Turnaround for Transactional Lawyers

By Eamonn Markham, Esq.

I think nearly every attorney in the United States would agree that the past few years have been difficult times for associates in the legal profession, especially for transactional attorneys. Since the transaction market peaked in 2000, there has been a steady decline in transaction jobs, as the same law firms whose size had galvanized the legal market in the late 1990s now found that their clients were no longer generating the same amounts of legal work, forcing firms to downsize their associate ranks.

Initially, firms quietly informed attorneys that they were no longer producing at expected levels and consequently asked them to leave their firms. In an unprecedented move, many large firms announced that they would lay off large numbers of attorneys-sometimes entire class years-because the firm didn't have work. Other firms assessed the fallout before laying off attorneys, but as more firms made the decision to cut junior and mid-level associates, the floodgates opened, and a large number of transactional attorneys were without jobs. In some instances, big-name firms actually folded. Many firms that didn't announce downsizings continued to use the subtle technique of quietly asking attorneys to leave at performance reviews. Consequently, a large number of qualified transactional attorneys have been available to the legal market for a limited number of positions, making a lateral move in this area difficult.

Although it might appear that the legal market has been stagnant over the past few years, it has been incredibly dynamic overall, with significant growth in some areas. Transactional associates have often been asked to assist with busier areas or to move to busier locations. Other practice areas have been incredibly busy (such as restructuring and litigation). Law firms have opened offices in a variety of locations, often absorbing practices from local offices that were in difficulty or, in some cases, completely disappearing. I believe this merger activity demonstrated that law firms were bullish on their legal markets, as law firms are businesses and do not go to the considerable expense of opening offices without a strong expectation of growth and profit.

As companies withered due to economic and other pressures over the last few years, bankruptcy has been one of the most robust practice areas, even providing work to a number of supporting areas of law. Among the supporting practice areas that benefited from the bankruptcy boon was corporate finance, where attorneys have been working with struggling companies that sought to have their debt restructured either in or out of court. They have also been busy because their clients have raised debt as other capital-raising avenues have closed. There has also been a strong demand for securities litigators, commercial litigators, and real estate transactional attorneys. We frequently see an upturn in the work of litigators when the market sours because companies are more apt to consider litigation in tough market years. In addition, increased scrutiny of corporate boards and corporate executives and the discovery of wrongful practices have caused a resultant increase in litigation by disgruntled shareholders against the companies and the individuals involved. During the past few years, attorneys in these areas have frequently worked 2,500-plus hours a year.

"So what?" you may well ask yourself. Well, let's hurry to the good news. The media has been rife with analyses of the current state of the United States economy, and many analysts are saying that the worst has passed and the economy is growing and headed for a recovery. This is important because a service industry such as the legal market is in constant flux and makes continuous adjustments to respond to clients' needs. The most obvious example was the dot-com work in the late 1990s. It is the nature of the United States economy that various market segments will boom and bust, and consequently, transactional attorneys will be busy, while their bankruptcy brethren slow down and vice versa. As evidence of this fact, consider that many corporate partners elected into the partnership since 2000 have been forced to remember the recession that existed when they started their careers in the early 1990s before enjoying the abundant work at the end of the decade.

Consistent with media reports of a better economy, my fellow recruiters and I have noticed a sharp change in the current legal market in the past few months. With a pronounced increase in lateral interviewing and hiring, it seems that firm appetites for transactional attorneys have grown with the economy, and this trend is continuing strongly. BCG recruiters have seen an increased number of transactional attorneys receiving interviews with many larger firms for an ever-widening number of practice areas. Many of these areas haven't had a job opening for a number of years. For example, a number of major firms has recently interviewed and hired licensing attorneys, a niche specialty offering only very limited opportunities until recently.

Current indicators of a robust economy include:
A growing U.S. economy in the first nine months of 2003, with a 7.2 percent annual growth rate-the highest growth rate since 1984-with consumer spending accounting for two-thirds of this growth;
Labor Department figures for first-time claims for state unemployment benefits have continued to drop: November 2003 had the lowest number of such claims since before the economy slipped into recession in January 2001;
The Commerce Department estimates that new orders for costly and long-lasting manufactured goods climbed 3.3 percent, far ahead of the 0.8 percent gain forecast by Wall Street economists;
Signals that firms are loosening their purse strings, notably "non-defense capital goods orders excluding aircraft"-economist-speak for the tendency for businesses to expand-has shown consistent gains;
The improving job market, which has buoyed consumer spirits with a number of consumer indices consistently rising;
And although there are some cautionary signs, including the weak Christmas season and a decrease in personal spending, many analysts conclude that a sustained pickup in the United States economy is imminent.
How do all of these economic indicators affect attorneys? Translate their results into the industries that attorneys service, and the areas of future growth can be divined. With a rebounding stock market, the capital markets are ready to free their financial resources. It is often the capital markets and M&A areas that get busy at first. Many companies need robust credit ratings, cash income streams, or an increase in their stock prices before assets can be purchased. Additionally, companies would rather wait for an improved market so that they can generate higher prices for assets to be sold. With increased flexibility in the capital markets, companies will consider a sale of assets because acquiring companies can more easily raise the capital to fund purchases. Consequently, attorneys who service these markets are the first to see their workloads increase, with increased hiring occurring as firms use their excess associate capacity.

Other indications of an improved economy come from the public securities markets. Although only 69 companies went public in 2003 (one of the lowest tallies in nearly 30 years), 2004 has considerable promise as a year where some large issuances of stock will occur. Companies to watch include Google and Genworth Financial-the insurance division of General Electric. December 2003 also saw a significant increase in the number of registration statements filed with the Securities and Exchange Commission ("SEC"). SEC attorneys report that they haven't seen this behavior in the capital markets since 2000! Hence, we anticipate an increased need for capital markets and securities associates. Associates with Sarbanes-Oxley experience are needed as that law comes into full force and firms rush to comply with its requirements. Other areas of the law where we anticipate growth include the increasingly busy capital markets, private equity, and M&A fields, which will need tax, ERISA, and **employment attorneys**.

One advantage of the increase in hiring is that it will create a robust lateral market for associates. In a typical lateral market, associates are continually leaving firms for other opportunities. Although law firms rely on attrition as part of their process to determine partners, too many associates leaving creates a void for firms with work that needs to be done. Many attorneys have refrained from considering a move because they believe that they have been stuck at their current firms because the opportunity to move has been limited. As associates begin to move laterally between firms and in-house, additional lateral opportunities will be created. If the economy continues to improve, we anticipate that this will be a busy year for law firms and consequently for lateral associates.

So now that you're ready to move and the market for laterals in your practice area has improved, what should you do? My first piece of advice to anyone considering changing jobs is to start looking and apply broadly. If you can, contact a recruiter and have him/her assist you in honing your resume. Make sure your resume is perfect. Find a recruiter who can review your resume critically, one who understands your market. That recruiter should also be able to direct your recruiting efforts. In your job search, a high-quality and reputable recruiter can be worth his/her weight in gold by providing assistance as you navigate your way through the legal market. Good recruiters can tell you the reasons for market changes and operate as insightful sounding boards, helping a lateral associate navigate the next chapter in his/her career. Next, be patient. Searching for a new job is a process that takes time. Realize that you may need to stay where you are for the time being.

Finally, if you have been laid off or are unemployed, your chances for finding work are increasing too. I recently heard that the legal market has a negative perception and stigmatizes attorneys who have been laid off because the logic apparently goes like this: Stars are never laid off; therefore, the lateral candidate must not be a star. Frankly, I disagree, and my belief has been supported in my discussions with hiring partners and coordinators at law firms when I have worked with candidates that have been laid off. However, if you were laid off, that fact is now part of your rsum-akin to the law school you attended-and it will need to be addressed in any cover letter. Take solace in the fact that not everyone was at the top of his/her class or attended the best law school. I also believe that firms are more likely to look beyond such experiences precisely because the recent economy has been so terrible, and laid off transactional attorneys are much more common now than in the past.

Consequently, procuring new employment is frequently a matter of reorienting your **job search**. Of course, if you were asked to leave a firm after a period of unsatisfactory reviews, then perhaps you should take a long look at whether you fit into a law firm environment or whether you even want to be an attorney.

All in all, I anticipate a robust lateral-associate market, so now is the time to start looking for that position you have always wanted! Best wishes for a successful search.