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# FT NORTH AMERICA INNOVATIVE LAWYERS 2014



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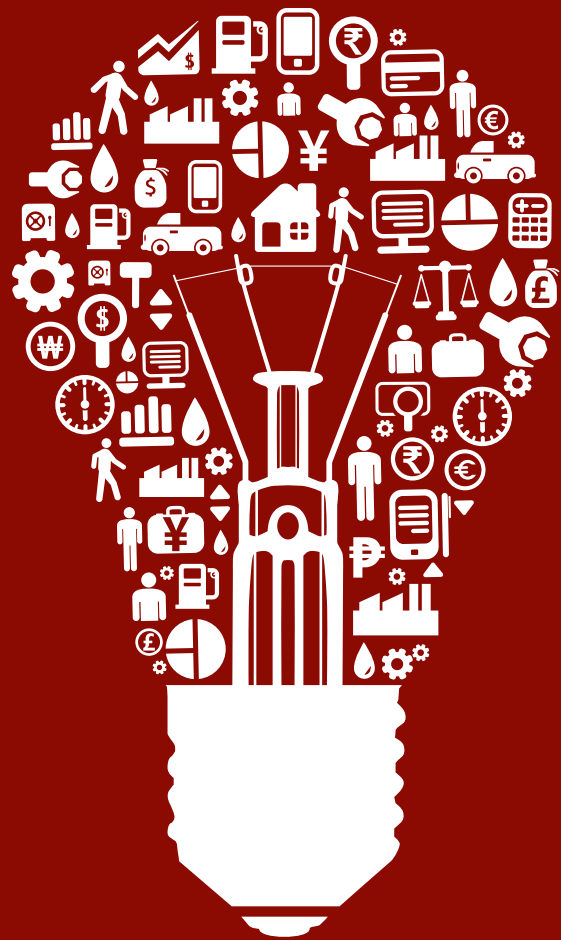
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## North America Innovative Lawyers 2014

# Change is extending scope and impact

Welcome to the Financial Times North America Innovative Lawyers report for 2014. We started publishing the unique ranking of US law firms four years ago. Now, for the first time, we have broadened the report's scope to include Canada and Mexico, reflecting the important role these economies play in global business.

The FT series of Innovative Lawyers reports is also extending its global reach. In June we published a first report and rankings for the Asia-Pacific region. And October saw the ninth annual European report.

These reports and rankings are meticulously researched. Law firms and in-house legal teams submit entries highlighting their most innovative work, then our research partner, RSG Consulting, conducts extensive assessments and interviews in order to apply a bespoke methodology that produces the rankings.

This year saw greater engagement than ever before. We received a record 448 submissions and nominations from more than 127 of the leading firms and in-house teams across North America. RSG

interviewed and sought feedback from nearly 440 clients, experts and lawyers.

The picture that has emerged is of a profession in transition. The information revolution is changing the world. There are new applications of technology, such as driverless cars, new assaults on data security and privacy, and new forms of partnership. The law has yet to catch up with many of these developments, but lawyers are playing a vital role in bringing clarity to these issues – and at the same time rethinking their own industry to offer wider strategic perspectives.

The 2014 report shows fascinating signs of structural change as firms move to embrace big data, new technology and the potential for radical efficiencies, while engaging in intensive debate about how to add value for clients.

The stakes are high. What is on offer to firms that change through innovation is the chance to be in the vanguard of a transformation in the way we do business.

**Gillian Tett**  
US managing editor

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For more detailed ranking tables go to [www.ft.com/innovative-lawyers-north-america](http://www.ft.com/innovative-lawyers-north-america)

## Research methodology

FT North America Innovative Lawyers Report 2014 is a rankings report and awards for lawyers based in the US, Canada and Mexico. Shortlists for the awards comprise the top-ranked submissions in each section of the report. The FT and its research partner RSG Consulting have devised a unique methodology to rank lawyers on innovation. Law firms and company in-house legal teams are invited to submit their innovations. No entry appears in

the FT report without a robust client or independent reference. Each entry is scored out of 10 points for originality, rationale and impact, for a maximum score of 30. Commended lawyers are those who received strong individual commendations in RSG Consulting's research. The FT 40 ranking is a pure aggregate of each law firm's performance across the private practice categories of the report.

**For full methodology go to [ft.com](http://ft.com)**

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**Introduction** Payment simply for hours worked fails to recognise the value created, says *Reena SenGupta*

# Chance for architects of change to win accolades

Innovation can be a double-edged sword for lawyers. Legal innovation is the hallmark of the most prestigious US firms – they pride and sell themselves on their intellectual horsepower. It is the source of their differentiation from the rivals that jostle for the accolade of having the most brilliant lawyers and coming up with the best solutions. But while clients appreciate such legal strokes of genius, lawyers are not always recognised for the commercial value they create, or rewarded in appropriate financial terms. Instead, the economic structure of the legal sector is still largely predicated on a time-input basis rather than one that places a value on output. In other words, lawyers are still paid for the hours they work rather than the value they create for their clients. Eric Greenberg, a corporate partner at Paul Hastings, says that legal innovation enhances reputation and generates business, but does not result in higher fees.

Mr Greenberg argues that, because of the hourly rate, law firms are like movie theatres that make the bulk of their money selling high-turnover popcorn. The innovative legal structures that create opportunity for the client may be the work of a few hours for a seasoned lawyer. But as lawyers, unlike bankers, are paid on their hourly input whatever the commercial value of the opportunity for their client, it is the more laborious, time-intensive tasks where big firms earn their big fees. “The traditional model treats every hour equally in terms of fees. The result is that the innovative, opportunity-generating hour must be coupled with other fee-generating hours and this can make legal innovation a loss-leader,” says Mr Greenberg. But high-quality innovation is taking place nonetheless. This FT report, which for the first time extends its remit from the US to the whole of North America, ranks 87 examples of legal innovation in the corporate, finance and

litigation categories. And although many of the firms’ submissions show lawyers working at full horsepower, they had only a one in three chance of getting their work profiled in the report this year. The submissions ranked for legal expertise in the FT report have to prove that the lawyers are, to use a common industry metaphor, far more than carpenters. They have to show they have played the role of architects. One example ranked in the Litigation ranking table comes from Tara Lee and Serge Nawej at DLA Piper. The team spent a large portion of the year knocking on doors in Kinshasa to create their case for the government of the Democratic Republic of Congo against vulture funds that buy distressed securities. They were eventually successful in helping the Congolese government find a process to defend itself against unfair claims. The courage and determination shown by the team went far beyond the usual brief. Although they may not be earning what their

‘Law firms are like movie theatres that make the bulk of their money by selling high-turnover popcorn’



FT 40				
Rank	Law firm	Total	Legal expertise	Business of law
1	Kirkland & Ellis	180	138	42
2	Skadden, Arps, Slate, Meagher & Flom	179	134	45
3	Latham & Watkins	178	137	41
4	Paul Hastings	149	107	19
5	White & Case	132	71	20
6	Simpson Thacher & Bartlett	125	83	21
7	Dechert	115	94	0
8	Weil, Gotshal & Manges	114	70	44
9	Orrick, Herrington & Sutcliffe	110	69	21
10	Cleary Gottlieb Steen & Hamilton	109	89	0
11	Seyfarth Shaw	90	21	47
12	Paul, Weiss, Rifkind, Wharton & Garrison	89	63	0
13	Ropes & Gray	85	43	20
14	Sullivan & Cromwell	70	70	0
15	Cravath, Swaine & Moore	69	69	0
16	Jones Day	67	67	0
17	Littler Mendelson	66	24	42
18	Gibson, Dunn & Crutcher	50	50	0
19	DLA Piper	48	26	0
19	Linklaters	48	25	0
21	Akin Gump Strauss Hauer & Feld	45	45	0
21	Freshfields Bruckhaus Deringer	45	45	0
23	Allen & Overy	44	44	0
23	Mayer Brown	44	44	0
23	Proskauer	44	22	22
26	Perkins Coie	43	0	21
27	Fenwick & West	42	0	0
27	Morrison & Foerster	42	42	0
27	Vinson & Elkins	42	42	0
30	Chadbourne & Parke	41	21	0
31	Nader, Hayaux & Goebel	40	40	0
31	Sidley Austin	40	20	0
33	Dickstein Shapiro	26	26	0
33	Reed Smith	26	0	0
33	Wilson Sonsini Goodrich & Rosati	26	26	0
36	Astigarraga Davis	25	25	0
36	Covington & Burling	25	25	0
38	McCarthy Tétrault	25	0	25
39	Blake, Cassels & Graydon	24	24	0
39	Pillsbury Winthrop Shaw Pittman	24	0	0



# Knowledge is beginning to take wing



Congratulations to our longtime Chair and Managing Partner Robert M. Dell on being named the inaugural recipient of the *Financial Times* Innovative Lawyers Special Achievement Award for North America.

He has led our firm for 20 years with integrity and humility. His legacy is a culture of teamwork, innovation and excellence.

**Business of law** Firms have been slow to invest in data analytics and knowledge processing platforms, but some are now moving ahead of the curve, reports *Caroline Binham*

Big data has been one of the business world's buzziest phrases this year. The practice of harnessing large quantities of day-to-day information and analysing it for patterns to inform new ways of working has been embraced by sectors beyond technology, from retail to financial services and even fraud investigators.

Law firms, meanwhile, have been laggards. They are aggregators of huge amounts of information and knowledge, yet have been slow to deploy it beyond traditional legal advice. That is beginning to change, at least among the most innovative firms.

At the heart of legal service, however, is the client.

Seyfarth Shaw, which tops the rankings in this sector, created a platform to facilitate information-sharing with its corporate clients. SeyfarthLink is a combination of the digital services that firms routinely provide to clients – such as an extranet with document-review, contract-management, process-mapping, file-sharing and so on – and newer services such as predictive analytics, or statistical techniques that include data mining and future modelling.

Given Seyfarth's traditional focus on employment, there is also a large portion devoted to labour law, with services such as a tracker for any accommodation made by a company for a particular employee, and assistance for employers that have to deal with large unions. It is proving popular with clients: nearly 600 companies now use SeyfarthLink, and over the past year, page views have more than doubled to about 200,000.

Another employment-focused law firm, Littler Mendelson, has developed a tool to facilitate not only client understanding about the plethora of labour regulations, but also their input in how those regulations are developed.

Littler's Workplace Policy Institute gives companies access to the firm's 1,000 attorneys who specialise in employment advice. It aims to be a broker between its clients and Capitol Hill, advising companies on subjects ranging from giving testimony to a select committee when regulations are drafted, to how to file an amicus brief should the legislation be particularly onerous.

And what if your clients are themselves immersed in innovative technology? For a firm such as Cooley, which has long served companies in Silicon Valley, putting document-management services on any old website was not going to impress. Cooley GO is a website which (as perhaps the highest possible accolade from a tech client might have it) does not look as though it has been made by lawyers.

While document management and creation



services are available, Cooley has thought about the further needs of its particular clients: the documents in question include how to develop a privacy policy, for example, while targeted tutorials include how to allocate stock to founders. Cooley has also eschewed traditional marketing to focus on social media and blogs to promote its site.

Kirkland & Ellis also knows the power of playing to one's strengths. The firm, which is a powerhouse in advising on top-drawer

investigation – is that its share price will take a hammering. Follow-on lawsuits filed by shareholders who allege that management should have known that such news would precipitate a drop in the value of their shares are all too common. There have been 78 such securities class actions filed so far in the US in 2014, according to research published by the New York Times.

Weil, Gotshal & Manges sees those cases as business opportunities, and so for the past year has been monitoring stock drops of more than 5 per cent and comparing them with research on its clients and other companies. It approaches companies that suffer such a drop, explaining the risk of a lawsuit. It has resurrected a former client relationship that way, and was prepared for litigation for another client when the lawsuit was filed.

That technology is so client-centric among law firms is certainly a positive, but are firms perhaps missing a trick? In the UK legal market, technology has been harnessed to streamline processes and to make business models more efficient. But this is not really the case in the US, where the vast legal market gives less of a financial imperative to trim fat.

It is a Canadian firm, however, that has undertaken efforts more like its UK than US counterparts in this regard (*see page 10*). McCarthy Tétrault, which has deployed new technology and an alternative legal-services provider, has seen clients receiving bills that are as much as 30 per cent lower. Evidence, perhaps, that smart use of technology can benefit both firm and client.

● BUSINESS OF LAW			
Law firm		Score	Description
Standout	Seyfarth Shaw	27	Developed SeyfarthLink, an online tool that enables better client-firm collaboration by improving flows of information.
	McCarthy Tétrault	25	Strategic partnerships with a legal processing outsourcer and an alternative supplier combined with Lean Six Sigma processes, have created efficient delivery models that can save clients up to 30 per cent in costs. Commended: Matthew Peters.
	Weil, Gotshal & Manges	24	Analysing daily share price movements for their effects on clients or potential clients has sharpened up the firm's business development activities.
	Conduit Law	23	The Canadian new-model firm has moved away from the billable hour and traditional models, saving clients as much as 40 per cent on legal fees. Commended: Peter Carayiannis.
	Kirkland & Ellis	23	A comprehensive database on the private mergers and acquisitions market enables the firm's lawyers to achieve better outcomes for clients.
Highly commended	Cooley	22	Interactive website for entrepreneurs that allows them to access the firm's expertise.
	Littler Mendelson	22	The Workplace Policy Institute set up by the firm helps represent employers' interests among lawmakers.
	Proskauer	22	Smart content marketing allows the firm to deliver vital information on current market practice in initial public offerings and high-yield bonds. Commended: Frank Lopez.
	Cadwalader, Wickersham & Taft	21	Initiated the Shareholder-Director Exchange (SDX) to create better understanding and avoid the adverse effects of shareholder activism. Commended: Jim Woolery.
	Latham & Watkins	21	A unique succession process to choose a new leader embodying the firm's cultural values.
	Orrick, Herrington & Sutcliffe	21	A litigation avoidance strategy that helps clients solve company matters in the state legislature rather than the courtroom.
	Perkins Cole	21	Established a firm-wide virtual currency practice to work with industry leaders and clients in navigating a new online marketplace.
Commended	Simpson Thacher & Bartlett	21	Partnered with US schools Stanford and Berkeley to work toward a better understanding of intellectual property practices, processes and outcomes.
	Latham & Watkins	20	A technology-based tool for internal budgeting and project management that has also codified the firm's knowledge.
	Littler Mendelson	20	Technological tools that enhance lawyers' ability to advise employers on how to manage regulatory charges and reduce litigation costs.
	Rimon, PC	20	Developed internal social network and ideas exchange platform to share legal expertise and billing structures.
	Ropes & Gray	20	A rapidly set-up new practice area to service private-equity clients dealing with regulatory challenges. Commended: Jason E Brown.
	Seyfarth Shaw	20	The research and development department, innovating in service delivery and legal technologies, has handled more than \$152m of business in the past 18 months.
	Weil, Gotshal & Manges	20	Building up a new business with law firm Thompson Coburn in the for-profit education sector to help companies restructure out of court.
	White & Case	20	One of the first large firms to harness the power of LinkedIn for business development.
	Kirkland & Ellis	19	An alumni programme that helps attorneys find new roles with clients when they leave the firm.
	Paul Hastings	19	A system that improves efficiency and helps give predictable fee estimates to clients.

The practice of harnessing information for patterns to inform new ways of working has been embraced across sectors

mergers and acquisitions, realised there was a dearth of material about how private deals – or failed acquisitions – were structured. An initiative to harness information gleaned in the legal market is paying dividends, with information on 1,000 deals now collated and analysed to the advantage of both lawyer and client.

Data analysis is also being used to attract clients in the first place. A sure sign that a company is in a spot of legal bother – perhaps following the announcement of a regulatory



North America Innovative Lawyers 2014

# Firms ride crest of a renewed M&A wave

Corporate & commercial Complexity and revived tactics are delivering for clients, writes *Ed Hammond*

Mergers and acquisitions have surged back during 2014, sparked by renewed corporate confidence and buoyant equity markets.

The value of deals completed globally in 2014 has already passed the \$3tn mark and this is on course to be the biggest year since the financial crisis. As the deals returned, US lawyers have been called upon to devise new ways of bringing together companies and overcoming problems with global takeover rules.

Two of the world's top semiconductor equipment makers, Applied Materials and Tokyo Electron, saw an opportunity to combine their strengths but there was no precedent for a stock-for-stock merger between US and Japanese corporations. Adding complexity, they agreed to use a Dutch holding company as a neutral jurisdiction for their merger of equals.

Weil Gotshal represented Applied Materials in this \$29bn deal that stands out on many levels - including dual headquarters and simultaneous listings in the US and Japan.

"This is definitely the coolest deal I've ever done," says Keith Flaum, Weil partner, "because of the structural complexity."

The biggest difference in many deals is not their structures, but the presence of activist investors.

Activist hedge funds that buy a company's shares and lobby for changes in the way it is managed have provided the catalyst for scores of deals in 2014. As well as pushing for sale, activists have homed in on companies with businesses that can be divested or spun off.

Law firms have been called on time and again to see off these agitators. Primary measures of defence have been the shareholder rights plan or so-called "poison pill" (where a company adopts a mechanism that dilutes the shares if any investor increases its holding above a certain threshold) and the staggered board, which prevents activists from removing large numbers of directors at one time.

Wall Street firms have established strong practices defending clients against attacks by activist investors. Even so, there is a sense among the US legal community that the days of treating activists as an undesirable but small

part of the deal landscape are ending. Lawyers are realising that activists are here to stay and, in some cases, can be a useful tool in takeovers.

In the most notable example of how activists can push for a takeover, Valeant, a Canadian drugmaker, teamed up in April with activist Bill Ackman to launch its \$53bn tilt at Botox-maker Allergan. This bid was not only extraordinary in its ambition, but also novel in its structure. Mr Ackman revealed that he held a substantial number of Allergan's shares and would be lobbying the company to sell to the Canadian suitor. Never before had a corporate buyer launched a full-blown attempt to take over a rival with the backing of an activist.

To structure the bid, Valeant turned to law firm Sullivan & Cromwell. "A hedge fund or activist investor working with a strategic buyer has never happened before," says Alison Ressler, partner at the practice.

Perhaps the biggest difficulty was convincing stock market and regulators that Mr Ackman's involvement did not constitute insider trading. But Douglas Barnard, lecturer at the University of Chicago law school, says: "You are allowed to trade on knowledge of what you intend to do, and normally by partnering you are just combining that intent."

The deal dragged on for seven bruising months, Allergan arguing for its independence and Valeant for its bid ahead of a shareholder vote in December. And in spite of a recent resolution - Valeant lost to a \$66bn bid by rival Actavis - the deal has redefined the relationship between activists and corporate buyers.

Another deal took all-but-forgotten tactics off the shelf, dusted them down and used them to good effect. Clothing companies Joseph A Bank Clothiers and Men's Wearhouse were trading bids as each sought to acquire the other. On the way, Jos A Bank agreed to buy clothing brand Eddie Bauer.

The saga ended when Jos A Bank, advised by Skadden, Arps, Slate, Meagher & Flom, used a buyer's exit clause to break its deal with Eddie Bauer and accept a significantly higher offer from Men's Wearhouse, delivering an extra \$600m to Jos A Bank shareholders.


Paul Schnell of Skadden is in no doubt that

CORPORATE & COMMERCIAL		
Law firm	Score	Description
<b>Weil, Gotshal &amp; Manges</b>	<b>26</b>	Represented Applied Materials on its \$29bn all-stock combination with Tokyo Electron. Commended: Keith Flaum.
<b>Covington &amp; Burling</b>	<b>25</b>	Helped World Wrestling Entertainment launch WWE Network, the first multi-platform, direct-to-consumer television service.
<b>Dechert</b>	<b>25</b>	Lead counsel to the Certares-led consortium of investors in its \$900m purchase of a 50 per cent stake in American Express's Global Business Travel division. Commended: Geraldine Sinatra.
<b>Kirkland &amp; Ellis</b>	<b>25</b>	Used contingent value rights (CVRs) to replicate indemnification for the first time, helping to protect Community Health Systems against risk in its acquisition of Health Management Associates. Commended: Stephen Fraidin.
<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>	<b>25</b>	Used a buyer's exit clause to help retailer Joseph A Bank Clothiers deliver an extra \$600m to shareholders. Commended: Paul Schnell and Jeremy London.
<b>Sullivan &amp; Cromwell</b>	<b>25</b>	Counsel to Valeant Pharmaceuticals' joint bid with Pershing Square for Allergan. Commended: Alison Ressler.
<b>White &amp; Case</b>	<b>25</b>	Helped Occidental Petroleum challenge federal laws in a previously untested refiling that secured its right to sell surplus energy to the California grid. Commended: Daniel Hagan.
<b>Cravath, Swaine &amp; Moore</b>	<b>24</b>	Conducted an extensive strategic review for Life Technologies, culminating in the company's sale to Thermo Fisher Scientific for \$13.6bn. Commended: Richard Hall.
<b>Latham &amp; Watkins</b>	<b>24</b>	Breathed new life into the "Burger King" dual-track structure by applying it to antitrust risk associated with client Georgia-Pacific's bid for Buckeye Technologies.
<b>Paul Hastings</b>	<b>24</b>	Helped launch FIBRA Hipotecaria, a pioneering mortgage real estate investment trust (Reit) that creates an international secondary market for Mexican mortgages. Commended: Michael Fitzgerald.
<b>Dechert</b>	<b>23</b>	Successfully overturned the Federal Trade Commission's prior ruling to facilitate OfficeMax's \$2.5bn merger with Office Depot. Commended: Paul Denis.
<b>Kirkland &amp; Ellis</b>	<b>23</b>	Negotiated a superior proposal clause to recoup \$48m following the termination of Eddie Bauer's proposed sale to Joseph A Bank Clothiers.
<b>Latham &amp; Watkins</b>	<b>23</b>	Introduced an indemnity offset mechanism to protect Dutch group Royal DSM during the spin-off of its pharmaceuticals arm into a joint venture majority-owned by private equity firm JLL Partners.
<b>Cleary Gottlieb Steen &amp; Hamilton</b>	<b>22</b>	Represented Japanese brewer and distiller Suntory Holdings on its \$16bn acquisition of US premium-brand spirits producer Beam. Commended: Paul Shim.
<b>Latham &amp; Watkins</b>	<b>22</b>	Helped Authentic Brands Group complete the high-profile acquisition of intellectual property rights associated with Elvis Presley and Muhammad Ali.
<b>Proskauer</b>	<b>22</b>	Represented American Realty Capital Properties (ARCP) in its acquisition of Cole Real Estate Investments (CREI), helping to make ARCP the largest US net-lease Reit.
<b>Sullivan &amp; Cromwell</b>	<b>22</b>	Negotiated an unusual prepaid reverse break fee to protect utility company Pepco's interests from regulatory delay during its auction sale.
<b>Freshfields Bruckhaus Deringer</b>	<b>21</b>	Worked through multi-jurisdictional complications arising from Nasdaq-listed engineering services group Foster Wheeler's sale to UK rival Amec.
<b>Morrison &amp; Foerster</b>	<b>21</b>	Guided Edison Pharmaceuticals through its strategic partnership with Japan-based Daiippon Sumitomo Pharma.
<b>Orrick, Herrington &amp; Sutcliffe</b>	<b>21</b>	Helped Hackman Capital-sponsored entities acquire and value a portfolio of 140 vacant properties from the bankrupt Hostess Brands ("Old HB").
<b>Paul Hastings</b>	<b>21</b>	Took advantage of new Nasdaq private placement rules to boost renewable energy and biofuels company Gevo's capital-raising ability.
<b>Paul, Weiss, Rifkind, Wharton &amp; Garrison</b>	<b>21</b>	Advised Time Warner Cable on its all-stock merger with Comcast to create a new operator with an enterprise value of \$68bn. Commended: Bob Schumer.
<b>Seyfarth Shaw</b>	<b>21</b>	Introduced Disclosure Dragon, an online document assembly tool for preparing legal and financial disclosure documents aimed specifically at the crowdfunding industry.
<b>Simpson Thacher &amp; Bartlett</b>	<b>21</b>	Advised Vodafone on the sale of its US business to Verizon in the largest mergers and acquisition deal of the century.
<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>	<b>21</b>	Addressed US Securities and Exchanges Commission conflicts with Dutch law to help Joh A Benckiser buy Sara Lee spin-off company DE Master Blenders 1753 in a deal that forms the world's largest pure-play coffee company.

Additional entries are in the online tables at [www.ft.com/innovative-lawyers-north-america](http://www.ft.com/innovative-lawyers-north-america)

The days of treating activists as a small, undesirable part of the landscape are ending

this tactic will be used again, particularly in an era of more hostile approaches. "People will say let's increase prices by creating competition," he says. "They're going to ask if there is an acquisition they can do to increase value."




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# Traditional pricing model abandoned

# Smaller deals prove more challenging



The firm is also rethinking its overall staffing. Instead of the traditional model, where partners and associates do the work, McCarthy Tétrault now hires staff lawyers where relevant. That means staff devoted to the client's work, and lower costs.

	Law firm	Score	Description
Highly commended	<b>Nader, Hayaux &amp; Goebel</b>	<b>21</b>	Finance: Helped the Mennonite community of Chihuahua set up the first Mexican reinsurance company for the agriculture sector. Commended: Yves Hayaux-du-Tilly L and José Andrés Rivas Rodríguez.
	<b>Hogan Lovells BSTL</b>	<b>20</b>	Finance: Created a novel financing structure enabling non-profit foundation Aqetopia to support the work of Mexican artists. Commended: Federico De Noriega Olea.
Commended	<b>Nader, Hayaux &amp; Goebel</b>	<b>19</b>	Corporate & Commercial: Advised Axis Asset Management on the first ever CKD (Certificado de Capital de Desarrollo) capital call in the Mexican market. Commended: Hans P Goebel C and Héctor Arangua L.
	<b>Galicia Abogados</b>	<b>18</b>	Corporate & Commercial: Achieved competition clearance for Mexican cinema chain Grupo Cinemex acquiring the Mexican subsidiary of Cinemark.
	<b>Creel, García-Cuellar, Aiza y Enriquez</b>	<b>17</b>	Finance: Advised Prologis on the \$620m listing of FIBRA Prologis, a real estate investment trust in Mexico. Commended: Rodrigo Castelazo and Cristiano Sánchez Carrillo.

The reinsurance fund that NHG worked on - Mexico's third such fund ever - has also spread beyond its initial target. The Mennonites are inviting avocado producers in the western state of Michoacán and apple producers in Chi-huahua to become involved, and have plans to operate in Paraguay, which also has a large Mennonite community.



**MATT FAWCETT**  
SVP General Counsel and Secretary, NetApp

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North America Innovative Lawyers 2014

Finalists make imposing group

Legal legends These individuals have inspired in the courtroom and beyond, writes Michael Skapinker

The 10 most innovative individuals in the North American legal sector are once again an impressive group, as they have been in the four-year history of the US Innovative Lawyers report. But the judges had little trouble picking just one of them to win the award for most innovative individual - itself an innovation for the report this year. Roberta Kaplan, a partner at Paul, Weiss, Rifkind, Wharton & Garrison, has been involved in some of the most important legal developments of recent years. First among these was her pro bono representation of Edith Windsor, in her successful challenge of the Defense of Marriage Act before the US Supreme Court. This case, which has led to a vast expansion in the number of US states recognising equal rights for same-sex marriages, will surely be a landmark in US legal and constitutional history, studied by law students for generations to come. On its own, it would have been enough to ensure that Ms Kaplan won the award. She earned particular credit for arguing

the case herself before the Supreme Court, when many thought she should have handed it to a lawyer with specialist experience. But there is more: her involvement in the legal development of the “sharing economy”, representing Hailo, the online taxi hailing company, and Airbnb, the peer-to-peer accommodation specialist, mark her out as a true lawyer of our time. The other candidates impressed, too. Tara Lee, chair of DLA Piper’s cross-border litigation practice, was commended for her international outlook in helping African countries counter “vulture funds”. Josh Rosenkranz, head of the Supreme Court and appellate litigation practice at Orrick, Herrington & Sutcliffe, was another finalist deeply involved in some of today’s defining legal issues. He represented Facebook in helping to fight off claims against it from Mark Zuckerberg’s Harvard classmates who claimed to have invented the idea. He has also represented Apple in its defence of the patents on its touchscreens.



Paul T Denis Partner and deputy chair, global litigation team, Dechert

Using insights gained from his tenure in the antitrust division of the Department of Justice and extensive private sector experience, Paul Denis has become a regular feature in FT Innovative Lawyers reports for clearing seemingly impossible antitrust hurdles. His speciality is guiding complex and sensitive mergers, acquisitions and joint ventures to full clearance.

It is not just his technical knowledge that helps Mr Denis achieve these results. Antitrust lawyers cannot operate in a vacuum, they need deep market knowledge and boardroom expertise. Mr Denis has these strengths, plus public policy insight and strong litigation experience. His skills were brought to bear in the US Airways-American Airlines merger by addressing the DoJ’s concerns about competition, and the OfficeMax-Office Depot merger, where his focus on pricing practices eliminated the need to challenge the precedent of FTC v Staples.



In a landmark Supreme Court ruling, she established the fact that gay people have the same rights as everyone else, effectively invalidating Doma. More than 32 states and the District of Columbia now allow gay couples to marry. Ms Kaplan’s work is recognised in the Social Responsibility rankings of this year’s FT North America Innovative Lawyers report.

Paul Denis has become known for clearing seemingly impossible antitrust hurdles



Stephen Fraidin Partner, Kirkland & Ellis

Few lawyers work on deals that call for novel structures. Fewer still expect those structures to endure beyond the deal they were designed to serve. Stephen Fraidin has added many new tricks to the dealmaker’s repertoire. He led the team that in 2010 devised the “Burger King structure”, a dual-track acquisition that uses a tender offer supported by a traditional long-form merger. This became a template for about 20 transactions, until a change in Delaware law made it redundant last year. Then in 2013, he came up with the “ketchup clause”, a provision allowing buyers extra time to secure financing before a reverse break-up fee became payable.

This facilitated Berkshire Hathaway and 3G Capital Management’s acquisition of HJ Heinz. This year, Mr Fraidin has moved a deal forward by using contingent value rights (CVRs) to replicate indemnification for the first time, helping protect his client from post-acquisition liabilities. Mr Fraidin’s record of innovation goes back to the 1970s, when he worked on the first successful hostile exchange offer while representing Humana in its acquisition of American Medicorp.

He began his career at Fried Frank, where he was mentored by veteran lawyer Arthur Fleischer. At a time when mergers and acquisitions law did not exist as a distinct category of practice, Mr Fraidin was a pioneer who helped develop the techniques of the specialist M&A deal lawyer.



Donald G Gray Partner, Blake Cassels & Graydon

A leader in all things to do with aviation law, Donald Gray frequently advises aircraft manufacturers and financiers, works with national and international airlines, and helps inform industry regulators. Once general counsel of an international charter airline, Mr Gray has been involved as legal adviser in every significant Canadian airline bankruptcy for 25 years. In 2001, Mr Gray was on the Canadian delegation to talks on the Cape Town Convention and instrumental

Donald Gray has been involved in every big Canadian airline bankruptcy in the past 25 years

in having the treaty ratified and implemented in Canada a decade later. In 2013, he persuaded investment banks that this gave lenders the protection to extend enhanced equipment trust certificates (EETCs) to non-US airlines. This resulted in Air Canada’s successful EETC fundraising, which has since been copied by others. By widening access to US capital at competitive rates, this is an enduring contribution to the industry.

North America Innovative Lawyers 2014



Scott D Rechtschaffen Chief knowledge officer, Littler Mendelson

In 2000, Scott Rechtschaffen was asked to devise a knowledge management strategy for Littler. Since then, he has created one of the largest such departments of any US law firm, with a team that builds products, creates content and has

This knowledge management team has transformed the way clients access legal services

transformed the way clients access legal services. Mr Rechtschaffen has shifted the firm towards delivering client-facing products through a suite of products including Littler GPS, Littler PolicySmart and Littler CaseSmart, which provides a platform that gives clients real-time access to their cases, as well as to data-driven insights. Mr Rechtschaffen also writes extensively on knowledge management.



Alison S Ressler Partner, Sullivan & Cromwell

Alison Ressler, an authority on mergers and acquisitions, corporate governance and capital markets, has taken the lead on some of the most talked-about deals in recent memory. She advised on the sale of Barclays Global Investors to BlackRock, advised Skype during its acquisition by Microsoft, and was special adviser to Christopher Cole during the sale of Cole Real Estates to American Realty Capital. When she moved to Los Angeles in 1984 as a junior associate, no Sullivan & Cromwell lawyer had ever been made partner without first spending time in the New York office. Ms Ressler was the first and in 2003 became the first woman to sit on Sullivan & Cromwell’s management committee. She serves as co-head of its global private equity group and is responsible for the firm’s practice in California. Ms Ressler has spent her career leading by example. Her work on such high-profile deals, her role as leader in the firm and the respect she has earned have had significant influence on women in the profession.



Joshua Rosenkranz Partner, Orrick, Herrington & Sutcliffe

Josh Rosenkranz has argued more than 170 appeals in state and federal appellate courts and served as attorney of record in about 1,500 other appeals. He is known as the “defibrillator” for his ability to revive lawsuits on appeal after previous losses. In this year’s report, Mr Rosenkranz has been recognised for his work in Oracle v Google, where he came up with a metaphor to help the federal circuit court understand the value of a particular piece of code in a very technical programming case - a bold strategy that required a rigorous rationale. He is a keen public policy advocate, looking for ways to shake up legislation, government agencies, the White House and the press.

He is known as the ‘defibrillator’ for his ability to revive lawsuits on appeal, after previous losses



Michael A Rosenthal Partner, Gibson, Dunn & Crutcher

As co-chair of Gibson Dunn’s business restructuring group, Michael Rosenthal has overseen some of the most complex reorganisations of recent years. His clients range from investment banks to media companies and healthcare providers. Last year, Mr Rosenthal played a lead role in the restructuring of Arcapita Bank, the first sharia-compliant institution and Gulf company to emerge from a US bankruptcy. During the financial crisis, Mr Rosenthal helped several public companies involved in the restructuring of Lehman and its affiliates, advising on spin-offs, loan restructurings and securitisations. He is also an expert on restructuring issues related to companies with asbestos and other mass tort liability, and has advised the trustees of some of the largest asbestos settlement trusts.



Joshua Walker Counsel, Simpson Thacher

Joshua Walker is a leading intellectual property counsel who applies his experience in complex intellectual property issues for Silicon Valley. He has for 20 years designed legal databases and analytics tools to accelerate the application of evidence-based reasoning to IP litigation. In his work merging law and technology, Mr Walker deploys interdisciplinary teams and academic cross-pollination to ensure attorneys adopt innovations. Mr Walker was inspired to work with technology in his early career as an analyst for the International War Crimes Tribunal. With limited resources, he helped develop a system for analysing more than 2m documents to raise conviction rates.



North America Innovative Lawyers 2014

Tech giants lead charge for change

In-house Many company lawyers are also taking on the role of corporate conscience, writes *Reena SenGupta*

The transformation that the role of in-house lawyers has undergone is plain to see in the 2014 FT ranking of North America's most innovative corporate counsels. The legal departments represented include some of the continent's blue-chip companies as well as smaller, up-and-coming businesses. They represent a wide range of industries from technology to transport, banking and insurance to pharmaceuticals and airlines. However, legal teams from technology companies – both new and longer-established ones – make up nearly half the list. This is no coincidence. These companies have an overtly innovative culture and the emphasis on doing things

differently permeates every function, including that of the legal department. Technology companies must also deal with the challenges of protecting their intellectual property and handling rapidly changing or even inappropriate regulation – two areas in which lawyers are essential. The combination of culture and legallyorientated business challenges gives lawyers in technology companies critical and evolving roles. There are two well-established technology names at the top of the list: Microsoft and Intel. Each has gone through a renaissance recently and is attempting to retrieve the cutting-edge, image of its beginnings. In each case, legal teams appear to be in the vanguard of this reinvention.

**Geoff Brigham**

*General counsel, Wikimedia Foundation*

Geoff Brigham leads a team of six lawyers at the Wikipedia website and is driving several initiatives to protect freedom of speech and shape the legal landscape of the internet. Mr Brigham is guiding development of the Wikipedia Zero project, to give free access to the online encyclopedia on mobile phones in developing countries in Asia, Africa and South America.

**Steven Cook**

*Senior vice-president and general counsel, PulteGroup*

Steven Cook has a record of building relationships, both internally and beyond, through initiatives such as an annual outside counsel summit. He transformed Pulte's approach to enterprise risk management by creating a tool that tracks risks comprehensively, and also gives a higher profile to the value added by the legal function.

**Matthew Fawcett**

*Senior vice-president and general counsel, NetApp*

Matthew Fawcett, who has been described as a courageous counsel, has transformed the global legal team at NetApp so that it is run as a business. By adopting new technology such as automated non-disclosure agreements and benchmarking external legal spending against market data, Mr Fawcett has driven down costs as well as raised efficiency.



North America Innovative Lawyers 2014

At Microsoft, Brad Smith, the general counsel, embodies the change to the role of in-house lawyers. As with other general counsels in Fortune 100 companies, Mr Smith has responsibility for government affairs and public policy. His remit also includes corporate philanthropy. He says that the broadening of the role gives the general counsel “the tools and the ability to think more creatively about how to service the company”. The Microsoft legal team has lawyers in 55 countries and sees its role as far more than keeping the company out of trouble. It is a broad, strategic resource and one that includes public relations professionals, academics and legislative experts. With the advent of cloud computing, the legal team has seen its role as one of restoring users’ trust in the safety of their data. It has sued the US government three times, but also worked with it on legislative reform. Microsoft has played an active role in bringing together industry coalitions to influence the development of privacy security laws. The team at Intel is also in a process of evolution. With a new general counsel, Steve Rodgers, the team has innovated in virtually all aspects of the legal function. Encouraged by Brian Krzanich, the chief executive, to “think outside the box”, the lawyers have streamlined their processes, for example reducing the time it takes to conclude non-disclosure agreements from 17 days to six minutes. The team’s approach to purchasing legal services is to be used as a case study by Harvard University and involves a radical, long-term idea to foster young lawyers in relationship law firms who will become key partners in the future. Intel lawyers are also shaping creative ideas. One member of its wholly owned subsidiary McAfee has published what must be the first ever graphic novel based on corporate privacy policy. Another evolution for in-house lawyers, in

cases such as Microsoft, is adopting the role of corporate conscience. After the financial crisis shook the world, many in-house teams in the US and Europe were asked by their chief executives to look after ethics and compliance. One general counsel who understands more than most the dangers that corporations can face is Thomas Russo, now general counsel at insurance company AIG, but previously at Lehman Brothers, the financial services group whose bankruptcy was one of the first flash points of the financial crisis Mr Russo’s role in helping turn AIG around from being \$180bn in debt to a healthy company again has secured the legal department’s reputation internally as a profit centre rather than a cost centre. And he has also made a significant contribution to the company’s pro bono work. One such programme helps gain special immigrant status for Iraqi refugees who have helped the US government, but are now in danger from anti-American violence. One of the research components used to compile the FT ranking involves extensive references from chief executives and other high-ranking colleagues for their general counsel. It seems that the highest accolade given is to describe their legal teams as “not really being lawyers”. The team that stands out in this regard is that of Geoff Brigham at the Wikimedia Foundation, which hosts the online encyclopedia Wikipedia. Lila Tretikov, his executive director, describes him as a “true leader” who thinks and strategises about the big issues that face the Wikipedia movement. Mr Brigham says that his team of six handles all the legal issues that face the world’s fifth most popular website. But he says that he also has the help of “one hundred thousand others” such as the editors, writers and other volunteer contributors who care about the issues of copyright, privacy and freedom of information. “The skill set is not just running an internal legal department,” says Mr Brigham, but also tapping into the power of a global online community.

**Mike Jacobson**

*Senior vice-president and general counsel, eBay*

Since joining as the company’s 96th employee 16 years ago, Mike Jacobson has built the legal framework for eBay’s business model to thrive globally. He advised on the establishment of the European Union’s e-money directive and has created a model for how company legal departments can play a role in the development of public policy.

**Stephen Johnson**

*Executive vice-president, corporate affairs, American Airlines*

Stephen Johnson has extensive aviation industry experience in both company legal and private equity roles. In his current position, he plays a strategic and creative role helping the company manage commercial risk. Most recently, Mr Johnson guided US Airways through its complex and industry-changing merger with American Airlines.

**Thomas Russo**

*Executive vice-president and general counsel with responsibility for legal, compliance, regulatory and government affairs, AIG*

Over the past three years, Thomas Russo has helped to bring AIG back from the brink of bankruptcy to significant financial success, and has established an award-winning pro bono network. Mr Russo is widely regarded as an industry leader and an authority on the financial crisis.

● MOST INNOVATIVE NORTH AMERICAN IN-HOUSE LEGAL TEAMS		
	Total	
Microsoft	36	The legal team plays a broad strategic role within and outside the company. It has influenced the development of privacy and data security law by bringing together industry groups, litigating against the US government and working with governments around the world on public policy.
American International Group (AIG)	35	Played an instrumental role in transforming AIG's fortunes, helping turn a \$180bn deficit into a \$20bn surplus and making the legal department the single biggest profit centre in the company while simultaneously cutting its spend on outside counsel.
Intel	35	Transformed working relationships with outside law firms by identifying different types of lawyers and future leaders at preferred firms and investing in their development.
Wikimedia Foundation	35	The legal team manages international legal issues for Wikipedia with only six lawyers. It has created a model that allows hundreds of thousands of volunteer contributors to manage legal issues and create policy in a transparent way.
Deutsche Bank	34	Using technology and lower-cost locations to create a streamlined and more efficient legal function. The team has pioneered and developed a range of outsourcing and offshoring facilities, alongside new risk-management solutions.
eBay	34	Business and regulatory authorities around the world continue to seek the advice of eBay's legal team on the legal frameworks needed to transfer money across boundaries and increase trade through e-commerce.
GlaxoSmithKline (GSK)	34	Using sophisticated metrics to establish value-based flat-fee arrangements in collaboration with external counsel. The team is also working to quantify the value of the legal function through an analysis of return on investment.
NetApp	34	Adding value to the business through tools such as a suite of applications dealing with everything from e-signature programmes to real-time metrics for billing external law firms.
Staples	34	Developed a global leadership initiative to help make legal one of the most visible and valuable parts of the organisation while also ensuring internal counsel across the world act as part of a single, coherent legal team. The legal department has also driven key M&A deals and helped increase the company's profitability.
World Wrestling Entertainment (WWE)	34	Overcame significant regulatory hurdles to create the legal infrastructure necessary to launch the WWE Network, the first multi-platform, direct-to-consumer television service.
Lincoln Financial Group	33	Transformed the legal team into one of the main strategic partners of the distribution division and oversaw a significant reduction in legal costs while also managing to cut settlement costs.
PulteGroup	33	A comprehensive legal dashboard and a new approach to enterprise risk management has helped in strategic decision-making and made the legal department and operational heads true partners in the business.
Qualcomm	33	An approach driven by technology and data for managing the company's patent portfolio has delivered economic gains. The legal team uses engineers and machine-learning technologies to respond to complex patent queries in minutes.
Computer Sciences Corporation (CSC)	32	A complete overhaul of the legal department has ensured that the team is aligned with a company in transition. A unique "profit leakage" model has allowed the team to add value by eliminating unnecessary costs.
Entropic Communications	32	Risk management tools have been applied across the company to make legal the centre of its operations, giving the business a joined-up approach to risk.
Workday	32	The team uses company technology to manage workflow and keep up with rapid product development. The team plays a crucial role in new client arrangements.
American Airlines	31	The legal team, which played a key role in the merger between American Airlines and US Airways, is creative and strategic in its approach to commercial risk.
OnDeck	31	An efficient legal team at the core of the business has enabled rapid development of new products in a fast-paced environment.
Becton, Dickinson and Company (BD)	30	Making compliance and ethics a priority for the business globally, the team has developed catastrophe avoidance metrics to guide the company and provide clarity for the operational teams.
Bombardier	30	Processes to streamline the complex public bid process have allowed the company to make 400 bids for transportation and aerospace contracts each year.
Caterpillar	30	The team led the transformation of the company's global distribution model through more than 100 mergers and acquisitions, and has developed a company-wide pro bono programme.
E lance-oDesk	30	A small team has created a system to identify and monitor transactional compliance issues related to remote working, and is establishing the necessary regulatory environment for the industry to grow.
Energy Future Holdings	30	Managed legal complexities surrounding a big restructuring and transformed its relationship with the board using an online tool to handle decision-making more efficiently.
Pacific Investment Management Company (Pimco)	30	Negotiated on behalf of institutional investors to create a process for the central clearing of derivatives under new regulation. The team has won numerous settlements in class action cases and is helping the investment business expand internationally.
Panasonic	30	Helped the company shift from a consumer market to business-to-business. It has served as a model for others in the electronics industry making a similar transition.



# Creative coding and slaying trolls

Technology outpacing decades-old laws, global business contract disputes and corporate governance bylaws presented some of the biggest litigation challenges in the past 12 months.

Technology required a little magic when confronted with copyright law nearly 40 years old, as software giant Oracle found when it appealed against a lower court's ruling in favour of Google. At issue was whether Oracle's JavaScript code was protected under copyright laws. Oracle argued that Google's Android

operating system infringed protection owed to JavaScript, because it replicated small components of code in its software.

Google argued, among other things, that the pieces of code were not protected because they performed a function, essentially being the building blocks that allow other software and codes to be compatible. A lower court judge agreed.

But with much at stake, Oracle sought to appeal, and turned to Orrick, Herrington & Sutcliffe. The law firm wanted to demystify the technical issues and started with the name of the replicated code, or application programming interface (API). Orrick decided to refer to this as "creative code".

And then Orrick partner Joshua Rosenkranz brought that touch of magic to arguments to the appeals court panel. If an author named Ann Droid – a play on the name of the Google operating system – wrote a novel that copied the chapter names and topic sentences of each paragraph from the Harry Potter books but summarised the remaining portions, Orrick argued, it would violate copyright protections. The appeals court found for Oracle and sent

the issue back to a lower court to be litigated further.

Technology was also at the forefront of a long-running patent dispute case in which billions of dollars in damages were at stake.

Innovatio IP Ventures, a patent holder, sued more than 100 coffee shops, hotels, restaurants and other establishments for offering wireless internet access to their customers in violation of 23 patents it owned, seeking \$2,300 for each location.

Cisco Systems and other makers of routers used by the retailers countersued. Kirkland & Ellis, lawyer for the device makers, argued that the patents were “standard essential” to WiFi technology and therefore Innovatio was obliged to license such patents on a “reasonable and non-discriminatory” basis.

Kirkland recommended that, rather than focus on damages, the courts should first decide whether the patents were “standard essential” and then place a value on them, before ruling whether any laws had been violated.

The aim was to streamline the litigation in an age when disputes over patents are on the rise.

So-called “patent trolls” that manufacture no products but buy portfolios of patents and then seek payments from users have attracted scrutiny from regulators.

Judge James Holderman found that all the patents were “standard essential” and adopted Kirkland’s methodology, setting a licensing fee of 9.56 cents per WiFi chip - and cutting billions of dollars of potential damages had the scope of the action been widened beyond the parties in the original suit. The parties ultimately settled.

With more than 97 per cent of takeovers resulting in shareholder lawsuits in 2013, the lawyers at Skadden, Arps, Slate Meagher, & Flom decided a plan four years earlier for client CommonWealth REIT to counter such a threat.

In 2009 CommonWealth, a Maryland-based real estate investment trust, turned to Skadden to protect itself from a surge in costly shareholder litigation. Skadden advised the board to amend its bylaws to mandate that all shareholder disputes would be arbitrated, disallowing litigation. It was not challenged until 2013, when two activist investors launched a hostile takeover for the company and filed



lawsuits claiming that the bylaw was invalid because it had not been approved by shareholders.

No public company had previously defended a board-backed arbitration bylaw. Skadden decided to fight, and the bylaw was upheld by a Maryland court. The decision could have become a way for boards to prevent frivolous shareholder lawsuits, but few companies have amended their bylaws to include mandatory arbitration clauses. Still, it is an example that the boards of companies, especially those based in Maryland, can follow.

Globalisation was a hot issue in legal disputes last year. In one case, the place of the US as the home of international arbitration came under threat in a fight between BG Group and Argentina concerning a change to tariffs from US dollars to pesos, which would have diminished BG's investment in Argentina's gas sector.

Freshfields Bruckhaus Deringer advised BG to pursue arbitration in Washington DC, despite a clause requiring 18 months of mediation in Argentina, and BG was awarded \$185m in damages. However, Argentina appealed and the DC court of appeals found that the case should have gone through the Argentina litigation provisions.

Freshfields collected amicus briefs from a network of international arbitrators and courts to persuade the US Supreme Court to hear the appeal. In the end, the Supreme Court said that arbitration deserved deference.

Law firm	Score	Description
<b>Orrick, Herrington &amp; Sutcliffe</b>	<b>27</b>	Used a literature metaphor in a battle against Google to convince an Appellate Court that it was possible to copyright software. Commended: Joshua Rosenkranz.
<b>Dickstein Shapiro</b>	<b>26</b>	Convinced the Government Accountability Office to consider post-award developments in a protest at NASA's award of a \$1.76bn contract. Commended: Scott Arnold.
<b>DLA Piper</b>	<b>26</b>	Levelled the playing field by stamping out the practice of vulture funds targeting indebted African countries. Commended: Tara M Lee and Serge Nawej.
<b>Kirkland &amp; Ellis</b>	<b>26</b>	Clarified the meaning of "standard essential" in a patent violation claim defended on behalf of Cisco et al. Commended: Steven Cherny.
<b>Wilson Sonsini Goodrich &amp; Rosati</b>	<b>26</b>	Successfully defended the right of companies in Delaware to choose their forum for litigation through their bylaws.
<b>Asfigarraga Davis</b>	<b>25</b>	Developed a cross-border protocol in the wake of the civil asset recovery for the world's second largest Ponzi investment fraud. Commended: Edward H Davis Jr.
<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>	<b>25</b>	Developed a mandatory arbitration bylaw for Commonwealth REIT, establishing a model for stemming shareholder litigation.
<b>Freshfields Bruckhaus Deringer</b>	<b>24</b>	Challenged the seat of arbitration for BG Group, a gas company, in a case against Argentina, successfully winning in the Supreme Court.
<b>Latham &amp; Watkins</b>	<b>24</b>	Resurrected the Environmental Protection Agency's "regional consistency" requirement, in a ruling that benefits the energy industry.
<b>Littler Mendelson</b>	<b>24</b>	Developed a comprehensive new tool to manage single-plaintiff litigation while providing insights on business risks and other employment issues. Commended: Lisa "Lee" Schreter.
<b>White &amp; Case</b>	<b>24</b>	Delayed a big airport expansion for six years while developing a comprehensive strategy to win extraordinary recompense for residents.
<b>Dechert</b>	<b>23</b>	Two big victories affecting cases of sovereign debtor defaults, working with Gibson, Dunn & Crutcher.
<b>Dechert</b>	<b>23</b>	Developed a unique divestment strategy to secure the bankruptcy restructuring merger between American Airlines and US Airways. Commended: Paul Denis.
<b>Gibson, Dunn &amp; Crutcher</b>	<b>23</b>	Achieved two big victories affecting cases of sovereign debtor defaults, working with Dechert.
<b>Quinn Emanuel Urquhart &amp; Sullivan</b>	<b>23</b>	Partnered with the Federal Housing Finance Agency to take on banks responsible for issuing bad mortgage-backed loans before the financial crisis. Commended: Philippe Selendy.
<b>Cleary Gottlieb Steen &amp; Hamilton</b>	<b>22</b>	Acted for Wilmington Trust in complex Chapter 11 proceedings against Residential Capital and its affiliated debtors.
<b>Latham &amp; Watkins</b>	<b>22</b>	Protected foreign audit firms from exposure to sanctions and criminal penalties abroad when meeting US Securities and Exchange Commission obligations.
<b>Simpson Thacher &amp; Bartlett</b>	<b>22</b>	Developed a roadmap for future retail mergers threatened by anti-trust law.
<b>Vinson &amp; Elkins</b>	<b>22</b>	Closing the floodgates on qui tam suits under the False Claims Act where the suit is for fraudulent receipt of government funds.
<b>White &amp; Case</b>	<b>22</b>	Successfully beat one of the largest anti-trust cases globally and challenged the view that juries cannot handle complex damages calculations.
<b>Kirkland &amp; Ellis</b>	<b>21</b>	Challenged statute of limitations in a fraudulent transfer risks trial recovering more than \$5bn.
<b>Morrison &amp; Foerster</b>	<b>21</b>	Defended Clorox against a shareholder class action that sought to undo results on proposals regarding executive compensation.
<b>Orrick, Herrington &amp; Sutcliffe</b>	<b>21</b>	Challenged the "irreparable harm" argument brought by leading US broadcasters in a win for consumer rights.
<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>	<b>21</b>	Convinced the court to apply the "business judgment" standard rather than the more rigorous "entire fairness" standard in a private merger case.
<b>Fish &amp; Richardson</b>	<b>20</b>	Convinced courts to dismiss patent cases in accordance with decisions by the US Patent and Trademark Office.



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North America Innovative Lawyers 2014



# Bankruptcy beyond borders

**Finance** This year has seen legal strategists use the US bankruptcy code to steer foreign businesses through restructuring in fresh ways, reports *Yasmin Lambert*

In financial restructurings, the US has an important asset. Its bankruptcy code allows companies a degree of protection and leverage in reorganisations not available in other countries. US lawyers, in turn, are positioned to win mandates for complex restructurings from companies that operate largely out of their jurisdiction.

Each year, the finance section of this report carries a heavy representation of innovative legal work on US bankruptcy cases. Lawyers often play a highly strategic and unusually central role, steering companies through the complex process.

This year, lawyers are recognised for extending the application of US bankruptcy laws to businesses further afield and to cities at home on a larger scale than ever before. Working without precedent has required particularly creative and persuasive approaches.

When Bahraini investment bank Arcapita found itself in financial distress, it explored out-of-court restructuring options as well as the possibility of a UK administration proceeding. None provided the solution the bank needed, so it turned to Gibson Dunn lawyers.

In just a few days, it developed a strategy to file for Chapter 11 bankruptcy protection in the US, alongside a Cayman Islands proceeding.

Arcapita is the first Gulf bank and the first sharia-compliant institution to confirm a Chapter 11 plan of reorganisation. Gibson

Dunn lawyers were the strategists and consensus builders, steering the company through unprecedented legal, Islamic finance and communications complexities.

Part of the lawyers' role was to educate creditor groups and other stakeholders about the feasibility and strength of a US filing. It involved a roadshow through the Middle East. "I don't think others appreciated the power of the US Chapter 11 process," says Michael Rosenthal, partner at Gibson Dunn.

The bank succeeded in winning approval for its plan and emerged from bankruptcy protection. Its success shows the US bankruptcy code can handle Islamic finance, but Mr Rosenthal says the deal has broader significance.

"It has ramifications for restructurings of all Middle Eastern companies with international connections, not just Islamic investment banks. If they can't restructure out of court, it means they have Chapter 11 as an alternative," he says.

"And more broadly, if you are a company with investments in a number of regions, it means Chapter 11 is there in your toolbox. Whether you file or only threaten to file, it gives you strong leverage."

Jones Day advised the city of Detroit in the largest-ever municipal bankruptcy filing. The bankruptcy of one of the most populous US cities tested the limits of Chapter 9, the section of the bankruptcy code that applies to municipa-

lities. "Virtually everything in the case was unprecedented," says David Heiman, a partner at Jones Day, the lead restructuring counsel to the city. "We frequently found we would have to take a legal position, and it was difficult to pull in support because there was no precedent. In this case, we demonstrated that the bankruptcy laws enable cities in need to discount the recoveries for all the creditors."

The plan, confirmed on November 7, reduces the city's estimated \$18bn debt burden by approximately \$7bn. Central to its success was Judge Steven Rhodes' decision to appoint a mediator to negotiate deals with various creditor groups, and the so-called "grand bargain".

This saw the state, non-profit organisations and supporters of the Detroit Institute of Arts agree to purchase the Institute's valuable art collection to keep it intact, while helping to fund pensions liabilities. "What was different from other large bankruptcy cases is there was little precedent, so we just had to be more creative. However, the real excitement and privilege of working on this case is its impact on the people of Detroit," says Mr Heiman.

There are two other important drivers of innovation this year. The first is the wave of new financial regulation and its impact upon global banks. Linklaters advised Citi and Banco Santander on the launch of Trade MAPS, the first multibank securitisation of trade finance

assets. It serves as a model for global banks that will need to move low-margin assets - including trade finance assets - from their balance sheets to comply with Basel III regulations or capital targets, as they are implemented over the course of the decade.

Stuart Litwin, a partner at Mayer Brown, advised Morgan Stanley as underwriter on the transaction.

He says: "I believe trade finance will eventually be the single biggest asset class in securitisation. We estimate that there are currently \$4tn to \$5tn of these assets on the books of the global banks."

Changing energy needs and opportunities in North America have driven much of the creative project financing structures and innovation in the finance section of the report, comprising more than a quarter of submissions, many for large-scale oil and gas projects.

In renewable energy, businesses such as Mars are pursuing unusual investments to support sustainability goals. Rather than focusing solely on its own energy consumption, the food manufacturer has partnered with Sumitomo to develop a green energy plant that will allow it to generate and trade renewable energy credits.

Thomas Trimble, partner at Akin Gump, advised Mars on the financing structure and expects it to prompt other manufacturers to create their own green power projects.

North America Innovative Lawyers 2014

FINANCE		
Law firm	Score	Description
<b>Gibson, Dunn &amp; Crutcher</b>	<b>27</b>	Spearheaded the restructuring of Arcapita Bank in the first chapter 11 plan for a sharia-compliant institution. Commended: Michael Rosenthal.
<b>Jones Day</b>	<b>26</b>	Lead counsel to the City of Detroit in its \$18bn-plus bankruptcy, which involved negotiating unprecedented settlements.
<b>Linklaters</b>	<b>25</b>	Represented Citi and Banco Santander in launching the first multi-bank securitisation of trade finance assets, worth \$1bn.
<b>Blake, Cassels &amp; Graydon</b>	<b>24</b>	Helped implement a new treaty in Canada and advised on Air Canada's subsequent enhanced equipment trust certificates aircraft financing, creating a new benchmark for non-US airlines. Commended: Donald Gray.
<b>Mayer Brown</b>	<b>24</b>	Advised underwriter Morgan Stanley in the \$1bn Trade MAPS financing, allowing banks to securitise trade finance assets and comply with Basel III regulations.
<b>Akin Gump Strauss Hauer &amp; Feld</b>	<b>23</b>	Created a hybrid structure for food company Mars's agreement to develop the Mesquite Creek Wind Farm and reduce the company's carbon footprint.
<b>Allen &amp; Overy</b>	<b>23</b>	Devised a hybrid corporate and project financing structure to enable the Export-Import Bank of the United States to finance Asia Broadcast Satellite's launch programme.
<b>Cleary Gottlieb Steen &amp; Hamilton</b>	<b>23</b>	Represented a consortium of creditors in the bankruptcy of Brazilian company OGX Óleo e Gás Participações, the largest in Latin America. Commended: Richard J Cooper.
<b>Cravath, Swaine &amp; Moore</b>	<b>23</b>	Created a novel financing structure that facilitated Crown Castle's acquisition plans while safeguarding its conversion to a real estate investment trust structure. Commended: Stephen Burns and Johnny Skumpija.
<b>Ropes &amp; Gray</b>	<b>23</b>	Advised Pax World Funds and worked closely with the Securities and Exchange Commission to enable the first conversion of an Exchange Traded Fund into a traditional mutual fund. Commended: Greg Sheehan and Brian McCabe.
<b>Sullivan &amp; Cromwell</b>	<b>23</b>	Helped Semptra Energy secure \$7bn of multi-source long-term debt to develop one of the first natural gas liquefaction facilities in the US. Commended: Fred Rich and Inosi Nyatta.
<b>Akin Gump Strauss Hauer &amp; Feld</b>	<b>22</b>	Advised Indian state-owned energy company GAIL in a 20-year services agreement to use the Cove Point liquefied natural gas terminal. Commended: Stephen Davis.
<b>Cleary Gottlieb Steen &amp; Hamilton</b>	<b>22</b>	Won a ruling on no-action clauses in an "uninsured unitranche" structure, facilitating the successful restructuring of American Roads, operator of the Detroit-Windsor Tunnel linking the US with Canada. Commended: Sean O'Neal.
<b>Cravath, Swaine &amp; Moore</b>	<b>22</b>	Formulated a dual-covenant structure that enabled Riverstone to refinance its debt while also negotiating a merger. Commended: Johnny Skumpija and George Zobitz.
<b>Kirkland &amp; Ellis</b>	<b>22</b>	Constructed a creative financing structure for investment firm Apax Partners, enabling it to acquire two companies in the workers' compensation industry at the same time. Commended: Jay Ptashke, Joshua Korff.
<b>Latham &amp; Watkins</b>	<b>22</b>	Advised on the IPO of Terraform, helping to develop the market for "yield companies" in the renewable energy industry.
<b>Paul Hastings</b>	<b>22</b>	Used a common derivatives structure to recapitalise New York's leading not-for-profit affordable housing lender, a first in the sector. Commended: Lisa Chaney and Eric Schwitzer.
<b>Paul, Weiss, Rifkind, Wharton &amp; Garrison</b>	<b>22</b>	Helped creditors recapitalise the CEVA Group via a complex US, UK and Cayman Islands process, all within two months to keep the company from bankruptcy. Commended: Andrew Rosenberg and Elizabeth McColm.
<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>	<b>22</b>	Worked with NextEra Energy and its underwriters to develop a hybrid yield co-master limited partnership financing.
<b>Weil, Gotshal &amp; Manges</b>	<b>22</b>	Advised the lead arrangers of a €7.6bn "Yankee loan" financing for a joint venture between DEMB and Mondelez International to create Jacobs Douwe Egberts, the world's leading pure-play coffee company. Commended: Daniel Dokos and Justin D Lee.
<b>Weil, Gotshal &amp; Manges</b>	<b>22</b>	Represented the rehabilitator of Financial Guaranty Insurance Company (FGIC) in the first case in which an insurance company was wound down while paying policyholders outside an insolvency proceeding.
<b>Allen &amp; Overy</b>	<b>21</b>	Advised the Port Authority of New York and New Jersey in the \$2bn procurement of the replacement to the Goethals Bridge, using a novel public-private partnership. Commended: Andrew Fraiser.
<b>Chadbourne &amp; Parke</b>	<b>21</b>	Executed the world's first securitisation of distributed solar energy assets, increasing industry access to the securitisation market. Commended: Andrew Coronios.
<b>Jones Day</b>	<b>21</b>	Advised NRG Energy in the development of the world's largest carbon capture project, demonstrating the commercial viability of technology at this scale.
<b>Kirkland &amp; Ellis</b>	<b>21</b>	Helped Bain Capital and Golden Gate Capital finance their acquisition of BMC Software using a new dual-commitment option structure. Commended: Linda K Myers and Christopher Butler.
Additional entries are in the online tables at <a href="http://www.ft.com/innovative-lawyers-north-america">www.ft.com/innovative-lawyers-north-america</a>		

The bankruptcy of Detroit tested the limits of Chapter 9, the section of the code that applies to municipalities. Virtually everything was unprecedented



# Profession helps make a difference

## Social responsibility

Firms are building the legal structures to support new models of enterprise, reports *Sarah Murray*

As the lines continue to blur between financial and social impact, North American law firms are recognising they can play a vital role in building the legal infrastructure underpinning what many refer to as the “impact economy”.

For firms, this means they can make a difference not only to individual lives but also to the broader economy.

Law firms are pursuing some of these activities through projects and initiatives in which they work with schools, charities and other organisations. Others are using pro bono activities to engage more deeply, often in initiatives that use market mechanisms to tackle social problems.

Of course, while supporting the impact economy is a focus for some firms, social justice remains a strong motivator for lawyers. For example, Reed Smith has worked in Haiti on helping victims of the 2010 earthquake gain asylum on humanitarian grounds in the US.

For Skadden, Arps, Slate, Meagher & Flom, the approach has been to come up with what it calls a “fund within a fund” – an additional \$10,000 grant to any graduate from the Skadden Fellowship programme. Founded in 1988 by the Skadden Foundation, the scheme supports recent law school graduates and judicial clerks in pursuing public interest projects.

The Flom Incubator Grants – named after the late Joseph Flom, the Skadden partner who co-founded the fellowship scheme – support either innovative projects or ones that increase the impact former fellows are making.

One recipient, Amy Laura Cahn, a lawyer at the Public Interest Law Center of Philadelphia, has used the grant to expand her work in the city to increase access to vacant land to people who want to create community gardens.

Ms Cahn advises clients on how to obtain a property’s title and campaigns for legal changes that would make land transfer fairer and less complex.

The grants can also be used as seed money when former fellows want to take on something more ambitious. “They have been successful in gaining additional funding because they have the grant from us first,” explains Lauren Aguiar, litigation partner at Skadden and chair of the foundation.

Also focused on increasing access to legal services, Fenwick & West has partnered with DLA Piper to run clinics in public libraries for low-income communities in California. The clinics use Cisco’s WebEx conferencing technology to give disadvantaged groups virtual access to pro bono legal advice.

However, an increasingly important way for the legal sector to engage with society is by using its knowledge of corporate law to help



develop business models aimed at creating social as well as financial impact.

For example, Womble Carlyle has created a multidisciplinary impact economy practice. The team – led by Pam Rothenberg, a managing partner – helps social entrepreneurs gain access to capital and develop sustainable business models that will advance their missions.

Some law firms are assisting the creation of financial mechanisms that help social investments succeed. For example, Dechert

has structured an investment loan that allows cacao farmers in Belize to stabilise their business before beginning to repay the loan. The model means that debt repayments are tied to the receipt of revenue, rather than to a fixed repayment schedule.

Ropes & Gray, in its largest pro bono commitment yet, has helped structure an initiative designed to reduce reoffending through training and counselling for men on probation or leaving the juvenile justice system.

The Massachusetts Juvenile Justice Pay for Success Initiative is a transaction also known as a social impact bond. In such deals, investors receive a return once social interventions have achieved their goals and generated savings – which in this case would be generated through lower incarceration rates and increased job and skills training.

Winthrop Minot, a partner at Ropes & Gray, points out that the impact of this work can go beyond Massachusetts.

“We knew that when the next pay-for-success transactions were picked up, our papers would be used as a starting point,” he says. “So we wanted to get as much right as we could the first time around.”

In a pro bono engagement that has lasted for many years and involved many lawyers, including senior partners, Linklaters has worked with B Lab, a New York-based non-profit organisation, on developing legal frameworks that help business play a role in achieving positive social change and solving environmental problems.

“This is a direct application of their skills to something pretty innovative, which is evolving corporate law,” says Andrew Kassoy, co-founder of B Lab. “These are people who want to see the law evolve and understand the parameters for doing that.”

The work has included the creation of a new type of corporate entity: the “benefit corporation”. Registered benefit corporations can give the pursuit of social and environmental impact the same attention as profit.

As B Lab has started exploring how the law might be applied in other countries, Linklaters has been able to help through its overseas network. “The thing that’s been most valuable to us has been the reach they have in other markets,” says Mr Kassoy.

The advent of new legal structures such as benefit corporation legislation and financial transactions such as pay-for-success deals broadens the range of pro bono work available to corporate lawyers.

“For corporate lawyers, it’s hard to find good pro bono projects,” says Mr Minot. “You think of pro bono as standing up and defending someone in court.”

This is changing, as momentum grows behind the idea that business can be used as a tool to solve social and environmental problems.

And there appears to be a hunger among lawyers to participate, as Mr Minot found when soliciting help from colleagues to work on the pay-for-success initiative.

“Whenever I contacted someone if I needed help in a particular area, no one said no,” he says.

‘For corporate lawyers. it’s hard to find good pro bono projects. You think of pro bono as defending someone in court’

● SOCIAL RESPONSIBILITY – PRO BONO CASES			
Standout	Law firm	Score	Description
	Paul, Weiss, Rifkind, Wharton & Garrison	26	Achieved a landmark Supreme Court victory for Edith Windsor invalidating the Defense of Marriage Act. Commended: Roberta Kaplan.
	Paul Hastings	23	Clarified the role of federal and state courts in deciding the status of up to 60,000 immigrant children faced with deportation. Commended: Brian Moran and Kevin Broughel.
Highly commended	Ropes & Gray	22	Pro bono support for the Massachusetts Juvenile Justice Pay for Success Initiative has helped to reduce reoffending rates of youth prisoners.
	Simpson Thacher & Bartlett	21	Established the use of a mandamus action to ensure asylum seekers are given an interview with an immigration official within 45 days of arrival.
Commended	Cleary Gottlieb Steen & Hamilton	20	A holistic representation of sex trafficking victims, including defence against prostitution charges, enabling them to reintegrate into society.

● SOCIAL RESPONSIBILITY – PROJECTS			
Standout	Law firm	Score	Description
	Reed Smith	26	While carrying out legal aid work in Haiti, the firm implemented the “humanitarian parole mechanism”, offering victims of abuse permanent asylum in the US. Commended: Jayne Fleming.
	Pillsbury Winthrop Shaw Pittman	24	A programme in collaboration with American Veterans that has provided furniture or home equipment to 1,500 former military personnel.
Highly commended	Skadden, Arps, Slate, Meagher & Flom	24	The firm offers fellows of the Skadden Foundation \$10,000 grants to incubate ideas for delivering legal services to those in need. So far, 57 projects have been funded.
	Linklaters	23	Partnered with B Lab, a not-for-profit social entrepreneurs organisation, to advance the concept of benefit companies worldwide.
	Fenwick & West and DLA Piper	22	Collaborated with Cisco to create virtual pro bono clinics accessed online in public libraries for low-income groups.
Commended	Perkins Coie	22	Help for underprivileged children to apply their rights under the Deferred Action for Childhood Arrivals programme for illegal immigrants who entered the US as children.
	Seyfarth Shaw	22	A new model developed to help legal aid organisations increase the effectiveness of pro bono work.
	Stroock & Stroock & Lavan	22	Drafting the structure and insurance policies for African Risk Capacity, an agency set up to bring more certainty to the way international assistance is provided to African countries faced with extreme weather, using UN data to predict rainfall.
	Womble Carlyle Sandridge & Rice	22	Creation of a firm-wide initiative to promote the impact economy, which marries investors’ profit with social good. Commended: Pam Rothenberg.
	Dechert	21	Created a debt repayment model for a fair-trade cacao sourcing and production company in Belize, tying repayments to receipt of revenue rather than to a fixed schedule.
	Skadden, Arps, Slate, Meagher & Flom	21	A new model designed to maximise the delivery of pro bono services to local communities through formal and sustained partnerships with corporate in-house attorneys and non-profit public service providers. Commended: Fred Goldberg.
	White & Case	21	Helping married lesbian, gay, bisexual and transgender (LGBT) couples navigate the tax regime in the wake of the legalisation of same-sex marriages.
	Chadbourne & Parke	20	Continuing work with young immigrants has been boosted by a new partnership with the Legal Aid Society.
	Fenwick & West	20	Helped improve access to legal systems in emerging economies by training the providers. Commended: Victor Schachter.
	O’Melveny & Myers	20	A full-time pro bono programme designed to increase access to legal services for underprivileged businesses and individuals.
	Orrick, Herrington & Sutcliffe	20	The firm’s “impact finance” practice group allows lawyers to use their expertise on a variety of social finance structures designed to generate positive change.
	Shearman & Sterling	20	Using legal technologies and US media to impact access to justice in Africa.
	Sidley Austin	20	A creative way to do pro bono work in sub-Saharan Africa that attempts to educate legal service providers and improve access to justice.
	White & Case	20	Created an investment fund that uses private-sector money for philanthropic purposes.
	WilmerHale	20	An integrated, strategic approach has added to the impact of the firm’s charitable endeavours and support for community projects.

## Applause for the creation of an international behemoth

It is hard to overstate the impact that Bob Dell has had on Latham & Watkins, where he has been chairman for the past 20 years.

Mr Dell, 62, will step down from that role in later this month, and from the firm where he has been for 32 years of his career, initially as a litigator before he moved into management.

In the past two decades he has orchestrated a strategy that has seen Latham grow from a firm of 583 lawyers whose centre of gravity was very much Los Angeles, to the \$2.3bn international behemoth it is today, with more than 2,700 lawyers across 31 offices worldwide.

That international growth – aggressive in its lateral hiring of partners – has been achieved, unusually, without merging with another firm.

When pressed on what he feels is his greatest achievement, Mr Dell replies: “Building our global presence but, even more importantly,

doing so while preserving our highly valued culture, which is not easy.”

Such a legacy is enough to confer upon Mr Dell the North American Innovative Lawyers’ first-ever special achievement award.

Latham has taken on the competition in two of the most cut-throat legal markets in the world – New York, and more recently, London – and is doing so successfully. It has built on its key practice areas and a few choice clients to become a rounded force.

“When Bob took over 20 years ago, Latham was an LA firm that had tried to do a few other things outside LA, although not terribly well,” the managing partner of a firm headquartered in New York confides.

“Twenty years ago, our competition would have been the other Wall Street firms. Now, Latham is very much on the list.”

Caroline Binham, correspondent



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