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US Innovative Lawyers 2011



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CONTENTS

- 2 INTRODUCTION**
This year's report shows that smart legal thinking is crucial, whether for businesses or for governments
- 4 CORPORATE LAW**
Corporate lawyers' main concerns are often speed and the logistics of getting a deal done
- 7 ENERGY AND TECHNOLOGY**
Creative legal solutions are essential in fast-changing sectors
- 10 LITIGATION**
Limiting the reach of the law can save companies vast sums of money
- 14 FINANCE**
Three years on, lawyers are still dealing with the fallout from the credit crisis
- 17 BUSINESS OF LAW**
Law firms are being forced to focus on their business models like never before
- 19 IN-HOUSE TEAMS**
Corporate counsel take a different approach from their law firm colleagues
- 21 INDIVIDUALS**
Profiles of 10 US lawyers who have stood out for their innovative thinking

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A culture of creativity

Talent and an environment that is conducive to original thinking are key. By Reena SenGupta

THE RECENT DEATH OF Steve Jobs was front of mind for several of the law firm managing partners interviewed for this year's US Innovative Lawyers report. In the context of a conversation about how their firms were innovating, their own endeavours did not appear to bear comparison to the efforts of Apple's founder.

But innovation in law firms is different from that in corporations. Compared with a company chief executive, law firm managing partners are rarely inventors or even entrepreneurs. Their managerial functions are different and their roles tend to be more that of leaders or figureheads.

In the US, law firm management is particularly light touch. As the business of law section in this report reveals, few top US firms are seriously experimenting with operational or management innovation.

Most US managing partners see their role as enablers of their lawyers' innovations. The two main challenges cited were in the recruitment and retention of top legal talent and allowing individual lawyers the space to solve clients' problems.

Michael Blair, presiding partner of Debevoise & Plimpton, says: "We have many small teams of lawyers working on many different projects, so the creativity has to come out of those teams and be directed into those projects. What you have to do is create an environment that attracts and motivates people who like to think about things in rooms with other smart people."

As the FT report shows, this smart thinking is crucial. Whether it is helping companies survive or helping the banks create liquidity, legal innovation and the efforts of lawyers to be creative plays a central role in the success of US business.

'Every innovative business has to be focused on how to deliver yesterday's solution for less'

This year's US Innovative Lawyers report received submissions from 53 law firms in the Am Law 200 (American Lawyer's list of the top US firms), or most of the largest 50 US law firms. The research team reviewed 272 submissions and interviewed more than 300 clients and lawyers in the hunt for outstanding innovation.

For the first time, the report includes a ranking of the most innovative law firms: the FT Law 25. This listing – actually 26 firms because two tied for several places – shows those firms who had the highest scoring pieces of work in the report.

The FT's Innovative Lawyers project – which also includes a European report, now in its sixth year – was conceived as an alternative way to measure law firm success. It breaks with the traditional method of looking at fees and profits as the measure of success. As the category rankings are based primarily on client reviews, the FT Law 25 shows firms that were consistently found to be creating transformative solutions for clients.

Heading the 2011 ranking is Davis Polk & Wardwell. It was a consistent performer across the legal expertise and operational categories of the report. Tom Reid, the firm's managing partner, says: "Every innovative business has to be focused on how to deliver yesterday's solution for less today. Today, clients can enforce the truism of 'more for less'. When the advice you deliver is truly unique you can charge premium prices, but it is not all unique – our business model is about



driving a higher percentage of the inventive, unique work."

In second and third place, respectively, were Skadden, Arps, Slate, Meagher & Flom and Cleary Gottlieb Steen & Hamilton. Both firms were responsible for significant innovations for clients from Burger King, the hamburger chain, to AIG, the insurance group.

BOTH FIRMS TALK ABOUT THE importance of culture and human capital to their ability to innovate. Eric Friedman, chairman at Skadden, says: "We recognised from day one that our culture was our advantage."

The firm has a history of diversity in terms of background, approach and personality, which Mr Friedman believes directly benefits clients. He says new associates are "Skaddenised" and taught

How the report was researched

RESEARCH FOR THE US INNOVATIVE Lawyers report was conducted by RSG Consulting, a specialist legal research group. Each law firm was permitted to submit up to three entries in each category, which were subjected to client and third-party review. Each entry was scored against three criteria:

- The originality of the legal work or business situation
- The rationales behind the work, encompassing strategic input, levels of proactivity, commitment and leadership
- The impact of the work on the client's business, on the industry or on business more broadly, or how it transformed a legal field.

Each criterion was scored out of 10, allowing the firm a maximum of 30 points per submission and a total of 90 points per category.

The FT Law 25 was ranked according to each firm's total score for entries featured in the report.

All 272 submissions received in 2011 were researched and scored, but only 108 submissions are ranked in the report. Where a firm is not scored against a particular category, this does not necessarily mean the firm did not submit in that category, or that it did not perform well in that legal discipline.

FT LAW 25: MOST INNOVATIVE US LAW FIRMS

Rank	Firm	Corporate*	Finance*	Litigation	Business of law	Total score for ranked submissions
1	Davis Polk & Wardwell	21	61	38	18	138
2	Skadden, Arps, Slate, Meagher & Flom	61	58	-	-	119
3	Cleary Gottlieb Steen & Hamilton	54	44	-	20	118
4	Orrick, Herrington & Sutcliffe	58	18	19	20	115
5	Latham & Watkins	37	38	19	18	112
6	Cravath, Swaine & Moore	40	40	22	-	102
7	Paul Hastings	39	19	21	19	98
8	Sullivan & Cromwell	22	42	20	-	84
9	Seyfarth Shaw	-	18	-	61	79
10	Paul, Weiss, Rifkind, Wharton & Garrison	38	40	-	-	78
11	Kirkland & Ellis	43	-	22	-	65
12	Dewey & LeBoeuf	44	-	-	18	62
13	Mayer Brown	-	39	23	-	62
14	Gibson, Dunn & Crutcher	21	-	38	-	59
15	White & Case	-	41	18	-	59
16	Cadwalader, Wickersham & Taft	20	19	-	17	56
17	Akin Gump Strauss Hauer & Feld	35	-	18	-	53
18	Dechert	16	-	18	18	52
19	Morrison & Foerster	23	-	21	-	44
20	Wachtell, Lipton, Rosen & Katz	-	-	44	-	44
21	Simpson Thacher & Bartlett	40	-	-	-	40
22	Jones Day	-	17	21	-	38
23	Weil, Gotshal & Manges	-	20	18	-	38
24	Fulbright & Jaworski	36	-	-	-	36
25	Freshfields Bruckhaus Deringer	16	-	-	18	34
26	Proskauer Rose	16	-	18	-	34

*Includes corporate and finance submissions ranked in the energy and technology, media and telecoms tables

the values of the firm, which combine business orientated, client-centric problem solving and a strong public interest focus.

At Cleary Gottlieb, Mark Leddy, managing partner, says the firm's compensation model facilitates and encourages collaboration among partners on a global basis. "The model sweeps away internal competition and tension, and drives internal collegiality so that we can concentrate on being outward-facing to clients."

He adds that Cleary Gottlieb does not perceive itself primarily as a US firm but rather one that operates globally.

For all the firms in the FT Law 25, culture is of the utmost importance to the promotion of innovative lawyering. However, this culture does not have to be homogenous.

The ranking's top 10 contains three firms that originate from the west coast: Orrick, Herrington & Sutcliffe; Latham & Watkins; and Paul Hastings. All three have cultures that are different from the east coast firms, but are strong innovators in their own right with a growing international footprint. Also notable are the Chicago firms of Seyfarth Shaw, Kirkland & Ellis and Mayer Brown, which bring a different but powerful style to their innovations.

What is common to all the firms in the FT Law 25 is their commitment, their ability to adapt and to work together in the best interests of business to unusual and important effect. ■

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Small change, big difference

The tiniest of tweaks adapt the law for a multitude of applications. By *Helen Thomas*

CERTAIN FACTORS ALMOST always matter in takeovers. While bankers tend to concern themselves with strategy, valuation and synergies, corporate lawyers worry about speed, certainty, negotiating leverage or the simple logistics of getting everything done. Each merger or acquisition may have its own nuances, but those elements often remain the same. Tweaking and adapting contracts or structures to better manage those factors is part of the lawyers' job.

Practitioners argue that small changes to established practice can make significant differences to outcomes. And when a new approach so obviously enables greater speed or better negotiating heft, it gets copied. "One interesting aspect of legal innovation is how quickly others follow suit," says David Fox, partner at Kirkland & Ellis. "It is about uncovering an approach that solves a problem where previously others have struggled."

"Lawyers depend a lot on precedent," argues Eileen Nugent, partner at Skadden, Arps, Slate, Meagher & Flom. "But the best way you can be innovative in corporate law is to understand what has been done before and be open to doing things a little differently. Using an existing structure and changing it a little is how problems get solved."

In September 2010, Burger King agreed to be bought by 3G, an investment fund backed by three of Brazil's wealthiest and most prominent businessmen. While negotiations had dragged on for many months, the hamburger chain's board was concerned with moving quickly.

"Time is the enemy of all deals," says Ms Nugent, who was on the team advising the company. "In the Burger King deal, there was a desire on the part of the target's board to get money into the hands of shareholders as quickly as possible."

Moving swiftly helps deal certainty, advisers argue, compressing the window of opportunity for possible interlopers and reducing the risk that the environment moves against you. In the Burger King deal, the parties agreed to proceed using a dual-track process, now known in some circles as a "double whopper".

Tender offers enable companies to close deals more quickly, sometimes using a so-called "top-up" option to enable a buyer to squeeze out minority holders. However, securing financing against such a structure is challenging, meaning private equity groups rely instead on a traditional merger structure. Banks are reluctant to lend into a deal where the buyer may end up with only majority rather than outright control.

The two law firms involved in the deal, Kirkland & Ellis and Skadden, blended a tender offer with a simultaneous merger process, the latter

acting as back-up and as a stick to encourage investors to tender their shares.

If the tender offer failed to reach the level required for full control – about 79 per cent – the deal could switch instead to the merger path. "There hadn't been deals that put all those features together," says Ms Nugent. "To a non-lawyer it just sounds like a nifty thing to do. But the melding of these two forms of agreement is delicate work from a legal point of view."

When advising companies on contested or hostile deal situations, priorities shift. Rather than seeking to make a combination iron-clad and speed it towards completion, lawyers work to unsettle a rival's agreement, introduce doubt or simply gain themselves a foothold in negotiating with counterparties and winning over investors.

Cravath, Swaine & Moore defended Barnes & Noble against Yucaipa, the investment fund headed by Ron Burkle, the activist shareholder who was seeking to increase his holding in the bookseller. The poison pill put in place to prevent Yucaipa's stake-building was eventually upheld by a Delaware court. But Barnes & Noble then bet that it could persuade shareholders to vote against the recommendation of ISS, the influential proxy advisory service.

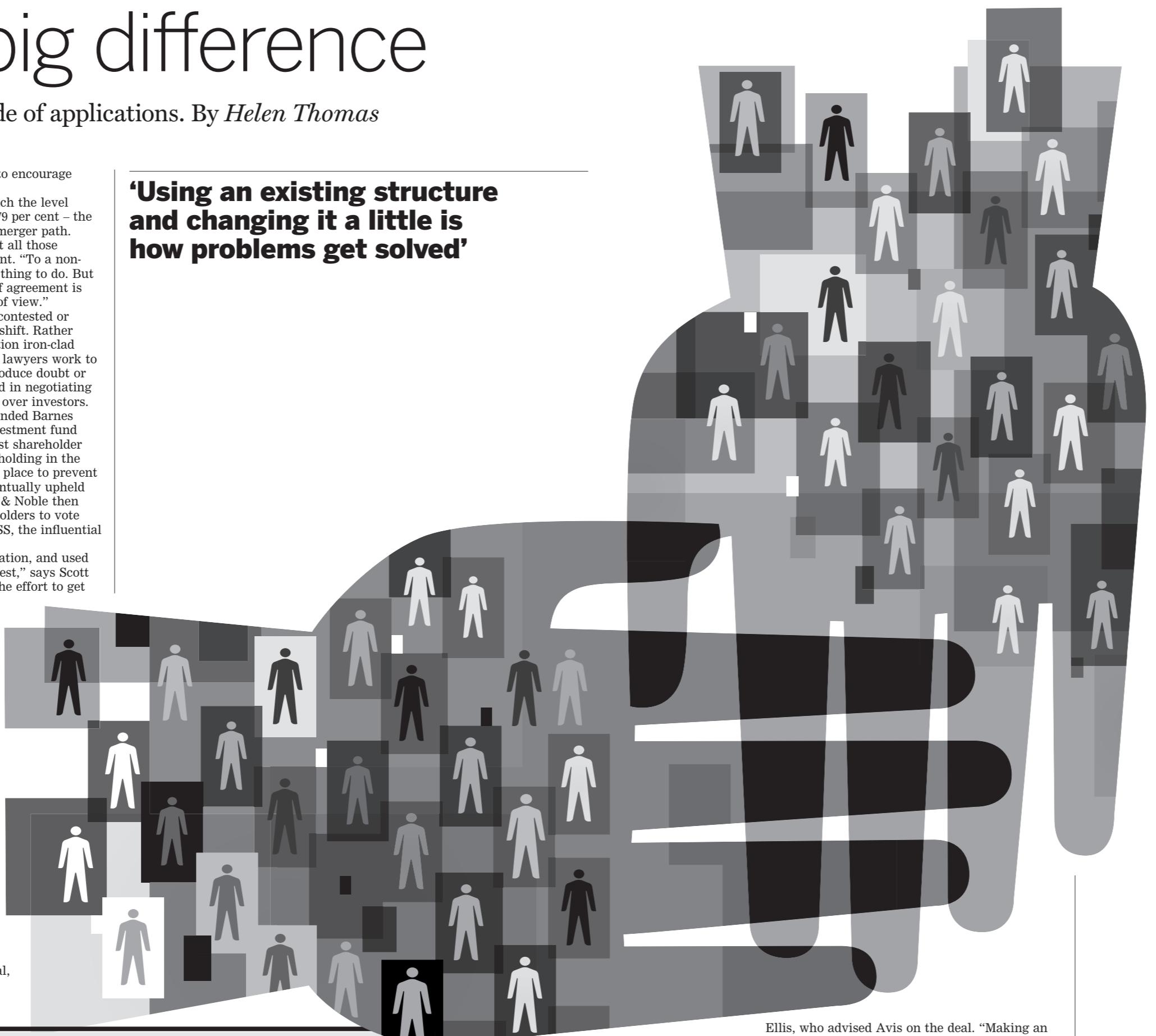
"We took their tactic, the litigation, and used it against them in the proxy contest," says Scott Barshay, partner at Cravath, of the effort to get investors to vote against Yucaipa's board nominees.

"Instead of the usual one-page letter to shareholders, we put out a 40-page white paper laying out our case to institutional shareholders."

When Avis Budget moved to bust up rival Hertz Global's agreed deal to buy Dollar Thrifty, sparking a lengthy battle between the car rental operators, Avis's team knew that the antitrust risk involved in each combination would be pored over by investors. They needed Dollar Thrifty's shareholders to vote against the Hertz deal, something they would hesitate to do unless confident Avis, too, could get a combination with Dollar approved – and was not lagging too far behind Hertz in negotiations with regulators.

"We had to persuade the world that Avis represented a real, credible alternative to the Hertz deal," says Mr Fox at Kirkland &

'Using an existing structure and changing it a little is how problems get solved'



Ellis, who advised Avis on the deal. "Making an antitrust filing before launching an offer for the company, in fact before even Hertz did, bolstered our case with Dollar Thrifty investors."

"It is rare that circumstances provide us with the ability truly to innovate," says one lawyer. "The law and the rules serve as limitations on innovation."

So, too, do the courts. In the industrial gas industry, Air Products' year-long pursuit of Airgas failed after the Delaware courts upheld the company's right to maintain its poison pill.

However, the state's Supreme Court had already overturned one innovative twist, upheld by a lower court. In a bid to circumvent Airgas' staggered board device, which allows only a portion of the board to be replaced at once, Air Products won support from Airgas shareholders for a bylaw that would have moved forward its annual meeting by eight months. In court, the two traded blows about the meaning of "annual". But Delaware bolstered Airgas' defences, ruling that the meeting could not be moved. ■

Transaction avoided a bank failure that could have cost \$300m

LAWYERS DO NOT OFTEN RECEIVE Christmas cards from their clients' employees. But AmericanWest Bancorp tellers decided to send festive greetings to the team behind a deal to sell and recapitalise the bank. The transaction saved AWB from being seized by the Federal Deposit Insurance Corporation, thereby avoiding a bank failure that could have cost the FDIC an estimated \$300m.

Weighed down by losses on commercial real estate lending, AWB in 2010 was running short of capital, but still had a valuable banking franchise boasting 77,000 customers in Washington, Idaho and Utah.

The difficulty – faced by numerous banks teetering close to collapse – was the bank's \$40m of trust-preferred securities, or TruPS, which could effectively veto the injection of new equity. Moreover, negotiating with TruPS holders was challenging – the securities had been pooled and repackaged into collateralised debt obligations, which in turn issued bonds to investors.

Morrison & Foerster acted for AWB, while Skadden, Arps, Slate, Meagher & Flom represented a vehicle backed by Goldman Sachs, the bank, and Oaktree Capital, the asset manager.

The lawyers believed they could avoid seeking approval from TruPS holders and shareholders by putting the bank's holding company into bankruptcy. Then, with only the consent of a bank's TruPS holders, the bank's assets could be sold.

Conventional wisdom, however, held that a bankruptcy filing would send depositors rushing to withdraw their money. Indeed, when the legal

team went to Washington to put their proposal to regulators, they were met with a sceptical response.

The lawyers argued that AWB's sticky base of depositors would stay with the bank – and then crafted a communication plan to explain to customers what would become the first sale of a US bank through the bankruptcy of its parent.

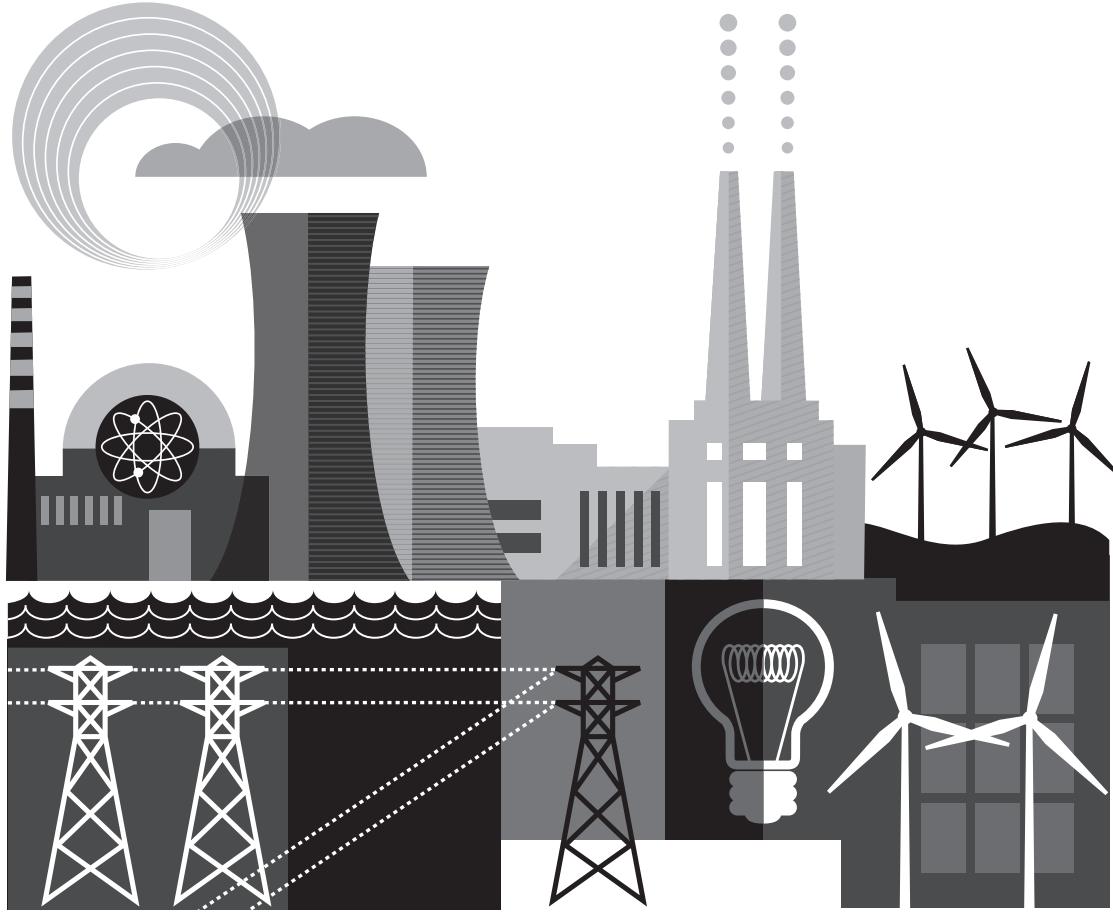
"As the FDIC begins to reduce the financial assistance and loan guarantees it gives buyers in auctions of failed banks, it is possible that we will see these kinds of deals occur more frequently," says Henry Fields, partner at Morrison & Foerster. "In addition, this could be used to break the impasse with other TruPS holders, even at healthier institutions."

Helen Thomas

Firm	Innovation	Corporate Law		
		Rationale	Impact	Total
STAND-OUT				
Kirkland & Ellis	3G's acquisition of Burger King	7	8	23
Morrison & Foerster	Recapitalisation of AmericanWest Bancorp through sale to private equity-backed buyer	7	8	23
Skadden, Arps, Slate, Meagher & Flom	Acting for SKBHC in the private equity firm's acquisition of AmericanWest Bankcorp	7	8	23
Skadden, Arps, Slate, Meagher & Flom	Burger King's acquisition by 3G	6	8	22
Cravath, Swaine & Moore	Defending Barnes & Noble against a group of investors	7	7	21
Gibson, Dunn & Crutcher	Defending Tenet Healthcare against a hostile takeover by Community Health Systems	7	7	21
HIGHLY COMMENDED				
Kirkland & Ellis	Advising Avis Budget on its bid for Dollar Thrifty	8	7	20
Cravath, Swaine & Moore	Terra Industries	6	7	19
Dewey & LeBoeuf	China Aviation Industry General Aircraft's \$210m acquisition of Cirrus Industries, the US aviation manufacturer	7	6	19
Fulbright & Jaworski	Building of the Long Beach courthouse	6	6	19
Paul, Weiss, Rifkind, Wharton & Garrison	Collaboration between Shanghai local government and Walt Disney on new theme parks	6	7	19
COMMENDED				
Paul Hastings	JPMorgan Chase's precedent-setting cross-border transaction	5	6	18
Akin Gump Strauss Hauer & Feld	Dow Chemical's joint venture with Mitsui project financing and management	6	6	17
Cleary Gottlieb Steen & Hamilton	Uniting Mexico's Femsa with Heineken of the Netherlands to make a global beer business	5	6	16
Dechert	Ventas acquisition of Atria for \$3.1bn	5	5	16
Freshfields Bruckhaus Deringer	Travelex's sale of Global Business Payments to Western Union	5	7	16
Proskauer Rose	Grifols' acquisition of Talecris	5	6	16
Skadden, Arps, Slate, Meagher & Flom	Advantest's unsolicited takeover of Verigy, the world's third-largest semiconductor business	5	6	16

Fast and furious frontier

Last year's groundbreaking deal is this year's norm in an ever-changing sector. By *Ed Crooks*



AS THE ENERGY INDUSTRY has pushed forward into the unknown, the legal profession has been forced to keep pace.

Well-established sources such as the oil fields of Texas and the North Sea have been in decline and, with economic development driving demand inexorably higher, energy companies have been pushed further afield in their search for new resources.

Legal work in the sector, too, has been operating at the frontier: technologically, geographically, politically and commercially.

Many legal innovations are in parts of the industry that were barely imagined as recently

as a decade ago. Offshore wind, utility-scale solar power or deep-water oil off the coast of Brazil have emerged only very recently as serious commercial propositions, in response to the ever-growing need for resources that will provide new secure supplies of fuel, help guard against the threat of catastrophic climate change or – best of all – do both.

Some of the most spectacular work has been done in Brazil, where the physical difficulties of tapping oil reserves at high temperatures and pressures miles below the seabed, more than 100 miles from land in water more than 5,000 feet deep, are matched by the financial and legal challenges. Companies are attempting to perform feats that have never been achieved anywhere, let

'Many innovations are in parts of the industry that were barely imagined a decade ago'

alone in an emerging economy where many of the structures for corporate and project finance are still evolving.

Some of the most important pieces of equipment for developing the pre-salt fields are the drill-ships: floating rigs as big as battleships, capable of drilling in water 10,000 feet deep, that are complex and costly investments.

White & Case worked for four banks – Banco Santander, HSBC, Deutsche Bank and Banco do Brasil – that were the initial purchasers of \$1.5bn in bonds to finance the construction of two drill-ships for Odebrecht, the Brazilian engineering group, in a type of deal that had never been seen before on this scale in Latin America.

Trying to raise the money at a turbulent time for the financial markets, the advisers had to build in enough flexibility for the bonds to be priced at the best available moment. They also had to ensure that the debt, issued by a special purpose vehicle, was rated as investment grade.

Pulling together a network spanning the US, the UK, Brazil, the Bahamas, the Cayman Islands, South Korea and Austria, White & Case succeeded in creating a structure that has been recognised in industry awards and – in the true test of success – widely emulated as a model for other project bonds used by Latin American issuers to tap international markets.

The success was impressive as the financing structure had to be changed halfway through construction of the ships. The roadshow for financing the vessels was just about to present in September 2008, when Lehman Brothers, the US investment bank, went bankrupt. Loan guarantees from the governments of South Korea, where the ships were built, and Norway turned out to be vital.

Victor DeSantis, a partner at White & Case and head of the firm's energy, infrastructure, project and asset finance practice in the Americas, says he was reminded of an old television advertisement showing a jumbo jet zooming through the air and "you can see there are dozens of workmen all over it, still bolting the thing together. That's how it felt a lot of the time." ➔

It is not just new companies that inspire creative work

WITH AMBITIOUS AND FAST-GROWING companies eager to test the boundaries of "business as usual", it is no surprise that the technology, media and telecoms industries have become a focus for creative legal advice. This year, however, it was a company at the end of its life, rather than those at the beginning, that became a focus for some of the most demanding and original legal work.

The sale of the patent portfolio of Nortel Networks, the bankrupt Canadian telecoms equipment maker, set a high-water mark for patent sales and prompted tech sector companies to reconsider whether they were getting enough value from their intellectual property.

After a "stalking-horse" bid of \$900m from Google – a price that was already considered high by comparison with other patent sales – a subsequent auction saw the price jump to \$4.5bn as a group of Google's rivals, led by Apple, intervened to prevent the patents falling into the search company's hands.

"Normally in a sale or insolvency a company

has distressed assets [and they] get what they can," says Paul Shim, the New York-based partner at Cleary Gottlieb Steen & Hamilton who led the transaction. "But here it became clear to us that we had an asset that potentially had significant value but nobody knew what it was."

The winning bid – by a consortium that dubbed itself Rockstar Bidco – is still awaiting US Department of Justice clearance. But it has already made waves in the technology world, with Google subsequently jumping into a \$12.5bn acquisition of Motorola Mobility, the mobile phone maker, as an alternative way to boost its IP holdings.

Elsewhere, legal work for internet companies figured prominently. Facebook stamped its mark on the server industry with a blueprint, developed with the help of Paul Hastings, designed to spread the know-how behind its energy-efficient data centres and allow a new group of low-cost hardware makers to compete for its business.

Key to the arrangement, known as the Open Compute Project, was a decision to release Facebook's optimal server designs under open-source

arrangements. The project involved a complex series of development, manufacturing, supply and assembly agreements.

Meanwhile, Zynga, the social games company, turned to Ropes & Gray for help with managing employees cashing in stock holdings without exposing the company to liabilities for carrying out what amounts to a "public offering".

Richard Waters

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TOP LAW FIRMS IN TECHNOLOGY, MEDIA AND TELECOMS

Cleary Gottlieb Steen & Hamilton

Nortel Networks' patent auction

Paul Hastings

Facebook's new transactional structure and the Open Compute Project

Ropes & Gray

Zynga's private sale of stock

Cadwalader, Wickersham & Taft

Microsoft antitrust cases

Cravath, Swaine & Moore

Financing of digital projection systems

Skadden, Arps, Slate, Meagher & Flom

Saving Metro-Goldwyn-Mayer's worldwide business

For the full technology, media and telecoms table, go to www.ft.com/usil11



The company could say enough to make the IPO look attractive, while staying within SEC's rules

→ The first ship, the Norbe VIII, was launched in March 2010; the second, Norbe IX, this year. The debt was last year rated triple-B by Fitch.

Another factor reassuring investors is that Odebrecht has signed 10-year contracts with Petrobras, the Brazilian national oil company, to use the drill-ships from 2011 to 2021. To pay for this and all the other commitments in its astounding five-year, \$224bn capital spending programme, the company last year held the world's largest ever share issue. Advising on that project was Cleary Gottlieb Steen & Hamilton.

The \$67bn share issue was legally as well as financially complex. Petrobras is a politicised company: it has a stock market listing, formal independence and operational autonomy, but politicians always take a keen interest in its activities. The Brazilian state had about 40 per cent of the equity, and was determined for this not to be diluted in the share issue, necessitating a complex structure involving the transfer of oil concessions as part of the deal.

"They know us, they know our guidelines," Pedro Bonesio, executive manager of project finance at Petrobras, says of Cleary Gottlieb. "They know the way Petrobras does business and, despite the fact we almost never go to the equity market, they could be very helpful for us."

Another highly politically sensitive deal was Sullivan & Cromwell's work on Exxon-Mobil's \$18bn project to sell liquefied natural gas from Papua New Guinea to China. With the world's largest ever project financing, this deal is expected to double Papua New Guinea's gross domestic product.

Not all the legal innovation in the energy sector is happening on a grand scale, however, as is shown by another deal with a Brazilian connection: the \$1bn initial public offering by Cobalt Energy, a relatively small company that has been pioneering the exploration of the coast of west Africa, one of the world's most promising oil frontiers. Cobalt has proprietary technology for finding oil and wanted to raise funds to back its judgments with more drilling. But it was constrained because it could not offer proven reserves, only potential unproven resources, which it was not allowed to present to potential investors under rules from the US Securities and Exchange Commission.

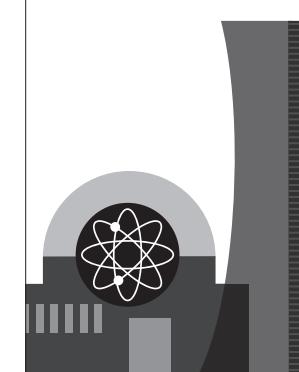
Davis Polk & Wardwell, which had worked on a similar IPO in Brazil for OGX Petroleo e Natural Gas Participacoes, another oil exploration and production company, developed a way to transfer that model to a US context. By giving potential investors details of the geology of the areas where it was looking for oil, the company and its advisers could say enough to make the IPO look attractive, while staying within the SEC's rules.

It is still early days for Cobalt. Though it has promising prospects in Africa and the Gulf of Mexico, it needs to drill more wells before it can form a sense of the extent of the oil revenues. Without Davis Polk's work, however, it seems unlikely it would have come this far.

As groundbreaking as these deals were at the time, some of the structures are already becoming commonplace, and others are likely to be increasingly prevalent in the years to come. The energy business, however, always keeps moving. How long before the latest legal innovations include deals to explore the exciting but hazardous Arctic seas, or to export LNG from the US? It is likely to be only a few years at most. ■

ENERGY

Firm	Innovation	Originality	Rationale	Impact	Total	Description
STAND-OUT						
Dewey & LeBoeuf	Setting up and facilitating the Atlantic Wind Connection Project	9	9	7	25	A partner from the firm came up with the idea for the project and the firm continues to act as project counsel. This is one of the most significant initiatives to harness the potential of offshore energy and one that has been actively facilitated by the firm, which shouldered some of the development risk.
Sullivan & Cromwell	Exxon Mobil's \$18bn project to supply liquefied natural gas from Papua New Guinea to China	7	7	8	22	Expected to double the gross domestic product of Papua New Guinea, the firm created the joint marketing and borrowing structure designed to replicate what the credit rating would have been if there had been a single entity. The challenge for the lawyers lay in the scale and number of parties to the project.
White & Case	Financing offshore drill-ships for Brazil on the Odebrecht Norbe project VIII and IX	7	8	7	22	Acting for the lenders in the largest project bond issued in Brazil, the firm developed and cornered the market for this work with their expertise. The firm's documents are now used as a reference for these deals.
Davis Polk & Wardwell	Cobalt International Energy \$1bn initial public offering	7	8	6	21	Coming up with how to describe the exploration and production company in a way that satisfied the US Securities and Exchange Commission and appealed to investors. Succeeding where others had failed and managing to get the confidence of the board, Richard Truesell's prospectus drafting was considered to display fine judgment.
Orrick, Herrington & Sutcliffe	Municipal Electric Authority of Georgia's financing of the first nuclear generating plant to be built in 30 years	6	7	8	21	Liaising with stakeholders across the public/private spectrum, the firm created a template for funding projects of this scale and nature with US Department of Energy assistance that has drawn attention across the industry.
HIGHLY COMMENDED						
Cleary Gottlieb Steen & Hamilton	JPMorgan Chase's purchase of RBS-Sempra's energy and commodity business	6	7	7	20	Handled a complex transfer of trading relationships in different market sectors before the deal closed. The deal emphasised the importance of transitional arrangements to preserve the value of the business during negotiations. Transformed its client's business in this sector.
Orrick, Herrington & Sutcliffe	Helping BrightSource Energy raise nearly \$1bn over two years	6	6	8	20	In the largest Department of Energy transaction to date, the firm answered policy questions and provided a template for loan programmes on solar projects.
Simpson Thacher & Bartlett	Alta Wind Deal II-V for Terra-Gen Power	6	7	7	20	Showing exceptional commitment, the firm represented the lenders in the financing of the largest US wind project. It was vital to the sponsors in their structuring of the project on a forward commitment basis.
Simpson Thacher & Bartlett	KKR's novel "ground-up" investment approach to its acquisitions in the oil and gas industry	7	7	6	20	Created a unique template, via three new "build-up platforms" and partnership agreements with independent energy management teams for KKR to pursue oil and gas investments.
Latham & Watkins	Representing Credit Suisse in the bankruptcy of Bosque Power	6	7	6	19	Achieved a judgment that can now be referenced and replicated; the ruling terminated the debtor's initial period of exclusivity to solicit acceptances of its plan of reorganisation. Persuaded the equity holders to buy into the plan and structured the new business so that investors were not overly burdened with regulations.
Paul, Weiss, Rifkind, Wharton & Garrison	Splitting Encana into two pure-play energy companies	6	7	6	19	After a reorganisation plan was derailed owing to the credit crisis, the firm employed the application of Canadian and US multi-jurisdictional disclosure rules to avoid long approvals. The spin-off went ahead and both companies listed on the New York Stock Exchange.
COMMENDED						
Akin Gump Strauss Hauer & Feld	Bridas's \$1bn deals with BP and CNOOC of China	5	6	7	18	Communicative attitude and cross-jurisdictional expertise enabled Akin Gump to facilitate a solid legal structure that was flexible enough to accommodate the needs of a wide range of stakeholders.
Latham & Watkins	Atlantic Wind Connection Project	6	6	6	18	Acting for the main investors, the firm structured the investment and subsequent documentation, helping the client road-test different ideas.
Mayer Brown	Panama canal widening	6	7	5	18	Acting for the Panama Canal Authority, partner Barry Machlin identified a problem within the contracts, inserting clauses to protect the expansion project should the surety companies have their credit ratings downgraded.
Cleary Gottlieb Steen & Hamilton	Petrobras' \$67bn global equity offering	5	5	7	17	In the largest share offering in history, the firm navigated the restrictions across multiple jurisdictions. It had an important role in pursuing equality for shareholders and granting existing ones pre-emptive purchasing rights.
Fulbright & Jaworski	Anadarko Petroleum's deepwater oil and gas exploration in Ghana	5	6	6	17	This deal was the first unitisation of offshore blocks in Ghana in the Jubilee Field, estimated to hold 1.8bn barrels. The firm helped with the opaque approval process and educating the Ghanaian government.
K&L Gates	Parcelling out the company town of Scotia to enable the acquisition of the power plant by Recycled Energy Development	6	6	5	17	The transaction involved the disaggregation of the cogeneration facility from a company town in which every asset was owned by a single entity. It was complex because of the number of stakeholders and issues involved.
Orrick, Herrington & Sutcliffe	Fisker Automotive's electric cars	5	6	6	17	In a deal that proves the viability of the clean technology industry and incentivised similar deals during the recession, the firm secured one of only a few loans from the Department of Energy for Fisker to manufacture technologically advanced electric cars.



Drawing the line

Limiting the reach of the law can save companies vast sums. By Sarah Murray

IN THE PAST YEAR, LITIGATORS have added significant value to business by persuading courts to limit the reach of US law, as well as paving the way for arbitration agreements rather than class actions.

First, the outcomes of a number of cases revolving around extra-territorial claims have protected foreign companies with US operations from being sued in US courts for actions overseas. While these have benefited individual companies, their implications reach much further, eliminating billions of dollars in potential liability for foreign companies with US operations.

One important ruling last year was the US Supreme Court's decision in a securities fraud case, *Morrison versus National Australia Bank*. The decision handed down in June 2010 barred US courts from hearing cases brought by foreign investors against companies whose shares are not listed on US exchanges.

In the case, the Supreme Court ruled that Australian shareholders who had bought shares overseas in National Australia Bank could not bring securities fraud claims in a US court. Overturning four decades of lower-court case law, the decision held that a section of the Securities Exchange Act – which prohibits acts resulting in fraud or deception in relation to the purchase of securities – applied only to transactions made in the US.

In arguing the case, Wachtell, Lipton, Rosen & Katz questioned the application of an existing body of case law that had been taken for granted by many securities lawyers.

"When the case went to the Supreme Court, we recognised that the law was in considerable tension with the approach the Supreme Court had taken in areas such as anti-trust and employment discrimination," says George Conway, a partner in the firm's litigation department. "We developed an argument that challenged what the lower courts had done in the area of securities litigation."

The Supreme Court's decision shut down permanently the potential for the kinds of expensive class action litigation suits that had dogged foreign companies for many years. "You had billions of potential liability on one day, and the next day you didn't," says Mr Conway.

The decision was to have an impact on a case brought against Vivendi, the French telecoms and entertainment group, for allegedly misleading shareholders. Many of the arguments that were seen in the *Morrison* decision were developed by Cravath, Swaine & Moore, which represented Vivendi. By applying the *Morrison* decision, the



firm saved Vivendi more than \$9bn of potential damages. As significantly, the *Morrison* decision is being applied more broadly in employment law, as well as in cases such as those that fall under the Racketeer Influenced and Corrupt Organisations law (known as Rico).

The first decision to apply the Supreme Court's ruling beyond the federal securities laws came in a US Second Circuit Court of Appeals case. In the case, the plaintiff, Norex Petroleum, a Cypriot company owned by a Canadian investor, claimed several billion dollars in damages, alleging that TNK-BP, a Russian oil company, had acquired the assets of a small bankrupt Russian oil company

through alleged misuse of Russian courts and Russian shareholder meetings.

The case went back and forth between the lower courts and Second Circuit Court of Appeals and ended up back in the Second Circuit as the *Morrison* decision was unfolding.

"Ultimately, after *Morrison* came down and the Second Circuit received additional briefing from the parties, it had to apply *Morrison* to the Rico statute," explains Owen Pell, a partner in White & Case's New York office.

Mr Pell believes the Norex case and the *Morrison* decision make foreign direct investment in the US less risky. "It means that your entire business cannot get entangled in a dispute," he says.

HOWEVER, IN THE LIGHT OF the *Morrison* decision, he also warns companies to consider carefully the legal systems in the places in which they invest. "One could argue that after the Norex case, people in business dealings outside the US need to think even more seriously than before about alternate dispute resolution," he says. "Because after Norex, it's not so clear that you can use US courts as the court of last resort."

Meanwhile, in another Supreme Court win, a decision in favour of AT&T, the telecoms group, held that US states may no longer refuse to enforce private agreements to go to arbitration on the grounds that they preclude customers from bringing class actions.

The case concluded a process that began in 2002 when Cingular Wireless (now AT&T Mobility) was looking to find an alternative solution to the expensive class actions being brought against it by customers that would be simpler, quicker and cheaper – arbitration.

'After Norex, it's not so clear that you can use US courts as the court of last resort'

"The company was being besieged by class actions," explains Evan Tager, partner at Mayer Brown. "They were being sued for rounding up to the nearest minute in measuring people's allotments of minutes, for having early termination fees, for locking their phones so they couldn't be used on other people's networks – you name it, they were being sued for it."

No one benefited from these actions. The cases were costing Cingular a lot of money but the amounts of money being won translated into small sums once in individual customers' hands.

By building additional incentives into the arbitration clause, Mayer Brown came up with an arbitration structure that would make it attractive for customers to choose that route.

As with the *Morrison* decision and the Norex case, the ability to arbitrate resulting from the Supreme Court decision helps the corporate sector more broadly.

For AT&T, for example, while arbitration saves companies substantial amounts of money, the fact that the system also benefits customers – who tend to receive more generous compensation for their grievances when negotiating on an individual basis – also helps build the company's reputation as a responsible enterprise, which builds customer loyalty.

"The monthly fee drives everything," says Mr Tager. "You don't want customers leaving to go to another company because they don't like your business practices."

Landmark victories often secured in pro bono cases

IN A NUMBER OF LANDMARK LITIGATION cases – often conducted by law firms on a pro bono basis – US lawyers have secured victories for organisations on issues ranging from gay rights to discrimination in schools.

One example is Gibson Dunn, which triumphed in the first federal case to consider whether same-sex marriages could take place under the US constitution. Critically, during the case, the firm brought in lawyers from both sides of the political spectrum. Moreover, the firm put its top partners on the case. The victory, which was widely covered by the media, had a significant impact on the national debate about gay marriage.

Meanwhile, Latham & Watkins helped University of California's Hastings College of Law fight a challenge to the constitutionality of its non-discrimination policy for student-funded groups. The policy required student organisa-

tions to allow students to participate regardless of their status or beliefs. The US Supreme Court ruled that the college was legally allowed to withdraw recognition from a campus group, the Christian Legal Society, which excluded gay members from voting or holding office.

In Los Angeles, Morrison & Foerster won a case that prevents teacher layoffs at inner city public schools under severe financial distress. State budget cuts had resulted in the layoff of thousands of teachers in 2009, but some schools were harder hit than others, with no instruction taking place in some of their classes.

The firm, which worked with the American Civil Liberties Union of Southern California and the Public Counsel Law Center, used litigation to reach a settlement and to enforce the guarantee of equal educational opportunity under the California constitution.

Sarah Murray

LITIGATION				
Firm	Innovation	Originality	Impact	Total
STAND-OUT				
Wachtell, Lipton, Rosen & Katz	<i>Morrison</i> versus National Australia Bank	8	8	25
Mayer Brown	Landmark decision on class actions and arbitration	7	8	23
Cravath, Swaine & Moore	Challenging subject matter jurisdiction in the Vivendi "F-cubed" securities litigation	7	8	22
Kirkland & Ellis	Challenge to BP Lubricants false marking patent case	8	7	22
Quinn Emanuel Urquhart & Sullivan	New bankruptcy code for Dubai	7	7	22
HIGHLY COMMENDED				
Jones Day	New remedies for a losing bidder in a mergers and acquisitions transaction	7	7	21
Morrison & Foerster	Injunction and settlement to stop teacher layoffs	6	8	21
Paul Hastings	Defence of UBS in a precedent-setting dismissal of investor class actions	6	7	21
Davis Polk & Wardwell	Antitrust clearance of \$37bn Comcast-NBC Universal joint venture	6	7	20
Gibson Dunn	Federal challenge to California's ban on same-sex marriage	5	7	20
Sullivan & Cromwell	Challenge to MBIA Insurance's restructuring plan to transfer \$5bn in assets to a new company	6	8	20
Latham & Watkins	Defending the constitutionality of Hasting College's non-discrimination policy for student-funded groups	5	7	19
Orrick, Herrington & Sutcliffe	Acer, Nanya and Powerchip Semiconductors victory in a patent litigation	6	7	19
Wachtell, Lipton, Rosen & Katz	Testing the outer limits of the poison pill	5	7	19
COMMENDED				
Akin Gump Strauss Hauer & Feld	A model for state-owned enterprises outside the US to recover damages as a result of corruption	5	6	18
Davis Polk & Wardwell	Resolution of Pfizer shareholder derivative litigation	5	7	18
Dechert	Win for Philip Morris in a suit brought by Missouri Hospitals	5	7	18
Gibson, Dunn & Crutcher	Chevron's Lago Agrio litigation	6	7	18
Proskauer Rose	Defending challenge to ATP tennis tour's "Brave New World" restructuring plan	6	6	18
Weil, Gotshal & Manges	Legislative strategy for 9/11 compensation claims	5	7	18
White & Case	Norex Petroleum versus Access Industries	6	6	18

Buying time

Refinancing has been critical since the credit crisis. By *Telis Demos*

AMEND AND EXTEND" MAY not be the most glamorous-sounding legal manoeuvre; more than a few cynics have called it "amend and pretend".

But with a financial crisis of the magnitude of the one that hit the markets in 2008, the after-effects are long felt. For many lenders and investors, amending loan agreements to give borrowers more time to sort out their affairs was the only option as they waited to see if the deep recession would abate.

Three years later, the US economy has stabilised, and spending by businesses and consumers is much stronger than it was. Yet growth is not assured, with companies beset by uncertainty in new forms – for example, government loans to guarantee private loans threatening to create sovereign debt crises. As a result, restructurings that began during the financial crisis remain complex and difficult.

"There were so many restructurings in the crisis, when a lot of companies were just doing amend and extend," says Harvey Uris, global head of the real estate group at Skadden, Arps, Slate, Meagher & Flom. "We were able to push a lot of them out and avoid liquidation. Now they're just coming back to really get refinanced."

He adds: "That creates a lot of fights. But if you fight, the risk is you'll lose even more value."

Among the most visible examples of these restructurings was the reintroduction of AIG, the insurer, and General Motors, both of which had received state support, to the public markets.

GM's initial public offering – one of the world's largest at \$20.1bn – was by some measures a wild success. The offer price was above the initial value sought by the US Treasury, which along with the Canadian government and United Auto Workers owned the equity in GM. "There have been big deals, but this was a colossal transaction," says Richard Drucker, a corporate partner at Davis Polk & Wardwell.

A global marketing campaign was critical to getting that price, but the underwriters faced another challenge, too. GM's business would still face a difficult economy and, in representing the underwriters, Davis Polk needed to preserve the government's ability to return to investors to sell its remaining 27 per cent stake.

The law firm had to keep underwriters abreast of risk disclosure practices in the many jurisdictions where the deal was being marketed. "We had to be conscious that GM is now going to become a public company, and had to live up to the valuation," Mr Drucker says.

Uncertainty was even sharper in other corners of finance, such as real estate, which suffered some of the biggest dislocations as a result of the weak underwriting standards and deep leverage across the industry. "It's still a ways away from any way to recovery," says David Dubrow, partner at Arent Fox. "And it's not just the housing market itself – it's the state of the banks.

It is a question of how do you keep it going and how do you keep it working."

Ongoing engagement defines the work of Mr Dubrow and Les Jacobowitz, also a partner at Arent Fox. The firm has worked Fannie Mae, the government-backed housing finance group, since 2009, as it stepped into the role of providing liquidity in the market for low-income housing underwritten by state, local and federal housing finance authorities, with banks no longer able to provide that funding.

It was a complex engagement that required Fannie and Freddie Mac, its competitor, to work together for the first time, along with the US Treasury, the White House and several other agencies. But with the housing market still not providing private funding, the programme needed



to be restructured to continue. The US Treasury's statutory authority to buy new loans expired in 2010, forcing the creation of an escrow account.

"There was no template, no playbook, other than Apollo 13," says Mr Dubrow, referring to the failed lunar landing mission. "We had a circle, trying to figure out how to make it into the box."

Restructuring has come in many forms:

negotiating with creditors, selling assets and raising fresh capital. Mr Uris at Skadden – along with restructuring partner Jay Goffman and members of the firm's mergers and acquisitions and tax teams – employed elements of all of those tools when they were called in to restructure the US holdings of Centro Properties, the Australian shopping centre developer.

Like many banks, Centro had been funding its

business before the financial crisis in the short-term debt markets, until that financing dried up in late 2008. The next two years were spent doing short-term extensions with investors in the US, Europe and Australia. As the crisis receded, many of those investors eventually sold to distressed debt funds.

"We had a new mentality and a commonality of thinking with opportunistic lenders looking to make a profit and to find a way to have a liquidity event," says Mr Uris.

Lenders were motivated to try to amend and extend the loan so that they can hope that with time, values can improve," says Brian Hermann, partner in the bankruptcy practice at Paul, Weiss.

The funds wanted to avoid being forced to liquidate in a difficult market. So they agreed to extend the loans while Skadden worked out an unusual out-of-court restructuring in Australia, which does not have a prepackaged bankruptcy proceeding like the US Chapter 11.

The restructuring was successful, clearing the way for a \$9.4bn sale of the US properties to Blackstone last year. "They say the US doesn't export anything – but we exported the prepack concept," says Mr Goffman.

The process was further eased by having the National Football League Super Bowl in Miami last year, bringing a lot of business to the hotel. "As in all restructurings, you need to get a little bit lucky," says Mr Hermann. ■

'We were able to push a lot of them out and avoid liquidation. Now they're just coming back.'

Fontainebleau Hotel in Miami, which had recently undergone a renovation in an attempt to restore the glamour it enjoyed in the 1950s and 1960s. The firm was hired in 2009 as the joint venture that controlled the hotel ran low on cash. The goal was to avoid a bankruptcy at all costs, with the lenders fearing that the hotel would have little value if potential guests cancelled bookings.

"Lenders were motivated to try to amend and extend the loan so that they can hope that with time, values can improve," says Brian Hermann, partner in the bankruptcy practice at Paul, Weiss.

While investors were willing to invest in new equity, the dozens of local contractors who had worked on the hotel were not as patient. Paul, Weiss took the unusual step of employing a mediator who had already been engaged as some of the larger contractors sued the hotel, using the mediator to bring other contractors into restructuring plans. Eventually, enough agreed.

The restructuring was successful, clearing the way for a \$9.4bn sale of the US properties to Blackstone last year. "They say the US doesn't export anything – but we exported the prepack concept," says Mr Goffman.

■

FINANCE				
Firm	Innovation	Originality	Rationale	Impact
	Total	Description		
STAND-OUT				
Cleary Gottlieb Steen & Hamilton	Helping to stabilise AIG	8	8	8
Davis Polk & Wardwell	Advising the underwriters on General Motors' \$20.1bn initial public offering, the largest in history	7	8	8
Paul, Weiss, Rifkind, Wharton & Garrison	Out-of-court restructuring for Miami's Fontainebleau Hotel	7	9	6
Sullivan & Cromwell	Fighting off a hostile bid for General Growth Properties in the middle of its bankruptcy proceedings	7	8	7
Arent Fox	Fannie Mae and Freddie Mac initiatives to stabilise housing finance market	6	7	8
Mayer Brown	Barclays' \$10bn collateralised commercial paper programme, a first for the industry	7	7	7
HIGHLY COMMENDED				
Cravath, Swaine & Moore	A refinancing solution for CB Richard Ellis	7	6	7
Debevoise & Plimpton	Representing the Carlyle Group in emerging markets expansion	7	7	6
Sullivan & Cromwell	Sale of AIG's Alico life insurance unit to MetLife	6	7	7
Weil, Gotshal & Manges	General Growth Properties Chapter 11 restructuring	6	7	7
Cadwalader, Wickersham & Taft	New deal structures in the commercial mortgage-backed securities market	6	7	6
Davis Polk & Wardwell	Winding down of Credit-Based Asset Servicing and Securitisation (C-Bass)	6	7	6
Paul Hastings	Capital Trust restructuring	7	7	5
Skadden, Arps, Slate, Meagher & Flom	New precedent for Australian insolvency law	6	6	7
Skadden, Arps, Slate, Meagher & Flom	Representing BankUnited in the largest bank IPO in US history	6	6	7
White & Case	The first whole-company securitisation of a timber business	6	7	6
COMMENDED				
Orrick, Herrington & Sutcliffe	Redwood Trust's public offerings of private-label mortgage-backed securities	6	6	6
Paul, Weiss, Rifkind, Wharton & Garrison	Exit financing strategy for AbitibiBowater's restructuring	6	6	6
Seyfarth Shaw	Combining public-private financing with new economic recovery investment vehicles	5	6	7
Jones Day	Lehman Brothers' global settlement agreement with Ambac Assurance	6	6	5

Forced to innovate

Tough times have made many firms change their ways. By *Caroline Binham*



IT IS AN IDIOSYNCRASY OF THE US legal market that while American attorneys may be on the cutting edge of advice to clients, their firms are among the most traditional in the world. As a general rule, management style has not changed much in 30 years. But the worst financial crisis in a generation has changed things.

As lucrative mergers and acquisitions work dried up, long-term clients started to scrutinise their legal spending, or even saw their businesses hit the wall. As a result, law firms have had to focus on their business models like never before.

"The economic backdrop did more: it acted as a catalyst for GCs [general counsel] to address latent frustrations with traditional law firms whose goals are often in direct conflict with those of the client," according to Axiom, the firm that avoids using a partnership structure.

The financial crisis brought such peripheral innovations as alternative fee arrangements (AFAs) and outsourcing – once regarded with some haughty scepticism by the legal market – to the mainstream. The firm that innovates has the potential to flourish, even in the hardest of times.

While not a traditional law firm, Axiom enjoyed revenue growth of 30 per cent in 2010, compared with an average of 3 per cent for the firms in the Am Law 100, American Lawyer magazine's ranking of top US firms.

Axiom's new managed services division, which is expected to account for 28 per cent of revenue in 2011, offers general counsel efficiency advice from not just lawyers but also management consultants and technology experts. The team specialises in unbundling legal advice, showing general counsel what parts of work can be sent to onshore or offshore centres rather than law firms.

Bringing non-lawyers to meet clients was also an innovation used by Seyfarth Shaw as part of its efficiency drive that encompasses Six Sigma,

the process-driven management technique made famous by General Electric in the 1990s and now enjoying something of a renaissance. Seyfarth has evangelically taken up the Six Sigma message, and has found that it can work: one defence contractor client saw fees fall by 30 per cent.

As part of its Six Sigma programme, Seyfarth has created more than 110 legal process maps – visual checklists that guide attorneys through managing a commercial litigation, for example. The maps create efficiency because if the firm can accurately predict how much work will be involved in even the most complex dispute, it can quote the client a project fee – infinitely preferable from the client's point of view to the billable hour that characterises the legal profession.

"The legal industry has become mired in a focus on hours, increasing hourly rates and the concomitant focus on the law firm needs, rather than that of the client," Seyfarth says.

Likewise, Bryan Cave's practice economics group has created a dashboard for the firm to better project manage its instructions – and keep them to budget – as well as a similar application for clients to track projects they are involved in.

More than anything else, the financial crisis has underscored the old tensions and opposing objectives of clients and firms embodied by the billable hour. General counsel now demand predictability (and affordability). Only the firm that really knows its business can offer clients a

realistic AFA. Crowell & Moring, for example, has been pursuing AFAs for more than four years. One-third of its \$327.5m revenues in 2010 came from such arrangements. Over the past year it has introduced a computer program to refine the process, which suggests AFAs based on client demands.

THE CREDIT CRISIS HAS HAD OTHER repercussions for clients in the form of regulation as policymakers worldwide have tried to redesign the architecture of the financial system.

In the US, 2010's Dodd-Frank Act was a sweeping reform of the financial system, designed to fetter banks "too big to fail", creating a Consumer Financial Protection Bureau, and bringing derivatives and credit-rating agencies into the regulatory fold for the first time, among other goals. The Volcker Rule, meanwhile, aims to limit proprietary trading and investments in hedge funds and private equity firms by banks that benefit from federal deposit insurance.

The European Union embarked upon its own regulatory overhaul, while global standards set under the Basel accords now require banks to hold more capital and liquid assets.

Cleary Gottlieb Steen & Hamilton put together an interactive database to help clients to track regulatory reforms, while other US firms such as Davis Polk & Wardwell saw the regulatory overhaul as an opportunity to offer alternative forms of advice. The firm created a regulatory hub, an online platform with advice on a fixed-fee basis.

Cadwalader, Wickersham & Taft developed a database to give standardised tracking and analysis of derivatives, financial documents and broker-dealer regulations. ■

The crisis underscored opposing objectives of clients and firms embodied by the billable hour

BUSINESS OF LAW

Firm	Innovation	Originality	Rationale	Impact	Total	Description
STAND-OUT						
Seyfarth Shaw	Client service model	8	8	8	24	Using the Six Sigma management process to revamp the firm's business model in a way that is unique to the profession. In some cases, the firm has been able to reduce fees by 30 per cent.
Bryan Cave	Structural approach to innovation	8	7	7	22	Creating teams dedicated to improving process and innovation. One of them, the client technology group, develops technology solutions.
Axiom	Managed services	7	7	7	21	Employing an advanced process and technology-based efficiencies to improve legal functions or workflows.
Cleary Gottlieb Steen & Hamilton	Regulatory reform initiative	6	7	7	20	A customised interactive database that tracks financial regulatory reform for clients, is customisable and meets a pressing business need.
Crowell & Moring	Alternative fee arrangements (AFAs)	6	7	7	20	Wholesale adoption of AFAs that encompasses 25 of the firm's top clients, representing a third of its revenue in 2010.
Orrick, Herrington & Sutcliffe	Talent model; alternative fees and innovative client relationships; alternative metrics; global operations centre	7	7	6	20	An overall approach to being innovative, the firm has tried to become more efficient, manage its people and clients better, and has attempted to measure success differently.

HIGHLY COMMENDED

Fenwick & West	"Flex"	6	7	6	19	The technology licensing practice offers experienced attorneys the opportunity to become part of their clients' legal teams to help with fluctuations in resourcing requirements.
Paul Hastings	Providing market intelligence in the commercial lending sector	6	7	6	19	Addressing the lack of data in secured loan transactions, built a database to identify market issues for clients.
Seyfarth Shaw	Facilitating a multinational transaction for Royal Bank of Canada	6	7	6	19	Brought the use of Six Sigma to its client's transactions, thereby transforming the bank's experience of legal services.
WilmerHale	Alternative fee arrangements	6	7	6	19	One of the first to go to market with a comprehensive AFA programme, the firm has instituted a "matter management" programme. It stresses relationships, strategy and team management alongside billing arrangements. Some 15 per cent of the firm's fees are now under AFAs.
Wilson Sonsini Goodrich & Rosati	Supporting West Coast business	7	6	6	19	Through information technology tools such as the term sheet generator and document automation through to its entrepreneurs college, the firm supports its clients through cutting costs and training.

For the full business of law table, and details of the panel of experts who assessed the entries in this category, go to www.ft.com/usil11

A different breed

Corporate counsel are finding their own methods of promoting innovation. By *Reena SenGupta*

IN THE CORPORATE COUNSEL world, innovation is not the preserve of the big departments. As some of the leading innovations show, a small team can create as much value for a business as a large one.

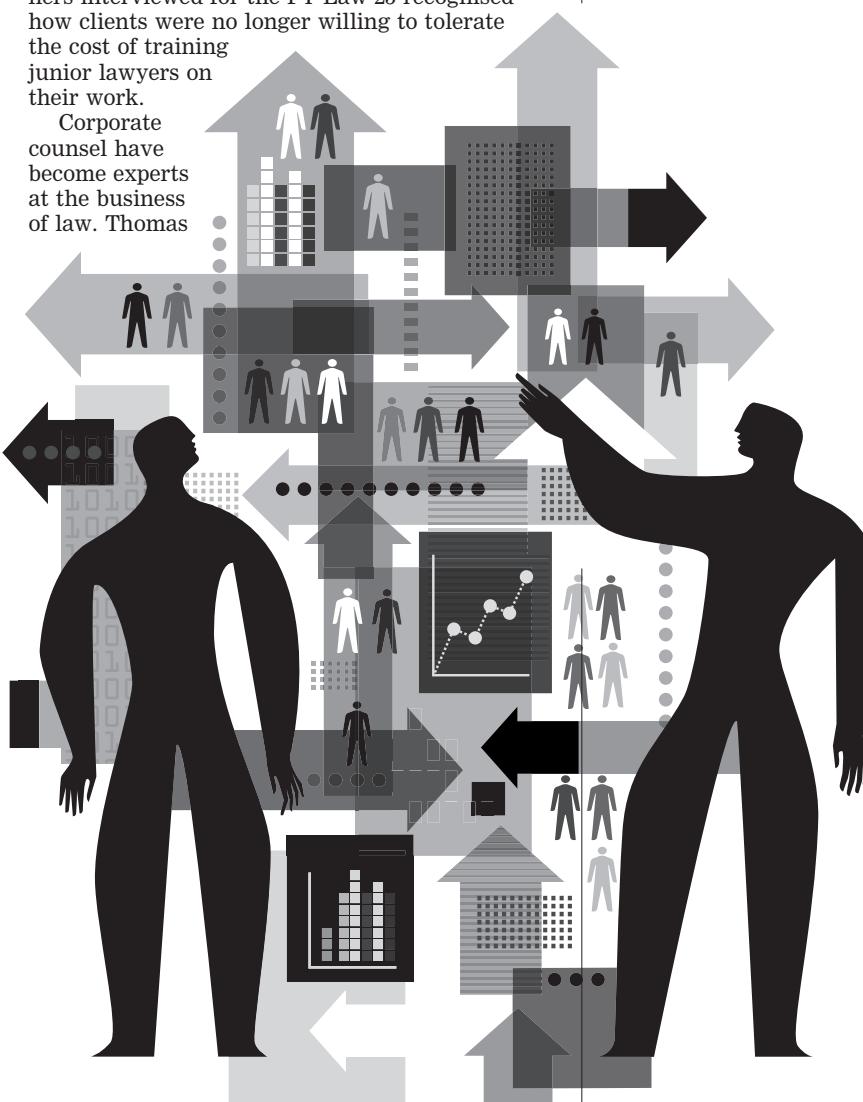
In-house lawyers tend to be a different breed from their peers in private practice. The days when in-house legal teams sought to replicate the law firm model are gone, and legal functions are promoting operational efficiencies and creating a new imperative to find more alternatives to the billable hour. And in a profession where measurement has been viewed as a mysterious art, some in-house teams have become experts at developing metrics to assess the contribution of lawyers to the business.

A telling initiative that illustrates the professional divergence between private practice and corporate counsel is shown through IBM's Legal Resource Centers. Like most corporations worldwide, IBM had always hired lawyers who spent their early years in law firms. But Robert Weber, IBM's general counsel, says: "It became apparent that bringing in people after 5-8 years, they are not only disproportionately overpaid but they didn't have the skills we needed."

In a break from industry tradition, IBM has also started to recruit graduates directly from law schools and train them at its own centres.

Though the recruitment of lawyers from law school is not new – Sunoco, the oil group, did it in the 1980s, and Pfizer, the pharmaceutical company, has started taking a small number – IBM's programme marks an important shift in corporate counsel's acceptance of law firm inefficiency. Several US law firm executive partners interviewed for the FT Law 25 recognised how clients were no longer willing to tolerate the cost of training junior lawyers on their work.

Corporate counsel have become experts at the business of law. Thomas



IN-HOUSE TEAMS

Firm	General counsel	Number of lawyers worldwide	Description
MOST INNOVATIVE TEAM			
IBM	Robert Weber	550	Reinvented itself as a global function. Global centres of expertise enhance integration and provide junior lawyers with leadership opportunities in virtual teams. A major account programme builds direct relationships between lawyers and IBM's biggest customers. Recruits graduates straight from law school and has set up its own training facilities.
STAND-OUT			
DuPont	Thomas Sager	250	DuPont's legal model has promoted change for nearly 20 years. Recently, the team has transformed a benign approach and generated \$396m from litigation in 2010. Outside law firms complete critical self-analyses, manage ancillary providers and are given incentives to collaborate.
FMC Technologies	Jeffrey Carr	12	From designing the Alliance Counsel Engagement System to building knowledge-sharing platforms, the team has pioneered a different approach to value-based billing with outside counsel. Has improved quality, reduced legal costs and is changing lawyers' behaviour.
Pfizer	Amy Schulman	400	The Pfizer Legal Alliance sent ripples around the global legal community. A way to save legal costs and improve client-lawyer relationships, the alliance is based on flat-fee arrangements. The legal function has reorganised so each business unit has its own chief counsel and legal team.
Wolverine World Wide	Ken Grady	4	Encouraging external firms to adopt the Six Sigma management strategy, the small legal team has changed the rules of engagement with external advisers. Shares the value of savings with its law firms through a set of metrics.
Google	Kent Walker	Does not disclose numbers	Has influenced the development of information law and how information companies work with regulators and policymakers. The lawyers guided Google through its decision to stop censoring search results in China, and continually tread new legal ground.
HIGHLY COMMENDED			
Allstate	Michele Mayes	628	Has developed a transformative approach to promoting diversity in its external law firms, measuring them on seven criteria. Rotates internal lawyers through other functions and has made a significant contribution to vital communities through mentoring projects such as Street Law and the Chicago Urban Debate League.
Sony Electronics	Michael Williams	24	Developed software tools to open up its knowledge bank. By looking at the needs of customers, it has significantly increased efficiency. Was one of the first to identify recycling as an issue. It also has a creative approach to giving its lawyers business skills.
Toyota Motor Sales	Christopher Reynolds	105	Steered the company through product liability claims. Has developed smart models to deal with the litigation and increased its profile in the business. Instituted a business manager for the department, moved to alternative fee arrangements and is promoting diversity in outside counsel.
COMMENDED			
Anheuser-Busch InBev	Sabine Chalmers	350 (with corporate affairs)	Lawyers share sales and reputation targets with the business in a way that aligns the two. In a department that also includes responsibility for corporate affairs, the team adds shareholder value by fighting legislation, lobbying and preserving the reputation of the industry.
Chiquita	James Thompson	13	Forced to deal with a US Department of Justice investigation into extortion payments to save the lives of employees in Colombia, the team has also dealt with high-profile issues in multiple jurisdictions over the past five years. Has ensured a calm, quick response to problems.
CSX	Ellen Fitzsimmons	30	Has reduced aggregate legal expenses by 30 per cent. The team extensively uses data and metrics to analyse expenditure and rates in its AFAs and to manage external advisers.
Electronic Arts	Stephen Bene	45	Through technology and process improvements, the team has automated the production of non-disclosure agreements, putting in place a self-service portal for the business and using cloud computing solutions for contract management. Lawyers sit on the boards of business divisions.
Zynga	Reggie Davis	18	Helped create a new class of preferred stock to enfranchise employees in the company's growth. Has also encouraged the business to follow regulations through making them fun to comply with.

Research note This ranking of innovative US corporate counsel is not a comprehensive list. Drawn from market research surveys with suppliers to, and users of, in-house legal functions and interviews with the general counsel, the table represents those departments that stood out for their ideas, willingness to try something new and ability to implement innovations that add value to their businesses and to the profession.

Sager, general counsel of DuPont, the chemicals group, says: "I was hired into DuPont in the 1970s and came with a certain mindset. Now the skillsets needed are dramatically different." He says all DuPont's in-house lawyers have done project management courses and have become better at ensuring work remains on time and budget.

For many in-house legal departments, the focus has been on managing external counsel and reducing legal spending. The Pfizer Legal Alliance is well known in the profession for abolishing the need for itemised bills and controlling costs through an annual fixed-fee arrangement with external law firms.

The legal team at Wolverine, the shoe manufacturer, has a different approach. Ken Grady, general counsel, inspired Seyfarth Shaw to adopt Six Sigma management processes. He works with the firm on Wolverine's trademark portfolio. The value-based arrangement ties the firm's remuneration to outcomes it delivers for the business.

Arrangements such as these are implicitly changing the client-lawyer relationship. Both promote collaboration. Wolverine's approach ties Seyfarth Shaw closely to the company's goals, while Pfizer's promotes greater co-operation between competing external advisers.

Cost pressures mean that in-house teams are switching to alternative fee arrangements. Jeffrey Carr, general counsel at FMC Technologies, prefers not even to use the word "alternative" to describe his risk/reward system, in which outside counsel have to share risk with the company. "I think we've already passed the tipping point but people haven't realised it yet," he says.

Outside the operational innovation sphere, corporate counsel also take important leadership positions for their companies. The ability to lobby, talk to regulators about policymaking and influence legislation is becoming more central to the legal function's value to business.

For example, Kent Walker, general counsel of Google, was active in the company's decision to withdraw from China. "Driverless cars, phones that can translate from German to Chinese, we're involved in all those products," he says. "So we need to consider what will be the legal issues in the next few years. Our role as lawyers is to see round corners." ■

RESEARCH FOR IN-HOUSE TEAMS SUPPORTED BY

WHITE & CASE

Leading lights

Profiles of 10 legal innovators who shone brightly in this year's FT report



SCOTT BARSHAY

Partner, Cravath, Swaine & Moore

Scott Barshay took a leading role in defending a hostile takeover bid for Barnes & Noble, the book retailer, and clients credit him with developing and leading an innovative defence strategy that included a poison pill, litigation and a highly contentious proxy fight.

While every hostile takeover defence is unique, few since the heyday of hostile mergers and acquisitions in the 1980s have involved the kind of heated litigation used with Barnes & Noble.

Mr Barshay says that it is critical not to be afraid of departing from convention. "You have to have the courage of your convictions that you are going to be successful," he says. At the same time, an ability to draw on a wide range of views, advice and experience have been invaluable tools. Clients point to Mr Barshay's depth of understanding, combined with a highly creative and strategic approach.

Mr Barshay also advised United Airlines on its \$7bn merger with fellow US carrier Continental Airlines, and has played a leading role in some of the past year's highest profile deals, including Hertz Global's offer to acquire Dollar Thrifty in the rental car market, and the pending merger of Deutsche Börse, the European exchange, with NYSE Euronext.



JEFFREY CARR

Senior vice-president and general counsel, FMC Technologies

Jeffrey Carr is a vocal advocate for change in the legal industry. Reforming delivery of legal services at FMC Technologies, the provider of technology for oil and gas fields, and influencing change across the industry has become almost a hobby. In demonstration of his willingness to embrace new technologies, Mr Carr sent a request to law firms via Twitter, inviting them to describe what makes them different in 140 characters or less.

In his time at FMC, Mr Carr has designed and implemented "Aces", an engagement model for external law firms, and carried out a comprehensive overhaul of the company legal department's management models and systems. A mantra, which applies to both internal staff and external counsel, centres on performance-based pay, risk-sharing and rigorous and formal evaluation.

Mr Carr has pioneered new billing arrangements, which include a mixture of risk-sharing, fixed fees, budgets with implications and expectation around efficiency. The arrangements

have improved quality and reduced outside legal spending.

For Mr Carr, his greatest achievement is developing a legal team that has transformed the way legal services are provided in the company. He describes it as "a high-performance and sustainable team and a proud legacy". A hive of innovation, his team is rolling out a wiki to share legal advice internally, a new compliance programme and developing M&A process maps.



RICHARD (RICK) CLIMAN

Partner, Dewey & LeBoeuf

Rick Climan (above) has negotiated multibillion-dollar mergers and acquisitions but also devotes a substantial amount of time to teaching law students and fledgling lawyers the intricacies of his craft. His success as an educator is based in large measure on his use of innovative techniques, which include the use of mock negotiations.

His unique monthly M&A forums in Silicon Valley have earned a wide and loyal following, with some audience members attending them for well over a decade and others flying in from Los Angeles and even New York to attend.

The forums are geared towards educating the legal and business communities on the cutting-edge M&A issues affecting technology companies. Participants include senior executives and in-house counsel at tech companies, tech-focused investment bankers, law professors and, increasingly, lawyers from rival firms.

When asked whether it is in his firm's interest to pass his expertise to competitors, Mr Climan answers: "Most top-tier M&A professionals would say they much prefer to be opposite a seasoned lawyer than a naive one. It streamlines the process. I actually think that many lawyers, who are risk-averse by nature, are afraid of innovation. If they break from tradition they may be singled out for ridicule, or worse if the strategy fails."



JAY GOFFMAN

Partner, Skadden, Arps, Slate, Meagher & Flom

Most of Jay Goffman's reorganisations are done through quick, cost-efficient, out-of-court pre-packed restructurings. He was a pioneer in the method and continues to be a leader in the field. He has led many landmark pre-packs.

In representing Metro-Goldwyn-Mayer in 2010, Skadden, Arps, Slate, Meagher & Flom orchestrated the largest pre-pack to be confirmed in less than 30 days, and thwarted a takeover attempt by Carl Icahn, the activist-investor. By quickly developing a plan that served the best interests of more than 350 lenders, Mr Goffman's team restructured \$5bn of debt. Once on the verge of bankruptcy or a forced merger, MGM has now recapitalised its worldwide business and positioned itself to continue making films.

Working with fellow partner Rick Madden to help the deeply indebted Centro Properties Group avoid liquidation, Mr Goffman also exported US innovations to Australia, using his firm's techniques to solve the riddles of a jurisdiction that dissuades faltering companies from restructuring.

On the subject of fostering innovation within firms, Mr Goffman says: "Most lawyers don't naturally think in a creative manner. They often become lawyers because they like structure. You

have to convince people they are not going to get shot if they think out of the box and give them the freedom to think about the right solution."

ROBERT GIUFFRA

Partner, Sullivan & Cromwell

Robert Giuffra (left) has been at the forefront of securities litigation arising from the financial crisis. He played a pivotal role bringing together a coalition of 11 financial institutions, including Bank of America, Morgan Stanley and UBS, to challenge the multibillion-dollar restructuring plan of MBIA Insurance.

Following the Morrison versus National Australia Bank case, which centred on whether US courts could hear cases brought by foreign investors against companies whose shares were not listed on American exchanges, Mr Giuffra advised on two of the largest cases to apply the decision, acting for Porsche, the carmaker, and UBS, the Swiss bank. He was also counsel to UBS in multiple litigations that resulted from the collapse of Enron, the energy group, securing the dismissal of hundreds of millions in damages relating to Enron notes and securities.

Mr Giuffra says: "I try to think about first principles rather than looking at what precedents exist." He credits his success to hours spent brainstorming arguments with his associates and partners, and the long hours put in before trial. His clients describe him as intelligent, creative and a "master chess player" in the court. His political experience and understanding of the landscape are also highly valued. ➤

**MARKIAN MELNYK****Founder and president, Atlantic Grid Development
(formerly a partner at Dewey & LeBoeuf)**

Atlantic Grid Development's core project, the Atlantic Wind Connection, is an offshore high-voltage transmission backbone designed to serve efficiently mid-Atlantic region offshore wind energy parks while also making the congested land-based transmission grid more reliable and efficient.

The system's backbone cable will run in shallow trenches on the seabed in federal waters 15-20 miles offshore, where the wind is strong but the towers would barely be visible. When completed, the project will generate enough to power approximately 1.9m households.

Mr Melnyk says: "The idea came about as a result of my needing to change the focus of my legal practice and deciding there was a lot of potential in developing offshore renewable power as a practice area. So I looked at how you would develop a project in US waters and saw there was a whole transmission angle to it, then I saw that there was an opportunity to actually do it."

The \$5bn Atlantic Wind Connection project exemplifies the fact that innovation in the energy sector is not always born in the laboratory. It is also an example of how legal training and experience can be applied to creating change.

Mr Melnyk says: "Sometimes you think it's only the engineers who can make it better and drive down costs, but here there were policy opportunities to make it better."

**STEPHEN POOR****Chairman and managing partner, Seyfarth Shaw**

Stephen Poor has been chairman and managing partner of Seyfarth Shaw since 2001, and has led the firm to adopt the quality and efficiency methodologies of the Six Sigma management system.

Rather than trying to steamroll the methodology across the firm – "or boil the ocean", as Mr Poor puts it – the firm began by instigating Six Sigma department by department. It has now been woven into every aspect of the firm's operations. "It has become the prism through which we look at everything," Mr Poor says.

Seyfarth's client service model focuses on creating "value-based" relationships that incorporate Six Sigma techniques, process improvement strategies, alternative fee approaches and technology. Clients say the firm stands out for an enthusiasm for new and innovative ways of working.

Mr Poor has also led the implementation of a full competency-based talent system, which introduces performance-based remuneration and career progressions for the firm's attorneys. The firm believes clients gain greater value from a system that better aligns attorney skills and rates with client business needs.

This year, Seyfarth launched a labour and employment fellows programme, providing second-year law school students an opportunity to develop hands-on skills in employment law.

**CHARLES (RICK) RULE****Partner, Cadwalader, Wickersham & Taft**

Rick Rule worked in construction at the age of 14 to finance a career in creative writing, but his inherited love of a healthy argument led him to the University of Chicago law school. Becoming part of the Chicago school of antitrust theory allowed him to examine the philosophical, social and economic impact of the subject, and he went on to become acting director of the antitrust division at the US Department of Justice at only 29.

Now head of Cadwalader, Wickersham & Taft's antitrust practice, Mr Rule enjoys the intellectual challenge of working at an intersection of antitrust issues and innovation. He has served as adviser to regulatory bodies and corporate clients including Microsoft, the software group.

His team is advising the company on antitrust matters related to its \$8.5bn acquisition of Skype, the internet telephony provider. The team also represented Microsoft as a third party in the DoJ's investigation of Google's proposed acquisition of ITA Software, the provider of airfare software used by search engines and travel sites.

Mr Rule says: "People who are innately interested or are verging on being frustrated business people are the best lawyers. The way you institutionalise innovation is by not institutionalising it. We find people who have the passion and curiosity, the intellectual capability. Let them deal with clients early on and learn by doing, and then their strengths come out."

**AMY SCHULMAN****Executive vice-president and general counsel, Pfizer**

Since setting up the Pfizer Legal Alliance, a flat-fee structure for 19 of the pharmaceutical company's law firms, Amy Shulman has gone on to expand her remit. In a still unusual move for corporate counsel, she is now also the business head of Pfizer's nutrition division, which had annual revenues of \$1.867bn in 2010. This is no

Breadth of experience is crucial to innovation: 'Tight focus can make you efficient but kills creativity'

small leap for a lawyer who, up until 2008, was working as a partner in private practice for DLA Piper, the international law firm.

Asked how she manages to combine a business role with heading Pfizer's legal function, Ms Shulman says: "It's like having two kids. That balancing act is never evenly weighted."

Once a teacher – she taught philosophy and English – encouraging young professionals is a theme in Ms Shulman's career. She is one of a handful of general counsel who recruit law graduates directly, thereby side-stepping the law firm training to create a junior associate programme that is more tailored to the needs of business.

She feels most proud of her work in inculcating young professionals with the zeal to practise law and work for clients. Her drive to better the profession is expressed in all her innovations from the alliance to raising the profile of Pfizer's lawyers in the business.

RICHARD TRUESDALE**Partner, Davis Polk & Wardwell**

Richard Truesdale (below) is co-head of Davis Polk & Wardwell's global capital markets group, and represents clients in US and international capital markets transactions and advises on corporate governance and securities market regulation. His innovative work in the past year has included the initial public offering of Cobalt International Energy.



Cobalt faced a substantial obstacle to accessing the public markets in order to expand its exploration and drilling operations.

The company's assets consisted solely of resources or potential reserves, as opposed to actual reserves. The US Securities and Exchange Commission prohibits exploration companies from disclosing these on the grounds that they are too speculative for potential investors.

Armed with experience of a similar IPO for OGX in Brazil, where regulations were less prohibitive, Mr Truesdale came up with a way to give potential investors a well-informed view of the company's prospects without falling foul of the regulators. It focused on the geophysical characteristics of Cobalt's

prospects and the basins in which they were located, rather than the prohibited summary numbers of resource barrels. He says that breadth of experience is crucial to innovation.

"Tight focus can make you very efficient but kills creativity," he says. "Then you must have the determination to see that through." ■