

THE BURFORD

Quarterly

A REVIEW OF LEGAL FINANCE

TRENDS IN MANAGING LEGAL
RISK IN 2021

CFOs ON OPTIMIZING
LEGAL ASSETS

LAW FIRM LEADERS ON HOW
FIRMS ARE EVOLVING





ROUNDTABLE

Law firm leadership perspective



In December 2020, Burford Director Christine Azar directed questions concerning law firm trends to a respected group of law firm leaders. Their perspectives are excerpted and gathered below.

Q.

2020 has been a turbulent year for businesses across many industries. What has been the most significant challenge or concern you've observed among your clients?

Frank Ryan:

The first thing everyone is concerned about is making sure their people are safe and secure. That is something that we have been managing internally and have seen all our clients managing. Second, being able to expediently respond to clients at a very sophisticated level to satisfy the needs they have in times of pressure and stress; this is critically important. Now more than ever, clients need us by their side and prepared to help them resolve whatever issues they are dealing with.

Jason Peltz:

The constant state of uncertainty has been the largest concern we have observed. High-stakes commercial litigation by its nature has a good amount of uncertainty, but the curveballs experienced this year increased the uncertainty to new heights. With many courts closed or operating on reduced schedules and jury trial schedules continued, our clients faced challenges with budgeting, setting internal expectations and of course many faced and continue to face significant spending pressure. Many of our law department counterparts have been necessarily pulled away to address the urgent business and legal issues associated with the pandemic. We have worked hard to ensure that they can attend to these new challenges, confident that we have their litigation concerns well covered.

Jason Leckerman:

The challenge of uncertainty has been the common theme for our clients of all sizes and across all industries. Companies that initially worked to deal with operational uncertainties created by the Covid-19 pandemic were soon confronted with equally important, but more fundamental issues relating to social justice, diversity, equity and inclusion. In response, clients initially focused on the immediate concerns of budgets and controlling expenses, as they took stock of services they truly needed to run their business. As everyone embraced remote work, clients also focused on improving technology infrastructure, the legal and business implications of instituting a remote workforce and employee well-being. In many ways, clients' attention to technology and the needs of their workforces enabled them to meaningfully respond to the social justice issues we have seen since the summer.

Q.

While there has been some good news relating to the pandemic, when a return to “normal” will happen (or what it will look like) is still uncertain. What are the most important ways for firms to evolve to meet the evolving needs of clients, and what’s most important to your firm?

Jason Peltz:

Most important to our firm is client success. If our clients do not succeed, neither do we. Our entire model is built on this simple premise of aligned objectives and incentives. By extension, maintaining our team focus, with clients serving as an integral part of our team, remains vital. This is always how we have worked but it has become even more important given current circumstances. In terms of firms evolving to meet evolving client needs, the key is teamwork—knowing what success means to each client, understanding the challenges each client faces, acting as an invested partner and adapting to meet each client’s needs.

Frank Ryan:

One of the things that we learned during the pandemic was how much more quickly we could move and how fast we could change driven by the needs of the day. I think that law firms—especially our law firm—will be much more attentive to being agile and able to move quickly. There are things we can do at a pace that we never imagined we could have done before and that is by virtue of what we learned during the pandemic. I think clients are going to want that even more out of law firms: Being more agile, more nimble, more responsive and able to move more quickly. That is without question something that I believe will be increasingly important in the months and years to come.

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Jason Leckerman:

Clients' current needs include leveraging technology, addressing disruption, anticipating the next challenge and ensuring they are maximizing the value they derive from relationships with outside counsel. Although these areas have been a focus for many in recent years, they became acute in 2020. For law firms, this means that we need to proactively communicate with our clients, demonstrate an understanding of the impact of current issues to their businesses and industries, provide legal services seamlessly across platforms and think creatively about cost and fee arrangements. At the same time, given the challenges our clients are facing, we need to be hyper-focused on efficiency in delivering our services.

At Ballard, we quickly adjusted to the remote environment. While delivering value beyond excellent legal service has been a core focus of the firm for some time, that adaptability and the pace of change has enabled us to change the way we work with clients to better align with client needs and the demands on their schedules. Through focused outreach, particularly those in highly impacted industries, we have continued developing innovative value-add approaches beyond the fee-for-service model. For example, over the past year we have developed robust online resources, such as our Navigating the New Normal Business Resources and Presidential Transition Center to help keep clients abreast of breaking developments and strategies to help with businesses. We also have offered clients an array of free CLEs and customized trainings to help their teams navigate and prepare for these challenges. The common thread has been to offer timely, forward-thinking information that is direct, practical and actionable. This evolution naturally comes with the growth of our Client Value and Innovation Team, which focuses on complementing the exemplary legal service we provide clients by offering predictability, value and efficiency, and identifying appropriate opportunities to share the risk with clients. The team works with the lawyers and our clients to deliver transparency and efficiency in the way we price and manage our engagements and to provide information and analysis tailored to our clients' business needs.

Q.

Recent research shows that two out of three law firm lawyers identify increased competition from traditional and emerging competitors as a key challenge. We've also seen recent research suggesting that there may be an increase in law firm mergers given this tough competitive landscape. Do you agree that bigger is better? What can—and should—law firms do to set themselves apart?

Jason Leckerman:

Is bigger better? For a small slice of the legal industry, that may be true, but for most firms like ours, I'm not so sure. Intense competition among law firms, emerging new law providers and large acquisitions will always be a part of "big law" firm culture; however, that can only go so far. While some firms want to be all things to all clients, we prefer to focus on core areas of strength and providing the services we know our clients want and need. My sense is that most firms will continue focusing on attracting small groups or laterals as a primary driver for growth. Indeed, the changes prompted by the pandemic no doubt will challenge the notion that firms "need" an office in particular cities. Acceptance that lawyers can do their work from anywhere (while honoring state licensing requirements) is growing rapidly, along with the notion that employees can work remotely and remain productive and efficient.

To set themselves apart, law firms will need to focus on qualities other than size. How firms deliver legal services to clients will remain a key differentiator. This year will present significant challenges and opportunities. The new administration in the US, the important focus on racial equity and the pandemic (and its true economic impact) will mean new federal, state and local laws and regulations, as well as increased enforcement activity. Firms need to stay ahead of these changes, so clients know what's coming around the corner and how to mitigate the risks or maximize the opportunities they will create. We know that while clients' legal budgets are not increasing, their legal needs are, so firms need to be one step ahead and align their priorities with the goals and needs of their clients. That is not as easy as it sounds.

We are helping clients address ethical, environmental and safety concerns through our Environmental, Social, and Governance (ESG) Initiative. ESG metrics are a growing area of focus for companies of all sizes, investors and investment firms, lenders, governmental agencies and legislatures, stock exchanges and other self-regulatory bodies, activist shareholders and advocacy groups. Another example is Ballard's Racial Justice and Equality Pro Bono Litigation Initiative, a

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new pro bono plan of action dedicated to combating racial injustice and inequity through litigation. Litigators take on pro bono cases that specifically address racial justice issues, such as policing, education and voting rights. We also are establishing partnerships with firm clients and public interest organizations dedicated to promoting racial justice. Writing checks and financially supporting these organizations is simply not enough. We must commit to forging these partnerships if we want to see real change.

Jason Peltz:

Whether bigger is better likely depends on the particular legal service being provided. To meet competitive challenges, firms must differentiate themselves by knowing who they are and the particular legal services they excel at providing. Since our founding 27 years ago, our singular focus has remained high-stakes litigation. Companies and individuals hire us for their most important litigation and our exceptional quality; experience, not size, empower us to succeed.

Frank Ryan:

I don't believe that bigger is better. Being strategic is what is most important. I do believe that global scale with incredibly talented lawyers is very important—especially for us. Our ability to deliver globally for clients 24/7 in their most important, sophisticated matters is critical. But just being bigger I don't believe is the answer.

Being sufficiently large and being strategic is what is most important for law firms today.

The competition is as hot as it has ever been and will only become more competitive over time. As far as law firm mergers are concerned, we constantly see a drumbeat of top talent moving to certain firms and I believe that there will be more opportunities in the coming years for law firms to scale up. I think there will be mergers but how quickly that happens and what size I don't know yet.

Q.

Although anecdotal evidence suggests that the number is overstated, 68% of lawyers say that their firms are likely to consider building risk-based practices. Does this reflect a larger trend towards traditionally hourly fee defense firms augmenting or developing risk-sharing practices?

Jason Peltz:

Yes, my sense is that more traditional, hourly firms are exploring contingency and other risk-based fee models. It will be interesting to see how successful those firms can be given their institutional constraints. Considering most of those firms' models are built on hours, including their assessments of value, success and compensation, I imagine it will be difficult for many of them to pivot from their age-old architecture. I suspect some will succeed and others will not.

Frank Ryan:

I can't comment on the percentage, but I do think risk-sharing is something that law firms are increasingly thinking about as we become more sophisticated. All of us are becoming more sophisticated in terms of outcomes, specialties and having a talent to drive certain matters that allow both client and law firm a greater degree of certainty. Times are changing and there needs to be more sharing of risk between clients and law firms. Therefore, I believe law firms increasingly will consider risk-sharing opportunities and contingency fee arrangements.

Jason Leckerman:

I am skeptical that many other big law firms will actually embrace risk to the degree that they will develop significant risk-based practices that do not rely on the hourly fee model. It is true, however, that there seems to be an increasing willingness for clients and firms to find ways to share in the risk and the potential upside in litigation. This willingness seems to be natural extension of the increased use of alternative fee arrangements

(AFAs) that benefit both the law firm and the client. While we have been offering risk-based arrangements, given the choice between that and other AFAs, clients still choose other AFAs most of the time. This indicates that risk-based arrangements have a long way to go to gain support and adoption. We are, however, willing to bet on the talent of our lawyers—their ability to provide both clients and the firm upside—and I would assume other law firms feel the same about their lawyers.

Q.

Recent research shows 67% of CFOs would advocate for the use of legal finance in an economic downturn. What role should law firms play in educating clients about various financing options, including legal finance?

Jason Peltz:

As a trusted advisor, it is critical that lawyers educate clients regarding legal finance options. This is especially true given the exasperating budget constraints that many clients face, as legal finance may make especially good sense to assure that meritorious litigation can be efficiently and successfully handled.

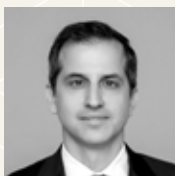
Jason Leckerman:

We are counselors. That means that we need to educate our clients about their options, including legal finance. For clients with liquidity constraints or who are simply risk adverse, legal finance could be the right answer. For law firms, it simply may make good business sense.

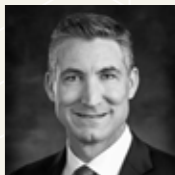
Frank Ryan:

The question of educating is a tricky one. First of all, making sure we understand the client's needs and goals is first and foremost, and then being able to provide to clients the tools that will allow them to satisfy and meet those goals is important. I think legal funding is right for some clients to meet those goals and it is a tool that makes sense for some clients. It is certainly something a law firm should have at its disposal to discuss.

PARTICIPANTS

**Jason Leckerman**

Jason Leckerman is Chair of Ballard Spahr's litigation department and is a member of the firm's Expanded Board. He focuses his practice on antitrust and competition, product liability and commercial litigation.

**Jason Peltz**

Jason Peltz joined Bartlit Beck in 1996 and has served as the firm's managing partner since 2018. He has a national litigation practice, regularly handling cases before the state and federal courts, arbitrators and mediators across the country. He has extensive experience in a wide variety of complex commercial litigation, including matters involving breach of contract, patent infringement, product liability, breach of fiduciary duty and deceptive and unfair trade practices.

**Frank Ryan**

Frank Ryan is the Americas Chair, Global Co-Chair and Global Co-CEO of DLA Piper. In his practice, he provides legal and strategic advice to domestic and multinational clients who draw on his experience in high-stakes litigation, intellectual property, media and sports, complex commercial and sovereign related issues. Clients turn to him as a go-to strategist and litigator for their most important matters.

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Christine Azar is a Director with responsibility for building business with US-based law firms and companies. Prior to joining Burford, Ms. Azar was the partner in charge of Labaton Sucharow's Wilmington office and began her career at Blank Rome. She has been recognized as a leading litigator by numerous organizations

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