



LAW WEEK COLORADO

Doing More With Less

The 3rd Quarter Managing Partner Roundtable participants represent a significant subset of firms in the state — those medium and small firms that house a majority of the bar's practitioners. This group articulated the unique challenges and benefits their firms face and how it all played out during the recession.

From left, Brett Godfrey of Godfrey Johnson; Catherine Puttman of Sherr Puttman Akins Lamb; Murray Ogborn of Ogborn Mihm; Art Karstaedt III of Harris Karstaedt Jamison & Powers; and Doug Thomas of Thomas Pollart Miller.

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Were Mid-Sized Firms Recession Proof?



The 3rd Quarter Managing Partner Roundtable participants clockwise from left, Doug Thomas, Brett Godfrey, Art Karstaedt, Catherine Puttman and Murray Ogborn. | LAW WEEK PHOTOS ALI BIBBO

LAW WEEK'S quarterly roundtables typically feature a wide range of firms including many firms that have a national presence with offices sprinkled across the country. Yet most of the state's attorneys don't practice in large firms, and instead they mostly populate firms with seven or fewer attorneys. Law Week decided to dedicate this quarter's roundtable to the managing partners of some of the area's small and medium-sized firms, and the conversation was so compelling that two roundtables a year will now exclusively feature firms on the smaller side of the spectrum.

This quarter's group included Brett Godfrey of Godfrey Johnson; Arthur Karstaedt III of Harris Karstaedt Jamison & Powers; Murray Ogborn of Ogborn Mihm; Catherine Puttman of Sherr Puttman Akins Lamb; and Douglas Thomas of Thomas Pollart & Miller. They were all candid in answering questions about how the recession affected their firms, how they retain and attract laterals, and what they anticipate their next challenges might be.

Tracy Masuga of Hunter + Geist reported the discussion, and Meg Satrom, editor of Law Week, moderated it.

THOMAS: There are 29 attorneys in our firm right now. We predominantly do workers' compensation defense. We do some liability defense, and then lately we have some trade names that we do some consumer protection work under. We're in the Tech Center, and we've been in the Tech Center for 10 years. Altogether, I try to keep an eye on 70 people every day around the firm.

GODFREY: Our firm has 10 lawyers. We've fluctuated over the years in size. The biggest we've ever been is 18, but we're at 10 now, and we just hired No. 10, and now we're looking to hire No. 11. We have a lot of business coming lately.

We practice on both sides of the bar. We have a predominantly defensive practice with a healthy component of plaintiffs' cases.

KARSTAEDT: I'm Art Karstaedt, of Harris Karstaedt Jamison & Powers. We have 18 lawyers. We've been in the Tech Center for 19 years. We do primarily insurance defense. Probably 90 percent of the work we do is we're either retained directly by the insurance company to defend the insurance company or to defend their insureds.

When I first started, it was almost always defending the insureds, but it's become a little more aggressive with respect to first-party claims against insurance companies, picked up quite a bit of that, so we do a fair amount of bad faith work as well.

PUTTMAN: Catherine Puttman, at Sherr Puttman Akins Lamb, and it sounds like we're probably the smallest and the youngest here. We have six attorneys. We just hired our sixth. And total, our office is 13 people. And we opened our doors in 2010 when nine of us left Gutterman Griffiths and came over and started Sherr Puttman Akins Lamb. We do primarily family law.

OGBORN: Murray Ogborn, Ogborn Mihm. We are 10 lawyers. We are a recent combination of two firms: Six lawyers from Ogborn Summerlin & Ogborn and four lawyers from what was Starrs Mihm, which dwindled after three of their partners went on the bench.

We do about 60-40 commercial litigation versus personal injury. Personal injury is all plaintiff; commercial litigation is both sides. We do some personal injury defense. And I think Brett and I traded sides on one case, I was defending and he was the plaintiff.

GODFREY: That was a weird one.

LAW WEEK: We do these roundtables six times a year, and four of them are focused on managing partners. While I aim to get a mix of firms for each roundtable, I've yet to host one specifically focused on medium and small law firms. I've been interested to hear how they dealt with the economic downturn and the changing legal market; I've wondered whether their experiences mirrored BigLaw or whether they saw some good news during the recession.

One of the first questions that I would like to ask is what you've seen as a result of the recession. In the introductions, I heard more than one person talk about recent growth, but was that common? Brett, I'd like to start with you — what have you seen or what are you seeing right now?

GODFREY: As tied to the recession, our sense is that the smaller firms, and our firm was no exception, had experienced some economic stress, especially if they, like us, own their own buildings or had significant capital resources the way we do. Our firm has a plane and an office building and things like that, and in a recession, those assets are devalued, and that can alter your position financially.

So while it didn't cause us any significant damage, we saw firms like ours in the recession unable to sustain their own existence, and they became prey for firms that were strong enough to take advantage of that economic situation. That isn't limited to small firms, but we saw a lot of firms getting gobbled up.

LAW WEEK: Absolutely. Catherine, what did you see?

PUTTMAN: We had a very different experience, simply because we took the

opportunity — whether it was a smart decision or an ill-advised decision — to leave a firm and start our own in the middle of the recession.

Instead of going in at the top of the market in terms of our rent prices, et cetera, we were coming in at the bottom of the market, so we were paying a fraction of the cost for prime space and other start-up costs. That helped us to be able to really establish our offices and establish where we were going than if we had been doing it in the middle of a boom.

Three years later we can say that it was a good decision. At the time, I think a lot of people looked at our decision and were questioning whether it was economically sound. But for us, it turned out to be absolutely fabulous.

In other terms, the recession certainly affected our client base — we probably had a smaller client base, certainly than we do now, and we've seen a significant turnaround in the last few years, probably in the last 12 months, specifically in terms of the number of people who have the ability to come and seek dissolutions.

OGBORN: I really don't have a feel for what the recession did to our practice. Other dynamics have impacted it, but I don't know how they're related to the recession.

We certainly saw our earlier clients become slow pay, which was a direct impact. We've always tried to keep our practice 50 percent hourly and 50 percent contingent fee. We've never gotten there. It's always heavily contingent fee. And because we've lately been competing more for personal injury cases, we're switching to commercial litigation more and more, trying to constrict our practice to fewer areas of practice to try to reach that 50-50 balance.

And I don't know that that has anything to do with the recession, but I do know that that will result in less expansion on the



MURRAY OGBORN

lawyer side and probably more expansion on the paraprofessional side, at least for a while.

THOMAS: The recession probably had minimal effect on our firm, and any effect it had was probably very temporary and didn't alter the long-term trends that were in place.

Certainly, one of the things that it affected was our ability to hire talent. In the years leading up to the recession, talent, whether it's paraprofessionals or attorneys, often was lured either to the business side of things or to the real estate side of things. All of a sudden those people are now available and are on the market again. So it gave us an opportunity to hire talent, which we may not have been able to hire five years ago. But that was temporary.

I also think that some of our clients in the insurance industry articulated that it was poor timing to request rate increases but that was also fairly temporary. It really didn't alter a lot of the long-term trends that are in place.

LAW WEEK: Interesting. So you were seeing the opposite of what some in BigLaw were experiencing. You weren't restricting your practice; you diversified in some ways?

THOMAS: Yeah, we continued to grow. We never had a year in which there was not year-over-year revenue growth, year-over-year client growth, or year-over-year attorney growth. So the long-term trends were not altered. They were short-term, temporary things that were altered, yes.

LAW WEEK: Art, what did you see?

KARSTAEDT: Well, we do so much work with the financial services industry, insurance companies as our clients, there was certainly a lot of pressure on them as a result of the recession. They were a major target and got hit broadside — there was pressure on them to act more responsibly, appear to be more responsible. And there was a contraction within their workforce. They wanted to do more with less.

They approached their law firms and said, "Gee, we can't afford to give you any raises." There was sort of a fee freeze in effect following the recession. And I think most of the insurance companies have weathered that storm and moved beyond it, yet they're looking to us to provide more with less, too.

They're expecting to see us do more than maybe was their expectation five years ago, and that puts the pressure on us. We're up to the task, but it's a different approach to how we do business than it had been.

LAW WEEK: An interesting comment, and I kind of want to expand on that. Doing

more with less is something that's both internally for firms but also externally from the client's perspective.

Let's start with the external discussion. Have all of you seen a shift in client thinking along these lines? Were clients uniformly asking for you to do more with less?

GODFREY: At the outset of the recession we did encounter that wave resistance to paying for services, so we simply separated from that band of clientele.

To replace that, we had an interesting phenomenon, because really huge corporations are still sticking with the big, big firms downtown, but the smaller or medium-sized corporations that are engaged in high-stakes litigation couldn't afford the \$600-an-hour rates that were downtown norms because of the recession's impacts on their economics, so they came to firms like ours. So we lost one band of business and gained a better band in its place that was driven to us by the direction of doing more with less.

LAW WEEK: Were those referrals, or do you think people just took a step back?

GODFREY: What we learned in those initial engagements with those clients, the in-house counsel or risk management personnel stepped back after receiving directives from their own boards or CEOs to find less expensive counsel. We were picking up clients that up until the time they hired us had been paying \$100 or \$200 an hour more than we charge. We could do the same work better for less.

At the same time, we completely revamped our internal infrastructure. We became a totally paperless office. We completely replaced all our technologies, our servers, our software. Everything was out the door. We threw out our phone system. We threw out all our computers and replaced them all with integrated systems that are completely paperless. All of those advances make me less expensive to operate with, and that helps us meet those competitive challenges that the clients are faced with in finding new counsel.

PUTTMAN: I think it's a little bit different dynamic with the noncorporate client. It's a much more personal relationship with them than it is with an insurance company. But we certainly saw our clients want to keep their costs down as much as possible.

And we were able to use our paralegals more, and we had an opportunity to have great paralegals join us — with great paralegals, you have more of an ability for them to do all the initial drafts and documents, et cetera, much more efficiently than with a newer paralegal or with a lesser experienced paralegal. So we tried to be conscious about that when we had clients coming in and wanted to make sure that they were keeping



BRETT GODFREY

their costs down.

There's also an ability for our clients to take control a little bit of their circumstances. We saw a little bit less interest in fighting over something that in the past maybe they were digging their heels in and not wanting to give in to the other party.

One other thing that I thought was interesting, however, was also with our higher-level clients, this was actually a really good time for them to go through this type of life transition, because either their net worth or their income was a lot lower than it had been in previous years, and so it was interesting because some of those dynamics shifted.

KARSTAEDT: Divorce is more affordable in bad times.

THOMAS: Our experience was more similar to Art's in regard to the lower tier or the commodity side of the insurance practice. Certainly there was enormous pressure by our clients to do more with less. And technology was one answer, one response. And we've responded to it, which is why we were able to continue to grow through that period of time.

There was no doubt that our clients expected us to deliver a lot more with less, yeah.

OGBORN: What we've seen is in our corporate clients, when we're suing a corporation on behalf of a corporation, they're digging in, and they want a deal. And that deal might go from lower hourly rates to a hybrid fee to a contingent fee. And we're willing to look at anything.

We just finished a bad faith case that took about three, three and a half years from start to finish, and we started out at an hourly basis, and we got into it about a year and a half, and the CEO started to talk about rates, so we flipped to a hybrid arrangement. About another year went by and he got more concerned with what he was spending, and so we flipped to a pure contingent fee. And we settled it about six months after that. Then he thought I had pulled a fast one on him.

What we've done is tried to get real flexible about fees. We've even gone to a situation where we'll quote a flat fee and tell them, "Okay. Here's our budget. We'll stay within that, and if something happens within the case, we'll issue a change order, and we'll sit down, and you'll either grant the change order or not, and then we'll decide what we're going to do from there."

Fee arrangements are only as limited as your imagination is, and that seems to really attract some of these medium-sized to a little larger corporate clients.

LAW WEEK: The willingness to even have that conversation?

OGBORN: Yeah, yeah, or take the risk. The big firms won't take those risks.

GODFREY: About four years ago we lost a client whom we serviced well for years who had decided in-house that they wanted to have all their defense firms bid for flat-fee work, and we simply declined to bid.

There was another firm in town that did bid for it, and they got the work. And the client called us up, because at that point in time that firm was unknown to them, and they would rather have stayed with us, and they said, "Are you really sure you don't want to do this?" I said, "No way, because that's going to create a financial disincentive for us — if we have a competitively auctioned-out flat fee, that's going to have a financial disincentive for us to do everything we professionally should do in a case. And to be disincentivized from doing quality legal work is a fundamental conflict of interest. And so, therefore, if we did quote a flat fee for you, we would assume going in that we were going to do the most possible amount of work on every file. That's also a bad assumption. You wouldn't want to accept that bid. It would be economically silly for you to accept that bid."

It just was a nonworkable situation, in our view.

LAW WEEK: Talking about fees and rates seems like an internal conversation. What other types of internal conversation were forced as a result of the recession?

GODFREY: Well, we lost one of our office buildings. We had to sell it.

Our firm did downsize from approximately 2007 to now. We're smaller than we were in 2007, although we're bigger than we were two years ago. So we're coming back up and out of it after having made a bunch of adjustments. The types of lawyers that we're hiring are different than the ones we would have hired five to eight years ago.

LAW WEEK: I hate to use the term "Moneyball," but are you making more targeted hiring as opposed to just looking for generalists?

GODFREY: What we're looking for now, and we're able to obtain more readily than we used to be, is a higher echelon of senior-associate/junior-partner type of attorney. We're getting more experienced people.

We've also, because of the shift in our client base, increased our pay schedules. And so while we found that the marketplace is more filled with willing workers than it used to be, so it's easier to get good people, the fact that we're paying more meets that shift halfway, so to speak. So these are happy times for us. That's a product of an adaptive process that we had to use as a firm, which



ART KARSTAEDT III

at the beginning was very stressful. Now, we're seeing the sweet side of it.

If we hadn't done that, we would have been assimilated, and we did have big firms approach us. We had contact from headhunters from several different large firms in Denver and national firms, and they offered us some sweet deals. I didn't want to go that direction at the time, so I decided we had to rebuild some other way. But a lot of our competitors at the time are now part of bigger firms for that very reason. They didn't want to do those rebuilds. It was just easier to be assimilated.

LAW WEEK: Did other people receive courtship offers?

THOMAS: No, we didn't make any, nor did we receive any offers. All our growth has come internally over the last 10 years, so we've relied on ourselves and our own abilities as opposed to someone from the outside.

OGBORN: We were approached by several headhunters with specific firms named as the courtiers. And like Brett, we didn't want to assimilate — we wanted our autonomy. We're strange rangers, and we don't like anybody telling us what to do.

PUTTMAN: We were approached at the time when we actually left en masse from Gutterman Griffiths. I don't know if it was a part of the economic circumstances in terms of the recession, or an attempt to snag us before we landed elsewhere, but for us it was a great decision to land on our own.

LAW WEEK: How about you, Art?

KARSTAEDT: Not approached, and I don't think we would be interested. We've never had that discussion because we've never had the opportunity, but on the other hand, nobody's ever proposed that that's something that they would be interested in.

Going back to external pressures, one of the things that we've encountered over the last five years, and this is something I've seen throughout my career, and the pendulum sort of swings back and forth, that the insurance companies beef up their in-house counsel staff, and then they'll go through a period of time where that wanes and they send more work outside

Insurers tried to resolve more cases before they went into litigation. And the effect there was that we saw larger cases. We didn't see any small cases, so to speak even continuing today. Despite insurance companies keeping some work in house, we weren't largely impacted.

I know every once in a while people feel threatened that the insurance companies are going to keep all of their work in-house, but it's just not possible. So I'm not too worried about that happening.

LAW WEEK: It seems that some corporations were thinking, "Oh, here's a way to save costs. Instead of paying my firm to train that associate, I'll just train them." And my feeling was that they hired people as a cost-saving measure, and it's not clear whether that played out well for them.

OGBORN: It goes through cycles where the corporations build up and then they come down. Right now they're on a downswing. What it is, more than anything else, is they realize they can't handle litigation in-house. They can handle other things, but they can't train trial lawyers. They just don't have the capability.

THOMAS: It goes through 20-year cycles, and the pendulum swings back and forth, and it's just a business risk. I agree with Art. It never seems to go away, but it goes to one side or the other side. So every 20 years or so, corporations have a tendency to build up their in-house attorneys, and then every 20 years it seems to swing back the other way where they jettison all those attorneys to private law firms. It's a risk of our business.

OGBORN: Like insurance companies, they go through cycles of, "Well, let's settle cases early," or "Let's try them all." And it isn't an industry standard. It's company by company. I always thought a good marketing technique was to figure out where each insurance company is and then solicit cases after their insurers — or with the companies that are settling early.

THOMAS: I absolutely agree that those cycles occur, not only industry wide, but company to company.

GODFREY: Another shift that I've seen, though, is in the workforce of what I want to call the senior associate portion of the workforce.

I'm seeing, not just by years, but by ability. By years we would say someone with five years plus, or at least approaching five years or above that. And then the ability of somebody who's had five good, solid years of tough training. That is a very valuable band of the workforce, because lawyers with fewer years of experience are black holes of time and energy — they want to be trained, they deserve to be trained. If they come to our firm, they get trained. But the commitment that takes from us is massive.

Whereas that upper-level echelon or that upper band of associates are people who are valuable from day one. They know how to do their work. They need minimal supervision. They're aggressive. They're ambitious. They've started to realize that their future is tied to their ability to be rainmakers as well as good lawyers.

And that band of the workforce seems to be easier to work with now than they used to be. They were facing the shockwave



CATHERINE PUTTMAN

of what happened in the economy and the work environment as a whole, and having now weathered a terrible storm, that whole band of the workforce is much easier to deal with. Their expectations are far more realistic than they used to be. And I've seen that as an additional stimulus to law firm development for firms that are in the growing mode.

LAW WEEK: Let's talk about that band of attorneys because they seem to be highly sought after across the board. All of you have attorneys in that band, so how are you protecting them? How are you retaining your attorneys and keeping them from those poachers? And how are you attracting them to your firm?

GODFREY: We're looking for smaller firms that we can team up with. We're trying to be the acquirer rather than the acquiree. So we're looking for firms in the two-, three-, four-lawyer band, because we have the office space for that. And, of course, subject to the fit, the personalities, the capabilities, that's one way we would like to grow.

Another way is that we've discovered that there are incentives that we can offer that bigger firms can't. While we can't match the salaries, some firms are offering we do have a different culture. We have technology that no other firm has, and it's fun to use it.

We have the ability to work from home more effectively than some firms. We feed everybody every day. We're able to provide a more relaxed atmosphere, which stimulates a more creative thought process. And there's a certain kind of attorney who would give up a little bit of salary for those benefits, to be in an environment because they think it's more conducive to a professionally rewarding day-in-and-day-out existence.

KARSTAEDT: Every firm has its own culture — that's part of what you're offering to somebody. You're looking for someone you think is going to be a fit, but people, particularly if they practiced five years, are looking to make a long-term career move. They're looking for the right place. And, you do your homework on your end trying to find those candidates that you think would be a good fit for you, and hopefully the person on the other end is doing the same thing, and they know you'd make a good hire. But it doesn't always happen, in spite of all the hard work that both sides put in and the effort.

We don't serve lunch every day.

THOMAS: We don't, either.

PUTTMAN: We do. We have a kitchen stocked full so that they can stay in the office — I really think it does make a

difference. There are things that we can offer that are different than just a salary.

And these associates who are coming in with the five years' experience are in the area of life or the time of life where they're looking for some type of work/life balance that they're not going to be getting at a larger law firm with 2,000-billable-hour requirements during the year. When we make the lateral hires, we have to be offering something a little bit different than what they're currently getting. And certainly the carrot of partnership is something that can incentivize, but it really is creating an atmosphere that they want to be a part of.

OGBORN: I disagree a little bit. Younger lawyers are looking more seriously at other aspects, quality of life, quality of work relationships, things like that, but I still think filthy lucre is the driving force. And I think there's one primary reason: that's student loans. We've had some younger people leave because we can't pay them like the large firms, and for \$20,000 a year flat, they'll go to a larger firm because they can pay off their student loans faster, and that's the driving force.

It helps if you can offer other things. Hodding Carter, a journalist-philosopher from the South, said, "There's two things you can bequeath your children: one is roots and the other is wings." And I think that's the philosophy we have to use with our younger lawyers. Train them, train them well, but give them wings very quickly. Give them responsibility. Let them start doing things.

If they can foresee that ability to get in the fray, and if they really have that fire in the belly, they can see that they're going to get responsibility soon and be able to go in and try cases, then I think that will keep them as much as anything else.

But we've seen more than one attorney leave based on money alone.

GODFREY: Back in 2007, we lost several attorneys all at once, and your paper wrote a fairly significant article about that. We learned a lot from that experience, it was interesting.

We lost three of our best lawyers all at once to a law firm that doesn't even exist anymore. Three of my people moved over to a firm, that then was assimilated into another firm and one of those three lawyers isn't even practicing law anymore. So it's interesting.

At the time we saw that as a painful experience, but then we looked at it and tried to turn a stumbling block into a stepping stone, so to speak. We said, "What can we learn from this." And one of the things I learned was that I had created a situation of vulnerability in the structure of the firm. Those people weren't as closely connected to the rest of the organization.

And so from the standpoint of



Art Karstaedt III and Catherine Puttman

answering the question, “How do we hold on during the poaching onslaught,” the key is to have the correct people to start with and the relationships maintained throughout, so that when those things happen, people don’t leave for the wrong reasons.

THOMAS: The band that Brett describes has always been valuable. In other words, if we go back 20 or 30 years, that band, that five- to seven-year associate, that was always the most valuable person.

What’s different today is that band’s mobility; 20 years ago, even 15 years ago, those people would not move because they believed they were going to be partnered where they were. Today we don’t see that anymore. We see the mobility of that band, and sometimes when you’re the acquirer, that’s great to be able to get that band. But when you’re trying to hold on to them, it’s difficult.

LAW WEEK: I also think what Brett is describing, particularly having cohesiveness within that group, is hard at large firms, because it’s more of a challenge to create community atmosphere. Do you think you’re at an advantage retaining attorneys as a smaller firm?

GODFREY: Well, a large firm, for example, simply isn’t able to implement the kind of technologies that we implemented. If I had had to sell to a conservative committee of older lawyers, who maybe aren’t as technologically alert to changes in the marketplace, the stuff that I wanted to put into my firm wouldn’t have happened. I would never have been able to make that sale because of the preexisting bias against change or against innovation in technology.

But in a smaller firm, we had the capability to make those technological upgrades, and now that they’re in, I tout those, I advertise them, I pound on them every chance I get in client development meetings to say, “Okay. This is stuff we have that other people don’t have,” and we couldn’t have had it if we were bigger.

It’s mobility. It’s like a small boat can turn faster than an ocean liner.

THOMAS: Yeah, there’s no question. We started our firm a little over 10 years ago, and there were three of us, three attorneys and one paralegal. We’ve grown to 70. Certainly when we were a smaller firm, we did a lot of the things Catherine mentioned. You were able to do a lot more things. You had a lot more flexibility. We didn’t have the boundaries — whether you describe it as conservatism or anything else. Certainly you have a lot more flexibility when you’re a smaller firm.

There is little doubt that as you get bigger and bigger, it gets harder and harder, and you have to be aware of it. So I do think that the smaller firms, especially

firms under 30, have a lot more flexibility, a lot more entrepreneurship, and a lot more ability to grow now more than ever before.

So we have a group of attorneys that practice family law under a complete trade name. We have a complete separate website. They can advertise if they choose to. They’re still our attorneys, they’re still part of our firm, and if they don’t want to do family law they can come do the insurance defense practice and vice versa.

It gives us the ability to retain attorneys that we might not otherwise retain because they’re bored or they don’t like one practice area, and it gives them some entrepreneurship and be able to do it in a smaller environment.

GODFREY: And Murray’s firm has mock jury focus group technologies that are better than anybody I’ve seen in the whole state.

OGBORN: We do that under a separate name.

But, I absolutely agree with Brett. Our operation is flexible only because they isolate the ancient mariner, who doesn’t understand most of this technology stuff. They start talking about what we’re going to do to go paperless and all this, which we’ve done, but they start talking, and it’s like Mesopotamian to me. I leave the room. But we’ve done it, and it’s absolutely necessary. You just have to do it.

The other is marketing. You have to market with a focus, and you have to do it wisely, but you have to market.

GODFREY: We’ve put a lot of effort into our website over the last year. We thought we had a good website, and then we started to notice that our competitors’ websites were getting much more robust, so we went back and rebuilt it again.

One of the things that we discovered is that web technologies are expanding exponentially to include embedded features that are intrinsically valuable to the client, as well as from a marketing standpoint. So we have a web portal that’s built into our site for clients to access their entire file through our web page. We can also establish a video link through our web page with people who have videoconferencing capabilities as simple as Skype.

LAW WEEK: What about you guys? What have you seen as far as being able to take more risks?

KARSTAEDT: I don’t know. We’ve been doing it so long. It just feels so comfortable. I suppose a bigger firm would look at it and say, yeah, we’re taking more risks, but we left a big firm 19 years ago, like a lot of small firms, and



DOUG THOMAS

we had a common core of interests and what we wanted to do and we wanted to accomplish. And to a large extent we maintained that vision throughout that period of time.

It’s easy to make a decision when everyone agrees. I suppose if there are 150 people or even 30 people in the room to make the decision, it’s harder to make. So you can grow to 27 or whatever, but if you grow to 50 or 60, it starts to get sticky.

So there’s probably an optimal size in terms of what those of us in the room could feel comfortable operating.

LAW WEEK: And to your earlier point, that largely depends on culture — that there’s an optimum size for each culture. At some point the culture will break, and it’s because you have one outlier or you get two or three laterals that have different views. And who knows when that breaking point is, but it would seem to me that you each know what your optimum size is, whether it’s the economy that dictates that or whether it’s just having the right group of people together.

GODFREY: Part of that optimization includes addressing stress management. Just thinking about your earlier question about taking risk and how to retain associates. Those are actually related issues because associates are looking for stability, and not just job stability; they’re wanting to be able to know that they’re going to have a job tomorrow, but also they want to have a job that they can sustain and endure without becoming physically or mentally ill.

Litigation in any firm in this city is pretty stressful business. In some firms the billable-hour requirements and the anonymity that the associate carries around for the first several years create a discouraging effect. Those firms don’t provide their associates with tools for stress management.

One of the things we found in this cataclysm that we went through a few years ago was that by providing people with tools to manage stress, and by in turn diagnosing the associate’s ability to manage stress, and seeking a better fit, we could create an underlying part of that culture that Art talked about, which makes us attractive to certain kinds of people.

It takes a certain love of stress to be a litigator, but nobody wants to be overwhelmed, and nobody wants to lay in bed at night at 3 a.m. worrying about things. So we’ve started to identify what it is that people worry about and how to prevent those things by dealing with them up front and not letting them

creep in. There’s a level of insidiousness to some of the things that cause stress in people’s minds, and we’ve identified those and started to formulize a means of keeping those things out of the world that our people live in.

If you give somebody more cases than they can handle, that by itself isn’t a cause of stress, but when they start to drop balls, and then they start to commit little misdeeds as a result of too much work, that creates stress, and it strains relations with senior partners and clients, and that keeps them up at night, and that creates a dwindling spiral. We try to head that off at the pass by a doctrine that we have internally called the “Annual Case Load Theory,” and if we match the person’s willingness to work with their caseload, then we find that we can create a more sustainable environment for them.

Another way to reduce stress is to have better tools for task tracking. And part of the technologies I was telling you about before were based on a book I read called “Getting Things Done” by David Allen, the GTD method, which is integral to most task software now. If you look at the box, it will say “GTD compliant” on most of the best task software out there. And if you have good methods, tools, technologies and processes to track tasks, then you don’t drop balls and you worry less. If you know that your to-do list is complete and your calendar is squared away, you’re less likely to be up at night wondering what you’re missing. So those are part of the firm culture.

PUTTMAN: I listen to this and I think that in large law firms perhaps the individual gets lost whereas in your law firm you’re focused on your individual attorneys. Larger firms don’t really have the ability or maybe even the desire to focus on the individual attorney. They’re focused on the end result, regardless of how it impacts the attorney.

GODFREY: I agree. We studied how Special Forces units operate in the military, because we have a lot of military people in my law firm. And we found that the most effective units in the military were the small, elite units, and we wondered why that’s true. It became a subject that we talked about at the end of the workday over a snack, and then we decided that one of the things that makes those smaller, elite units that function under stress, just like a litigation firm does, effective is unit cohesion — sense of tribal belongingness that you wouldn’t necessarily have in a 150-lawyer firm.

Striving for a sense of individual identity in that organization is, by itself, almost impossible. And that is

demoralizing. But the other side of the coin is those firms pay more base salary than at least we used to, and so if the guy is driven only by student loans and doesn't realize how stressful life can be, they become cannon fodder in those big firms. And the big firms hire those people knowing that they're likely to burn out totally within a certain number of years, and they just don't care.

PUTTMAN: So that's why those associates at the five-year, six-year mark have already learned their lesson that there's something else out there besides just what my paycheck is, because I'm not really enjoying my life enough based on what I'm getting from my paycheck. I am stressed. I am not sleeping. My relationships are suffering. Is there not something else out there that I can find where I have a really good work/life balance.

GODFREY: I agree with that. And the answer to that is for the firm to start thinking about it from the associate's point of view.

We made a decision philosophically as a firm, we just didn't want to be like those bigger firms. That's not who we are. And I think that's probably true of all the firms in this room, from what I know pretty much of all of you, and I think we all share that.

OGBORN: There's a learning curve in the trial business, too. When we recruit, we really probe to see if the potential young lawyers have that belly fire and really want to try cases.

Two things have happened to us, historically, when we find those people: We train them up, two to three, maybe four years, and Mitch Morrissey comes along and takes them out to the district attorney's office. And he'll come over, and he'll say, "Do you got anybody I can steal?" And those people will leave because they're not getting enough courtroom experience, trial experience. We just can't give it to them anymore on the civil side.

The other ones agonize over student loans and just want to make a little more money. And they've decided, "Maybe this isn't where I want to be. I want to go to a big firm and, you know, maybe take depositions someday."

LAW WEEK: And have you followed up on any of them to see, are they still practicing?

OGBORN: Well, sure, absolutely. Some of them are, and some of them are not. And the ones that are not are not surprising. I could have predicted that they would get out of the practice. They've lost the desire.

THOMAS: There isn't any doubt that trend wise, people are leaving the law. I think 50 percent of all law students or law graduates do not practice law for two years.

I read the other day there are 1.5 million lawyers and 720,000 actually practicing law. There's two reasons for that: One is because there are opportunities for lawyers in business, in government, in other industries that didn't used to be there. Number two, there has been this boom or bubble in law school and promoting themselves and often choosing wrong people for law schools. So after 10 years of interviewing people, I have a tendency to agree with Murray that we used to interview people looking for skills, knowledge, ability. And now when it comes down to it, the fundamental decision is that fire, that character, that fortitude.

I'm hiring the person, not the skills or abilities anymore. If there's any one thing that I've learned, that's what it is, because otherwise we can all say we've hired people that may have great knowledge, great skills, great abilities, but can't deal with the litigation. And it is litigation, and by its nature there's stress, there's competitiveness to it. It's a performance-based industry. And that's why after two years, half the lawyers are doing something other than practicing law.

It is a major problem for us, and that's why Brett does what Brett does to try and hold onto his attorneys. That's why we all have mechanisms — whether it's food in the kitchen at lunch, or it's the military aspect of creating this core — we're dealing with this larger problem in the practice of law that doesn't seem to be going away anytime soon.

GODFREY: But we're also seeing huge flocks of people seeking work. We made the decision to add another lawyer on Thursday of last week after a group meeting in the firm, and we put our ads up at our traditional sources on Friday. I got almost 45 resumes by Sunday night. I had another several come in today. I was stunned.

And then I started to just scan those resumes, not in any depth, but I have a number of people with five-plus years who are working in big firms downtown applying to my firm right this minute, and that's really gratifying. And that has not been true in the past.

OGBORN: Yet, 44 percent of last year's class don't have jobs in the legal field.

GODFREY: Not only that, I had the sense that there is now, and I can't prove this by any formal statistical study, but I get the strong sense that there is a sort of an exhale going on now with the big firms after there have been all these high-level acquisitions. Some of those big firms in their hunger to grow grew too fast, and some of them are going to start tracking back. And we're seeing some of the refugees of that out in the workplace now. People have been informed that, you know, "We're cutting back. There's going to be a reduction in force," because there was too much growth and the reflex back from that is going to produce the kind of higher-quality senior associate availability that we've been talking about here today, to the benefit of everybody in this room, at this size of firm.

OGBORN: Are you looking for rookies or are you looking for the five- to seven-year?

GODFREY: No, we are no longer interested in rookies.

LAW WEEK: Hearing no one is interested in rookies, makes me feel bad for all these people in law school.

KARSTAEDT: There are occasions where it makes sense.

OGBORN: Superstars. If we see a superstar, an obvious superstar, we're going to hire them, but we're not out doing interviews in law schools, I'll tell you that.

GODFREY: Our most recent hire had eight years, and the most recent hire before that had four years. We've had applicants that look good on paper with three years' experience, and we're not even vaguely interested.

THOMAS: We've hired one rookie recently, as you said, right out of law

school. I guess if you want to use the terminology, rookie, no prior legal experience. Although even then you try to find people who have law school clinics or who've actually practiced in law school. Even then you try to find some experience.

KARSTAEDT: Judicial clerks.

THOMAS: Judicial clerks is a good one. But we hire a lot of people between, say, two and five years and then try to get them into that band that makes them the most valuable. But we have hired, as Art says, someone right out of law school occasionally, but it does require a lot of effort and a lot of work on the firm's part in order to train them and get there.

THOMAS: I think the one trend that I see among all of us here that's different than, say, Bryan Cave is that we generally practice in state-specific statutes or areas. Family law, although there are some multistate, it's generally state specific. What Art, Brett, and I do generally, tort litigation, workers' comp litigation, is often driven by state statute. So it's very hard for a multinational firm to come in here and take our business away without some acquisition. They can't do it because they don't have the knowledge.

It's much easier in the business if you're doing Title VII work. Title VII work is Title VII work. It doesn't matter if you're in Nevada or Florida. It's the same work. And so for them it's a little easier to create a multinational large firm because the work gets more ubiquitous around the country. The SEC is the SEC whether you're in Colorado or New York. That's not true for all our businesses. There's a certain state statute. There's a certain state knowledge. There's certain state judges. There are players that give us an advantage that's not there for the big firms. So we have an advantage as small and medium firms in our knowledge that does not lend itself to the larger firms. They either have to acquire us or not do the work.

LAW WEEK: Right, because they can't compete with you on price. I mean, that's really what it comes down to.

THOMAS: Or knowledge. •