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Partner Q&A in the Wake of Wall Street's Collapse and its Ripple Effect on The Street

Wall Street's financial troubles are distressing not only to firms in New York City, which rely heavily upon financial industry clients, but also firms located throughout the U.S. At the current juncture, partners are viewing the landscape as either of two extremes — disastrously or opportunistically (and maybe a little bit of both). Naturally, the tumultuous nature of 2008 is keeping many of our partner candidates awake at night with images of the last ten (10) months running through their minds and, for some, foreboding feelings directed toward year ahead. To that end, we have attempted to tackle the top 10 questions that many partner candidates are asking this quarter as 2008 comes swiftly to a close:

QUESTION NO. 1: My firm is struggling. What does 2008 mean for equity, non-equity or contract partners in terms of preserving their employment at their respective firms?
It goes without saying that, for most firms where rainmaking is a required mandate of partnership, those partners possessing the strongest books of business (in terms of dollar figures and strength/longevity of client relationships) will be considered the most ''safe'' in terms of not having to worry about their jobs. While there is a line of thought that says that some firms will terminate equity partners in order to increase take-home profits per partner, this is a rather extreme approach.[1] Yes, it does occur, but more so, the first step is moving any questionable equity partners to non-equity status (a/k/a de-equitization). In addition, firms often try to produce some partner attrition through the encouragement of retirements. As for non-equity and/or contract partners, the safety of one's job depends upon a variety of factors such as your (i) relationship within the firm; (ii) business prospects; (iii) marketability of — and demand for — your practice area; and (iv) your visibility within, and outside of, the firm. Again, you alone know the structure of your firm and your long-term perceived value therein. Be realistic about such value and act accordingly. In other words, make yourself valuable. . . . demonstrate ways to bring in revenue and cut costs,[2] including starting your year-end collections push early.[3]

QUESTION NO. 2: I am a junior partner, and my firm has never pushed rainmaking. In light of the economy, however, should I start trying to generate business? Simply put, if the firm is looking at partners to cut, will having some business help me avoid the cut?
Whether or not your firm requires the building of a book of business as part and parcel of partnership, it is never wrong to begin developing clients on your own. However, note that client development is looked more favorably at some firms than others. There are a fair number of firms who offer an environment where a finite number of partners bring in the rain and the others are tasked with closing the transactions and/or litigating the disputes. Therefore, whether or not you should begin focusing all of your energies on bringing in clients depends on the business model of your firm. There are a host of IP boutiques, for example, which discourage the introduction of new business due to rampant conflicts issues and a desire not to alienate existing clients—especially in the patent area. Similarly, there are many firms which will not take on new business if it is estimated to generate numbers below a set figure. Thus, bringing in a 50K contract dispute on Saturday morning may feel like an accomplishment on Sunday, but it won't feel good on Monday when the partners advise you not to accept such work as it's ''not worth

our time.'' If your firm is a firm with understood limitations on rainmaking, look for other ways to make yourself conspicuous and useful in this down market—find something which meshes with your firm's business model and, again, adds value.

Also, if you are a junior partner, this may well be the first real bear market you have encountered which cast so heavy a shadow upon your career. If so, remember that shades of the same shadow have visited us twice before – in 2002 (right before a 5 year bull market) and 1988 (just before the start of a 12-year bull market).[4]

QUESTION NO. 3: What can I expect in terms of profits per partner in 2008, 2009, and 2010?
How your firm is structured and/or leveraged will decide how well you do this year in terms of profits per partner. For many firms, this year has been characterized by weak revenue growth and high expense growth (lead by associate compensation). Even the controlled approach toward making equity partners (as referenced in question 10 below) has not countered the falloff in demand for firms' services. Therefore, profits per equity partners were allegedly down by about 9.1% in the first six months of 2008.[5] Thus, at the end of 2008, profits per partner is expected to be down around 10%, with the top tier firms down around 5% to 15%.[6] While this is not good news for 2008, it may be helpful to consider the fact that while 2008 will mean lower partner profits for some, it will also be a year when firms undertake the administrative tasks they typically avoid – such as removing unproductive lawyers and inserting additional oversight into expense control.[7] These steps may not feel like a good thing in 2008, but once the market recovers and life returns to ''normal,'' it is the hard steps taken in a bad year which will yield the greatest value –and profits – in 2009 and 2010.

Remember, also, that while profits may be down for the Big Firms, many middle market firms are doing just fine this year. In fact, many small and mid-sized shops have benefited from the chaos of 2008. As clients look to lower their legal expenses, many are searching out top-notch boutiques and middle market firms to handle their work. Hence, for partners in these types of groups, your profits per partner may be just fine this year – and certainly better in 2009 and 2010 as you add new clients to your roster.[8]

QUESTION NO. 4: End-of-year bonus payouts hugely affect my firm's profits. Have any firms determined bonus for 2008?
At the time of this writing, exact monetary bonus determinations have not been made at the Big Firms (although some have hinted at a ''change in the usual'' determination guides). We eagerly await the entry of the first firm into the marketplace to declare their bonus amounts. Until that time, the one thing that we are seeing is firms attempting to pare back bonuses by connecting associates' bonuses to (i) firm performance for the last calendar year and/or (ii) tying bonuses strictly to rigid associate performance benchmarks.

QUESTION NO. 5: What happens if I am a partner practicing structured finance, real estate, securitization or another hurting practice area? Should I switch practice areas in order to stay ''marketable''? How do you define ''marketable''?
Obviously, there are certain practice areas which took a hit in 2008 but, prior to this year, generated a great deal of firm revenue. High-end private equity deals, real estate, securitization, and structured finance, for example, are four such areas. While some members of Big Law relied on these types of transactions due to their popularity with their clients in the financial sector,[9] it is not out of the realm of reality that those same financial sector folks will now be looking for assistance with matters in other practice areas such as litigation. Make the pitch for that work. Whether or not you, yourself, can do the work (since you may be a corporate partner, and they need a litigator), you should (i) anticipate and (ii) make the pitch to get your clients' new business so that you can at least continue to get origination and/or business development credit on such new business. Even where such credit is not possible, you will still want to anticipate your clients' needs and respond accordingly in order to keep your practice moving forward and developing it into a useful area for 2009 and 2010. It is not unusual to see an M&A partner for a given client in a good market turn into a restructuring expert for that same client in a down market. Rather than M&A deals, clients are looking at their financial assets and restructuring them to reduce risk.[10] Hence, if you are in a practice area which has tanked, the goal should not be to ''switch'' practice areas. The goal should be to (i) keep your book of business moving forward (and your receivables up) with new work in *any* practice area and (ii) determine what aspects of your current practice are salvageable and useful going into the post-credit fallout of 2009 and 2010 and (ii) build upon that foundation in the new year. Remember, prior to the bursting of the tech bubble, structured finance and securitization were a blip on the radar. It was post 2001 (after the government reset interest

rates) that firms jumped on these practice areas. Trust that the same can happen again with new practice areas just waiting to be noticed and developed.

''Marketable'' is often defined as someone who has either a strong, portable book of business and/or services a practice area which is in demand. We talked about getting credit for new business and segueing into new practice areas above. Do not, however, underestimate your power to increase your revenues and attract new clients by reviewing your billing structure. Many say that the $250-$500 billable hour is on the way out, with fixed and negotiated fees yielding better results, namely, double the revenue.[11] If you are losing clients to the typical ''billable hour structure,'' a change in billing design may right the wrong.

Finally, remember that if you are the head of *hiring* for a firm which is currently in a slump, do not forget that sags in the market produce possibilities to bring new, lucrative blood into your firm. Many partners have begun anticipating client needs for 2009 and 2010 and hiring new lateral partners who can meet those needs. The theory behind taking on additional expenses in an already bad year may best be summed up by one of our client firms who said, ''2008 is not going to be a barometer for anything other than a bad year. We loaded our expenses, such as adding on new partner hires for novel areas, into 2008 and are looking forward to reaping the rewards in 2009.'' Sounds like something Warren Buffet would do? Buying, buying, buying in a down market.

Thus, while 2008 may be a slump year; 2009 is certain to reveal new opportunities and paths to walk down. It may not be the road you expected, but it most certainly will be a road worth exploring.

QUESTION NO. 6: What practice areas are expected to rise above the rest in 2009?
As referenced briefly above, all are predicting that the practice areas of restructuring, bankruptcy, and litigation will be the golden tickets for 2009. The need for bankruptcy and restructuring attorneys is clear; as for litigation, the focus will likely be on shareholder suits, antitrust issues, and related securities litigation. In addition to the above, particular emphasis has been placed on ''energy'' or ''green'' practices becoming more and more popular. With regard to this latter practice area, the upcoming presidential election will in large part determine whether energy practices take off or stall right out of the gate.

QUESTION NO. 7: I've been let go from my firm. If I do not have business, what are my chances of finding a new partner position in Manhattan?
In Manhattan, a partner without business who is looking to make a move in a down market is extremely difficult to place into the typical Big Firm unless they currently specialize in a highly marketable practice area. This is due to the fact that at the Big Firms in New York City, anyone above a Class of 2000 is considered ''senior'' and, unless they have business, are also considered very expensive. Moreover, even if you were to agree to take a hit in class year and come in to your new firm as an ''associate'' or ''counsel'' in order to re-kick start your career, most large firms will not agree to such a scenario.

Keep in mind, however, that we are speaking about the Big Firms and large-sized environments. There are a host of small-sized and middle-market firms which may be open to such an individual. These groups often do not work with recruiters so they may be difficult to track down, but they do exist. Once found, the only hindrance may be a lower compensation, and that would be a personal decision you would have to make in order to remain practicing in Manhattan.

Also, on the Big Firm front and on the small/middle-market firm front, Manhattan is fortunate in that it sits in the middle of six very hot pockets of legal activity – Newark, Princeton, Morristown, Cherry Hill, Stamford, and New Haven. Don't underestimate top firms in these regions. Newark is 20 minutes from midtown; Stamford is 40 minutes from Grand Central. Both cities offer partners real opportunities to join top practices with upper echelon clientele; keep their practices moving forward; and not uproot their families from Manhattan. The more you think outside the box, the better your chances will be of finding something new.

QUESTION NO. 8: My practice is robust and portable. Are firms hiring partners right now on the East Coast and how have the events in New York City over the last few months affected hiring markets across the nation relative to partner hiring?
One thing is for sure, partner hiring has not slowed down at all in 2008. In fact, it has increased. In a downturn

market, firms often look to scoop up lateral partners in key practice areas where they foresee work in the next year or two. Moreover, even in practice areas which are not expected to be in hot demand in 2009, every firm has been open to a partner (or group) with business and will not say ''no'' to the idea of increasing their profitability this year.

As of five months ago, the MidWest and West Coast were yet to feel the effects of the fallout in New York, but that has since come to pass. Across the nation, all legal markets have felt the tug and slowed up hiring in all areas EXCEPT partner hiring. Thus, where a partner has a robust book of business and is open to relocation, the national markets are open to him/her. Moreover, as many firms are aware that they, and their competitors, are on the hunt for the same candidates in the upcoming ''hot'' areas, it is not surprising to see some very favorable deals going down for partner candidates in order to sweeten the pot.

QUESTION NO. 9: If my firm is having problems, and I feel the need to move on (or look around), would my job prospects be better outside the U.S. in the international markets?
The quick answer to the above questions is: if you have portable business, your job prospects *outside* the U.S. are equally strong. If you do not, it will be difficult unless you are in a highly marketable practice area. Either way, if you feel compelled to explore the international markets, one thing which might be helpful to look for is whether a firm's footprint is ''international'' or ''global.''[12] According to a recent report by Dan DiPietro in *The American Lawyer*, international firms (those with between 10% and 25% of their lawyers based overseas) have experienced greater profit margin compression than any other group of firms as they regularly have a heavier presence in the UK and Western Europe than their peers.[13] In contrast, global firms (those with more than 25% of their lawyers based overseas) have experienced the least profit margin compression as they have more attorneys in Asia, Eastern Europe and the Middle East.[14] Thus, if you are targeting international firms, you *may* find that those with a global footprint will offer you more options and/or a more open mind.

Moreover, certain foreign regions are reportedly doing better than others in navigating the current economic landscape. According to a recent article in The National Law Journal, Canadian law firms are not as leveraged as those in Manhattan.[15] Thus, while they may not enjoy the benefits of a thriving economy to the same extent as U.S. firms, they also do not feel as much of an impact when the economy dips.[16] The degree to which the foregoing is true remains to be seen. However, one thing we can take away from this paragraph is that if you have experience dealing with clients, industries, firms, etc. in a particular region or international setting which has not been hit as hard as the U.S., you may do well to hone in more closely on such region(s) and see if they prove fruitful when it comes to harvesting opportunities.

QUESTION NO. 10: If I am up for partnership this year, what does this mean for me?
When the market goes soft, firms often institute a reserved approach toward making equity partners. Thus, a finite number of individuals will make equity partner, and the others will either be non-equity, titled as ''Counsel'' or ''Special Counsel,'' be shown the door (up and out) or resign themselves to waiting until next year with fingers crossed. What happens in your particular situation all depends on the partnership structure at your firm. Some firms are single-tier partnerships; others are multi-tiered—giving you (and the firm) a few options. Either way, if you don't make partner this year, it can be heartbreaking. While waiting until next year feels a bit like losing the game, remember that you cannot control what has happened in the stock market, and you must play the hand you are dealt. A farmer cannot control a drought, but he/she can control what he plants the year of, and following, that drought in order to reap a harvest. Keep this scenario in mind for those of you who will not make partnership this year and, at the moment, feel somewhat like you have lost control of your future. You have not; you just may need to re-adjust your game plan. The sooner you come to terms with the fact that this is *not* about you so much as it is about the economy, the sooner you will be able to clearly assess the situation and make the right moves to keep yourself in the game for 2009 and 2010.

1. ''BigLaw and the Bottom Line: Firms Cut Hiring and Expenses, Expect Falling Profits'' by Nate Raymond and Clair Duffett, The American Lawyer (as report by New York Lawyer, dated Oct. 8, 2008).
2. ''What this Economy Means for You'' by Stephen Gandel and Paul J. Lim, (CNN.Money.com, dated Oct. 8, 2008).
3. ''BigLaw Storm Warning'' by Dan DiPietro, The American Lawyer (as reported in New York Lawyer, dated Aug. 21, 2008).
4. ''What this Economy Means For You. When Will Stocks Bounce Back,'' by Stephen Gandel and Paul J. Lim (CnnMoney.com, dated Oct. 8, 2008).

5. ''Big Law Storm Warning,'' by Dan DiPietro, The American Lawyer (as reported in New York Lawyer, dated Aug. 21, 2008).
6. Id. (Note: According to author Dan DiPietro, such estimates take into account the payout of associate bonuses across class lines.)
7. Id.
8. ''Amidst Market Meltdown, Midsize Firms See a Silver Lining'' by Karen Sloan, The National Law Journal, dated Oct. 2008.
9. ''Big Law Storm Warning,'' by Dan DiPietro, The American Lawyer (as reported in New York Lawyer, dated Aug. 21, 2008).
10. ''Rethinking Legal Fees for Lean Times'' by V. Dion Haynes, Washington Post, dated Oct. 20, 2008.
11. ''Big Law Storm Warning,'' by Dan DiPietro, The American Lawyer (as reported in New York Lawyer, dated Aug. 21, 2008).
12. "Big Law Storm Warning," by Dan DiPietro, The American Lawyer (as reported in New York Lawyer, dated Aug. 21, 2008).
13. Id.
14. Id.
15. "For Your Consideration: If Wall Street Collapses, Canada Will Still Be There" by Vesna Jaksic, The National Law Journal, dated Oct. 2008.
16. Id.