

# Table of contents

|   |    |
|---|----|
| <b>Foreword</b> .....   | 7  |
| <b>Peter Zeughauser</b><br>Zeughauser Group   |    |
| <b>Acknowledgements</b> .....   | 11 |
| <b>I. Understanding the flywheel effect</b> .....   | 13 |
| <b>1. Introduction</b> .....  | 13 |
| <b>2. Some firms are pulling away from the rest</b><br><b>in size and momentum</b> .....                  | 14 |
| <b>3. Compounded growth is a crucial factor</b> .....   | 16 |
| <b>4. Within a peer group, larger and more profitable</b><br><b>firms have important advantages</b> ..... | 17 |
| <b>5. The prospect of a merger can force a firm to</b><br><b>address problems</b> .....                   | 17 |
| <b>6. The risk of doing nothing also has to be weighed</b> .....  | 18 |
| <i>Management perspectives</i> .....  | 22 |

- II. Designing a strategy around strengths** ..... 29
  - 1. Formulate a strategy that extends existing strengths ..... 29
  - 2. Take a hard look at your firm ..... 30
  - 3. Identify opportunities to exploit ..... 31
  - 4. Look for firms that share your strengths and aspirations ..... 32
  - 5. View the issue through strategy ..... 34
  - 6. It pays to be patient ..... 36
  - Management perspectives* ..... 37
  
- III. The special perspective of the smaller firm** ..... 41
  - 1. Staying small has drawbacks, however ..... 41
  - 2. The cost of doing nothing is not nothing ..... 43
  - 3. There are tangible advantages to scale ..... 43
  - 4. How to begin evaluating the option ..... 45
  - 5. What to do if you want to go forward ..... 46
  
- IV. Missing the window, or not** ..... 47
  - 1. Perform an honest self-evaluation ..... 47
  - 2. Signs the window could be closing ..... 49
  - 3. Standing still carries risks ..... 50
  - 4. Addressing weaknesses ..... 50
  - Management perspectives* ..... 51
  
- V. Taking the driver’s seat** ..... 53
  - 1. Being reactive carries risks ..... 54
  - 2. Agree on criteria and frame the discussion around those ..... 54
  - 3. Consensus on the criteria lays the groundwork for a deal later ..... 56

|   |    |
|---|----|
| <b>VI. Drawing up the list</b>                                      | 57 |
| 1. Framing the initial criteria                                     | 58 |
| 2. Conducting the first screen                                      | 60 |
| 3. Profiling the most appealing candidates in depth                 | 61 |
| 4. Prioritising your targets based on your criteria and feasibility | 62 |
| <b>VII. The approach</b>  | 65 |
| 1. Do your homework and gauge your audience                         | 66 |
| 2. Dealing with the sceptics  | 70 |
| 3. Keeping quiet and preparing for leaks                            | 73 |
| <i>Management perspectives</i>                                      | 74 |
| <b>VIII. The second meeting and beyond</b>                          | 75 |
| 1. What to ask for  | 75 |
| 2. Start fleshing out the upside                                    | 78 |
| 3. Develop a process and a timeline                                 | 78 |
| 4. Identify make-or-break issues and work through them              | 79 |
| 5. Voice concerns and state priorities, not demands                 | 81 |
| 6. Start planning how to communicate with clients                   | 82 |
| 7. Be flexible about the legal structure                            | 82 |
| 8. Think creatively   | 82 |
| 9. Avoid flipping a switch that will leave someone in the dark      | 84 |
| <i>Management perspectives</i>                                      | 85 |
| <b>IX. Getting partners' approval</b>                               | 89 |
| 1. How to structure a vote  | 91 |
| 2. How to deal with vocal opposition                                | 91 |
| <i>Management perspectives</i>                                      | 93 |

- X. Making the deal a success** ..... 95
  - 1. Frame a shared strategy** ..... 96
  - 2. Build momentum** ..... 96
  - 3. Develop and track but-for revenue** ..... 96
  - 4. Foster and measure cross-firm collaboration** ..... 97
  - 5. Compensate partners for fulfilling the merger goals** ..... 97
  - 6. Leaders set the tone** ..... 97
  - Management perspectives* ..... 98
  
- Notes** ..... 101
  
- About the authors** ..... 102
  
- About Globe Law and Business** ..... 104

## Management perspectives

**Law firm leaders discuss what motivated them to consider a merger.**

### **SIDLEY & AUSTIN**

In 2001, Chicago-based Sidley & Austin, with 925 lawyers, agreed to merge with New York's 400-lawyer Brown & Wood.<sup>5</sup> At that time, Sidley was well known for its transactional, litigation and regulatory work, primarily for Fortune 200 companies and financial institutions, while Brown & Wood had a leading practice advising Wall Street financial firms on capital markets, investment funds and structured finance matters.

Sidley had observed in the late 1990s that its investment and commercial banking clients were increasingly relying on their New York-based banker teams to execute transactions, and international clients were increasingly focused on Sidley's New York office capabilities. Pre-merger, Sidley had grown its New York office to approximately 100 lawyers, but the lateral partner market in New York in the 1990s was less active and opportunities to expand significantly were limited. Sidley believed that it could benefit from being both larger in number of lawyers and in the scope of practices it could offer in New York. Brown & Wood, meanwhile, believed it could benefit from both greater diversification of its practices and client base.

### **Larry Barden, chair of management committee:**

*In the 1990s, our firm had extensive relationships with many of the country's largest corporations. Two of our more significant and rapidly expanding clients at that time were based in the New York area: General Electric and AT&T. We were also beginning to build depth and breadth in the life sciences area, which was drawing us closer to many pharma and medical device companies headquartered in the Northeast. We had built a successful New York office, with substantial talent. But in the 100-lawyer range – with those lawyers spread across a variety of practices – we felt we lacked some of the depth necessary to capitalize on the increased opportunities we were seeing in both the New York and international markets. The lateral partner market in New York at that time was far less active than today and pulling top partners away from leading New York law firms was no easy task.*

*We had built strong relations in our Chicago and Los Angeles offices with the local offices of the major New York-based investment and commercial banks. During the 1970s to early 1990s, most of these Chicago and Los Angeles outposts originated and executed their transactions locally. In the mid-to-*

late 1990s, however, many of these banks started to develop specialized execution desks/teams in New York. It was not uncommon to find that a deal originated by a Chicago or West Coast banker would be quickly handed off to a team in New York to execute, which often included the selection of underwriters-bank counsel. Thus, having strong capital markets and finance lawyers in New York closer to the banks' execution teams was becoming increasingly important to maintaining and growing our market share with Wall Street banks.

During this same time, we were expanding into Asia and Europe, and one of the things that was becoming apparent was that European and Asian-based clients – and lateral lawyer candidates – were increasingly asking, “How many lawyers do you have in New York – what are your capabilities in New York?” These inquiries also supported our belief that an expansion of our New York capabilities, particularly in some of our transactional practices, like structured finance, capital markets, M&A, would help us, not only domestically, but would enhance our profile and accelerate our growth in international markets.

By the late 1990s, Brown & Wood had also concluded that it needed to expand and diversify. It had become heavily dependent upon its capital markets and structured finance practices and felt somewhat exposed to the cyclicity of those markets. It desired to grow M&A and restructuring and build out its litigation practice. It also felt a need to expand its regulatory practices. Because Brown & Wood's principal clients were investment banks and investment funds, Sidley lawyers had worked opposite many Brown & Wood lawyers in securities offerings involving Sidley's corporate clients. We knew that Brown & Wood had highly specialized expertise in capital markets and finance, and enjoyed deep relationships on Wall Street. And we liked and were impressed by the lawyers at Brown & Wood we encountered.

The merger was labeled in the media as “Main Street meets Wall Street”, reflecting the primary orientation of each firm's client base. While, clearly, each firm brought different practices and clients to the merger, there were several overlaps in our practices that created exciting opportunities for us to consolidate market share. We each had significant capital markets and finance-focused offices in London and Hong Kong, and our respective securitization/structured finance practices were both market leaders at the time. We also saw a mutual opportunity to establish ourselves in the rapidly growing Northern California market by building out Brown & Wood's relatively small office in San Francisco and adding lawyers in the Silicon Valley area.

### **FOLEY & LARDNER**

In 2018, the 200-plus lawyer, Gardere Wynne Sewell, a longstanding regional firm originally based in Dallas, merged into the 1,000-lawyer Foley & Lardner, whose roots were in Milwaukee.<sup>6</sup> At the time, Texas firms were facing increasing competition from firms based elsewhere that were entering the Texas market. For two years after the merger, the combined firm operated as Foley Gardere in the former Gardere markets. After that, it reverted to Foley & Lardner.

#### **Holland ‘Holly’ O’Neil, former managing partner of Gardere:**

*We were at an inflection point for the firm. In 2013–2014, coming out of the recession, Texas was becoming the preferred place for large companies to relocate. We were very fortunate in that regard. But, as large companies relocate, so do their service providers, and so there was an onslaught not only of businesses but of law firms coming into our market. Not only were they catering to these relocated companies, but they were going after what we had historically thought of as our mainstay, existing clients. That was the reality of being just a regional law firm when your long-time clients were becoming much more than regional in their business focus.*

*Most clients I talk to would much prefer a one-stop shop. The opportunity to be more of a go-to trusted advisor for those clients required us to look ourselves in the mirror and recognize that, just being a regional law firm, we were getting lower and lower on the rung, as it were, compared to some of our competitors.*

*We had also been trying to aggressively lateral hire to try to achieve growth and were having really mixed results. At best, lateral hiring was offsetting normal attrition, but it really wasn’t growing the business. In addition, we were in a talent race, not just about attracting new clients or laterals, it was also about keeping our up-and-coming folks, who were being assaulted by the allure of more money and more opportunities at national law firms coming into our markets.*

*In order to keep even what we had, it became really clear that we needed to try to do a combination.*

#### **Jay Rothman, chair and CEO, Foley & Lardner:**

*There was the mirror image on the Foley side. For some time, we had identified Texas and Mexico City, and I had done some prospecting and spoken to firms in both Texas and Mexico City. We saw that as a hole in our footprint nationally. It’s not just about geographic reach, but we also saw the booming corporate practice in Texas. We saw an oil and gas practice in Texas that we*

*felt fit well with our renewable energy practice. We saw high stakes litigation because there's a lot more litigation in Texas that is actually tried than in a number of our other jurisdictions. We had a substantial intellectual property practice and we were looking to expand that into Texas. Finally, we had a sizable healthcare practice, and we saw opportunity there.*

### **FROST BROWN TODD**

In 2000, 180-lawyer, Cincinnati-based Frost & Jacobs and 180-lawyer, Louisville-based Brown Todd & Heyburn combined, aiming to protect and build on their positions as leading firms in their region.<sup>7</sup> Today, the firm has more than 500 lawyers in 15 markets in the Midwest and Mid-South, as well as Texas and Washington DC, focused on five key industries: energy, finance, healthcare innovation, manufacturing and technology.

#### **Adam Hall, chief executive officer:**

*We had two firms, Brown, Todd & Heyburn and Frost & Jacobs, which each had, basically, one large office and several smaller ones. We began to see that the world was changing on us and, if we wanted to do the same kind of sophisticated work that we had done previously, we needed to get larger and become more of a regional firm, and we started down the path of a plan to have a combination between a Kentucky, Ohio and, later, an Indiana firm, Locke Reynolds, with a bit more scale to it to have the depth to attract that sort of sophisticated work we had come to enjoy. Otherwise, the world was going to pass us by and, to be successful, we would have to contract. From that point on, the firm leadership was pushing more regional growth between Chicago and Atlanta to fill in geographically this part of the country.*

*Later, the strategy shifted from pure geographic expansion to: "Look, we're going to focus on what we're good at and the sort of clients we want to attract, and breakout of our geography in order to achieve that goal."*

*Our expansion has made us more attractive to laterals – to very successful practitioners that did not have a platform of our size and scale that could reach new geographies, reach new practice areas – so we've been able to pick them up. Scale also makes us more open to taking strategic risks. It's a different calculation for us now, so we're willing to open a new office with not as much gnashing of the teeth and discussion within the partnership as we had at a smaller size, because it's a smaller risk based on our scale.*

**Robert Sartin, chairman:**

*Our size has also made us a safer choice for clients in our markets. Say you have to answer as a general counsel, or let's say you're a private equity fund answering to your investors on a particular deal, "Why are you using firm X?" The larger the firm is, the more it is perceived to be stable, and usually its deal sheets are a little longer, so it's easier to say, "I'm using them and they're a very solid and strong and stable firm," as opposed to, "Well they're the best firm in the area."*

**DLA PIPER**

The firm is the product of some 25 mergers over more than 25 years. In the US, it began with the 1999 merger of 340-lawyer Chicago-based Rudnick & Wolfe and 370-lawyer Baltimore-based Piper Marbury. In 2005, what was then the 900-lawyer Piper Rudnick entered a three-way merger with the 1,350-lawyer London-based DLA and 380-lawyer California-based Gray Cary, creating a global firm with offices across the US, Europe and Asia. Gray Cary, originally based in San Diego, had merged with Palo Alto-based Ware & Freidenrich in 1996 and had built a strong franchise in the West Coast's technology sectors, as well as in Austin, Texas and Washington DC.

The original Rudnick & Wolfe/Piper & Marbury merger was driven by the need of each firm to diversify and expand geographically in response to the evolving needs of clients. Six years later, the three-way merger fulfilled Piper Rudnick's goal to build an international presence and stake a claim in the technology world. Gray Cary, meanwhile, felt limited without a New York or overseas presence.

**Lee Miller, former co-CEO of DLA Piper, co-chair of Piper Marbury Rudnick & Wolfe and managing partner of Rudnick & Wolfe:**

*At Rudnick & Wolfe in the 1990s, we felt that you couldn't grow the practices the way we wanted and still have the quality necessary, and the clarity, to take advantage of the corporate trends of globalization, consolidation and convergence. The only really practical way to do it was by one or more mergers. To try to do it organically would, one, be very cost ineffective, and two, just take forever. And, on a quality basis, I don't know that you'd ever get there.*

**Terry O'Malley, former chairman, Gray Cary:**

*We didn't have the scale needed to play outside the US credibly. And, fundamentally, we didn't have what people outside the US wanted, which was New York. We needed corporate people in New York. I could go hire some, but I needed scale to be credible*

*there. The practice at Piper Rudnick wasn't a perfect fit, but they had scale, and together we would have serious scale. They had 200 lawyers in New York.*

*They also had a substantial presence in Washington. We had a small presence in Washington and I knew we could sell Washington to the technology community. None of our close competitors really had a credible Capitol Hill presence. Piper had that piece. But, still, I probably would have been reluctant but for the London firm and its Asian practice. DLA had Hong Kong and a couple of other markets there.*

This is an extract from the chapter 'Understanding the flywheel effect' by Kent M Zimmermann and John E Morris in the Special Report 'Law Firm Mergers: Lessons from Successful Strategic Combinations', published by Globe Law and Business.