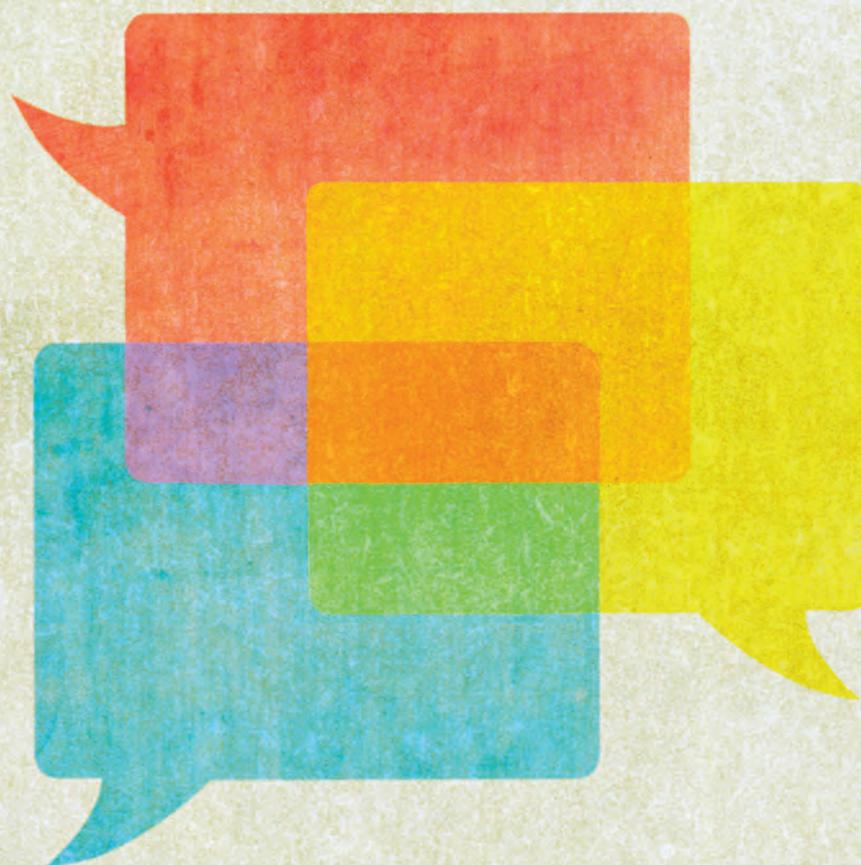


NOVEMBER 21 2013

# FT US INNOVATIVE LAWYERS 2013



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## US INNOVATIVE LAWYERS 2013

# REVOLUTIONARY TIMES

Welcome to the Financial Times US Innovative Lawyers report for 2013. This is the fourth year we have produced this special report, which incorporates our unique rankings of law firms that have brought original thinking and practices to business issues in the US.

This year the report has been enlarged to rank the top 40 US law firms and include a new table highlighting some of the most innovative work being carried out by US firms in Latin America in the field of finance.

A great deal of research goes into producing our rankings. Law firms first submit entries highlighting their most innovative work during the past year. The submissions are then assessed by our partner, RSG Consulting, which carries out the research for the project.

RSG conducts a series of intensive interviews with clients, partners and experts and uses a bespoke methodology to produce rankings in various areas of expertise – ranging from litigation to intellectual property.

The main focus is on the big US law practices, but we also take a look at the best in-house corporate counsel.

This year we received a record 355 submissions from 59 law firms. RSG also assessed 50 corporate legal teams. The report covers work led from law firms' US offices, which includes transactions carried out within the US as well as Canada, Latin America and other regions.

A significant theme of this year's report is the speed of change facing companies as the information technology revolution puts new

pressures on their operations, and the knock-on effect this is having on law firms and in-house counsel to adapt quickly and flexibly.

The management of legal talent is, for example, undergoing extensive change as corporate clients demand broader skills from their advisers, and practices are required to give extra training in management, accounting and financial issues to their staff.

I would like to thank Reena SenGupta, the head of RSG Consulting and the inspiration behind our Innovative Lawyers rankings, for making this report so comprehensive; and FT colleagues who have ensured the report is such a keenly anticipated annual landmark.

**Martin Dickson**  
US Managing Editor,  
Financial Times

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All the ranking tables from this and previous years can be found online at [www.ft.com/innovative-lawyers-us](http://www.ft.com/innovative-lawyers-us)



### Methodology

FT Innovative Lawyers 2013 is a ranking for US-based lawyers.

The FT and its research partner RSG Consulting have devised a unique methodology to rank lawyers on innovation. Law firms and in-house legal teams are invited to submit innovations that are researched through client and third-party interviews. Entries are selected to appear in the FT report based on a comparative analysis and the strength of client or independent reviews. Market experts are also consulted on selected submissions.

This year we received 355 submissions from 59 law firms and researched an additional 40 company in-house legal teams. RSG Consulting conducted 530 interviews with senior lawyers and business executives between August and November 2013 to arrive at the final rankings.

Each entry is scored out of 10 points for originality, rationale and impact to give a maximum score of 30. The assessment is comparative within each category and designed to identify lawyers who have delivered exceptional value to their clients.

The in-house legal team ranking is drawn from nominations as well as submissions. The research process includes internal commercial references for each company's legal team.

**FT 40 – 2013**  
The FT 40 ranking is a pure aggregate of each law firm's performance across the private practice categories of the report. The firm's total score for entries ranked in each of the Business of Law, Corporate, Finance, Litigation and Lawyers to the Innovators categories is also shown.

**Research Partner**  
The RSG Consulting research team has more than 20 years' experience analysing the legal profession. It has a track record of devising ranking methodologies for professional services firms.

Chief executive Reena SenGupta helped to launch the FT's Law & Business page in 2001, and has been a regular writer on the legal profession for the FT for the past 13 years.

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## US INNOVATIVE LAWYERS 2013

## CORPORATE



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## ENSURING A DONE DEAL

Political pitfalls and unexpected legal snags can hold up a smooth takeover, writes **Ed Hammond**

**E**ven those well used to the idiosyncrasies of US corporate regulation would have struggled to foresee the decision that, last summer, almost foiled the takeover of the country's largest pig farmer.

Shuanghui International, the Chinese food producer, had agreed to pay \$4.7bn (plus taking on debt) to buy US pork colossus Smithfield Foods.

The deal – the largest takeover of a US company by a Chinese rival – had been months in the making; legions of bankers, lawyers and advisers had confected terms that both parties could swallow.

Confident of completing the deal at the

time – and with a nod to constraints on deals involving sensitive military and technological information – Larry Pope, Smithfield chief executive, quipped: “We’re not exporting tanks and guns and cyber security – these are pork chops.”

The US Treasury disagreed and called for a review of the deal. Sausages, it seemed, were an issue of national security.

The Smithfield acquisition, which was eventually given government approval in September, serves as a useful if somewhat comical reminder of the difficulties facing foreign companies trying to buy market share in the US.

From tighter antitrust regulation, to

## US INNOVATIVE LAWYERS 2013

## CORPORATE &amp; COMMERCIAL

	Score	
Standout	25	<b>Skadden, Arps, Slate, Meagher &amp; Flom</b> Advised a consortium of private equity firms on a carve-out transaction to acquire 38 rigs and create the \$1bn Shelf Drilling.
	24	<b>Jones Day</b> Created new standards in the use of computer-assisted review of antitrust investigations to allow Goodrich to merge with United Technologies Corporation.
	24	<b>Paul Hastings</b> Employed innovative deal structures and achieved regulatory approval for Shuanghui's \$7.1bn acquisition of Smithfield Foods, the largest ever Chinese takeover of a US company.
Highly commended	24	<b>White &amp; Case</b> Advised Roust Trading Ltd, a holding company of Russian Standard, on a pre-packaged US bankruptcy to assume 100 per cent control of spirits producer Central European Distribution Corporation.
	23	<b>Latham &amp; Watkins</b> Created a novel interloper-friendly tool during Quest's auction giving rival bidders a 19.9 per cent top-up option to help neutralise the chief executive's holding.
	23	<b>O'Melveny &amp; Myers</b> Guided Chinese company BGI-Shenzhen through the financing and regulatory clearance for its acquisition of Complete Genomics.
	23	<b>Shearman &amp; Sterling</b> Advised Liberty Global on its acquisition of Virgin Media, and the re-domestication of the new entity to the UK while maintaining its US stock listing.
	23	<b>Simpson Thacher Bartlett</b> Helped Smithfield Foods to negotiate enforceability and regulatory concerns during its sale to Chinese company Shuanghui.
	23	<b>Skadden, Arps, Slate, Meagher &amp; Flom</b> Oversaw Sprint's sale to SoftBank while simultaneously helping the company acquire Clearwire and fend off rival bids.
	23	<b>Skadden, Arps, Slate, Meagher &amp; Flom</b> Built consensus to guide AMR's creditors committee towards a rare strategy to help the company exit Chapter 11 bankruptcy through its merger with US Airways.
	23	<b>Weil, Gotshal &amp; Manges</b> In a highly unusual deal, advised AMR on a merger agreement with US Airways while still under Chapter 11 bankruptcy protection.
	23	<b>White &amp; Case</b> On behalf of Toyota Industries Corporation, the firm successfully challenged the Department of Justice's new economic modelling for antitrust in vertical mergers.
	Commended	22
22		<b>Cravath, Swaine &amp; Moore</b> Advised AmerisourceBergen during its entry into a three-way strategic relationship with Walgreen Co and Alliance Boots.
22		<b>Debevoise &amp; Plimpton</b> Helped Dell's special committee explore options ahead of its \$24.9bn go-private transaction using an extended go-shop to encourage rival bids and fight a shareholder challenge.
22		<b>Fried, Frank, Harris, Shriver &amp; Jacobson</b> Orchestrated a complex, tax-free split-off of Mosaic from Cargill, allowing the parent company to remain private.
22		<b>Kirkland &amp; Ellis</b> Structured two recent deals that breathe life into the go-shop provision, turning an obligation into a deal technology.
22		<b>Latham &amp; Watkins</b> Advised Blackstone Energy Partners on its \$1.5bn investment into Cheniere Energy Partners to develop the first liquefied natural gas export facility in continental US.
22		<b>McDermott Will &amp; Emery</b> Represented Constellation Brands during antitrust investigations, creating a framework with the Department of Justice to allow the use of computer-assisted review.
22		<b>Morrison &amp; Foerster</b> Advised SoftBank on the largest ever Japanese buyout when purchasing Sprint while fighting off a competing bid.
22		<b>Ropes &amp; Gray</b> Worked with Behrman Capital to develop creative options for the sale of its 'Fund III' portfolio in a deal that increased liquidity and opened up a new market of potential purchasers.
22		<b>Vinson Elkins</b> Played a critical role in Pioneer's combined sale and agreement with Sinochem Petroleum USA to form a long-term horizontal drilling development partnership.
21	<b>Cravath, Swaine &amp; Moore</b> Assisted Crown Castle with its lease and leaseback acquisition of the rights to over 7,000 T-Mobile towers marking an important expansion of the company's US mobile telecoms infrastructure holdings.	
21	<b>Davis Polk &amp; Wardwell</b> Advised Bertelsmann on its combination with a Pearson division to form the world's largest consumer publishing company, Penguin Random House.	
21	<b>Freshfields Bruckhaus Deringer</b> Guided private equity firm EQT through its public tender offer for Westway, requiring a pre-sale carve-out of one of its businesses.	
21	<b>Kirkland &amp; Ellis</b> Represented 3G partners in its joint acquisition of Heinz in a \$28bn all-cash transaction that utilised an innovative deal structure, dubbed 'the ketchup clause'.	
21	<b>Kirkland &amp; Ellis</b> Advised the Clearwire board on a strategy to increase value to its shareholders by encouraging a rival bid into a majority owned company.	
21	<b>Latham &amp; Watkins</b> Helped structure and launch Goldman Sachs's accelerated bookbuilt offering with put options for Hemen Holdings' \$1bn SeaDrill share sale.	
21	<b>O'Melveny &amp; Myers</b> Advised US Airways on a unique agreement between labour unions before the announcement of the American Airlines merger.	
21	<b>Simpson Thacher &amp; Bartlett</b> Represented the Special Committee of the board of directors in the sale of Clearwire to Sprint, achieving a larger-than-expected sale price after using competing bids.	

harsher political scrutiny and a whole host of legal hurdles unique to the US, the challenges for those businesses wanting to buy a piece of corporate America have rarely been greater. And yet the number of so-called inbound cross-border deals is rising steadily.

In 2003, just 9 per cent of all US-based mergers and acquisitions involved foreign buyers, according to data from Thomson Reuters. Last year, that figure had risen to 17 per cent of the total.

And, as the share of corporate transactions involving an element of cross-border investment has grown, so too has the legal scaffolding upon which all deals must be built become ever more complex.

Robert Spatt, a partner at Simpson Thacher & Bartlett, advised Smithfield during its acquisition by Shuanghui. “When you have a Chinese company coming into the US, there's often potential political and regulatory issues and heightened sensitivity,” he says.

The deal's success, though, may pave the way for future investors. “To have a Chinese company buy a \$7bn company in a small town in Virginia is culturally impactful,” says Mr Spatt. “There will be Chinese flags displayed in Smithfield, a small town very much part of rural America. China and the US as nations obviously evolve their global political relationship, but with this paradigm successfully completed on a business and human level,

it gives you a new way of looking at a deal and gives Chinese companies a base to work from.”

Even at a more procedural level, many companies attempting to take over a US rival struggle with nuances of the country's fragmented legal system.

One of the issues most often brought before the court system in Delaware, the state in which more than half of US public companies are incorporated, is the terms of a deal being disputed by shareholders of the target company. This type of lawsuit has become commonplace in dealmaking and can prove a costly and time-consuming nuisance to acquiring companies.

Some law firms have practices dedicated to finding shareholders in a target company who are willing to file a lawsuit. The process usually, although not always, results in the acquiring company paying a settlement.

The shifting legal landscape in US dealmaking means overseas investors trying to buy market position in the country now need to be better prepared.

Robert Townsend, co-chairman of Morrison & Foerster's global M&A practice, says: “On a public deal of any size, you have to be aware that there will almost certainly be plaintiff's security litigation. From the outset, you need to be very sensitive to the likely litigation that will happen after announcement and manage the transaction process in accordance with applicable law.

“There is a heightened regulatory scrutiny going on in both the antitrust area and other regulatory areas. You have to understand the risk going in and understand the disclosure requirements and be prepared to deal with the time and cost of what is going to be a much more challenging regulatory review. It can have significant effects on the costs and terms of financing and on the certainty of closing the deal.”

Thomas Kennedy, a partner at Skadden, advised Sprint in its acquisition by the Japanese bank SoftBank. He says the deal came up against an “unprecedented level of scrutiny and political opposition.

“There was no road map for this. We had to integrate the corporate transaction, the litigation and the regulatory process.”

Some law firms have practices dedicated to finding shareholders in a target willing to file a lawsuit

US INNOVATIVE LAWYERS 2013

LITIGATION

# HEAVYWEIGHT CHAMPIONS

With some notable victories over federal agencies, law firms are helping to shape reforms in the wake of the financial crisis, writes **Tracy Alloway**

In the five years since the depths of the financial crisis, two things have characterised the corporate environment in the US: securities lawsuits against big banks and other financial institutions, and ever increasing regulation aimed at curbing what regulators saw as the excesses of the pre-2008 financial world.

As reams of new financial regulation, including the sweeping reforms contained in the Dodd-Frank Act, come into effect, the most innovative litigation lawyers are taking the lead in advising financial institutions on how to navigate the red tape.

Where regulations break new ground, lawyers have the opportunity to influence the implementation of new regulatory regimes and the development of financial sector reform.

"Both sides of the table will be writing on a cleaner slate than you have with other issues," says Jim Meyers, partner and securities litigation and regulatory enforcement specialist at Orrick. "There is more of an opportunity to make policy-style arguments about why an enforcement action should not be enacted."

In the meantime, fresh approaches from legal teams have set new precedents for government agencies looking to impose penalties and bring legal proceedings against financial institutions. The complexity of such securities fraud actions has necessitated, and rewarded, an innovative approach from law firms.

Lawyers at Cleary Gottlieb Steen & Hamilton, for instance, struck a decisive victory against the US Securities and Exchange Commission when they successfully argued that the securities watchdog had missed its window to pursue a civil penalty case against former executives of a Gabelli mutual fund.

The issue before the courts was whether the SEC could seek to impose penalties five years from the time of the occurrence of the alleged fraud by the Gabelli executives or, as the SEC argued, from the time the commission became aware of the wrongdoing. In a unanimous ruling, the US Supreme Court sided with Cleary, effectively narrowing the timeframe for future SEC investigations.

The ruling has far-reaching implications for the way the government pursues civil cases in areas from securities fraud to trade regulation and consumer safety.

"Part of the way I think about it is what the consequences would have been had we not won," says Cleary partner Lewis Liman, who led the Gabelli defence team.

"It would have permitted the government to reach back tens and scores of years to investigate people for long-forgotten conduct, and then to use that conduct to bring claims or extract settlements."

Robert Anello, partner at Morvillo Abramowitz Grand Iason & Anello and president of the Federal Bar Council in New York, says "challenging the SEC and taking it all the way is innovative in its own right. Too many people settle."

Lawyers at Covington & Burling scored another unusual victory against federal agencies when they defended Michael Perry, former chairman and chief executive of failed bank IndyMac. The SEC alleged Mr Perry had engaged in securities fraud,



while the Federal Deposit Insurance Corporation claimed he allowed the bank to make risky loans that led to its downfall.

Mr Perry's lawyers were able to knock the FDIC's lawsuit down to a \$12m claim, of which \$11m could be collected on IndyMac's insurance policy. The SEC's once wide-ranging enforcement action was whittled down to a single claim.

Lawyers have also been overturning elements of fraud actions that have stood for decades. Cravath, Swaine & Moore this year overturned a fraud theory that had dominated class action cases since 1987.

This "fraud-on-the-market" presumption allows shareholders to win class action status without having to prove plaintiffs made investment decisions based on the defendants' alleged misstatements. Cravath's team was able to apply – and then overturn – the theory to a lawsuit by Gamco Investors, that alleged Vivendi had lied about its financial health in the early 2000s.

Cravath lawyers cross-examined Gamco executives to prove the investment company had not relied on Vivendi's stock price to make its investment in Vivendi. Instead, they argued, Gamco had used a strategy that relied more on "private market value", or how much a private investor might pay for the company's assets.

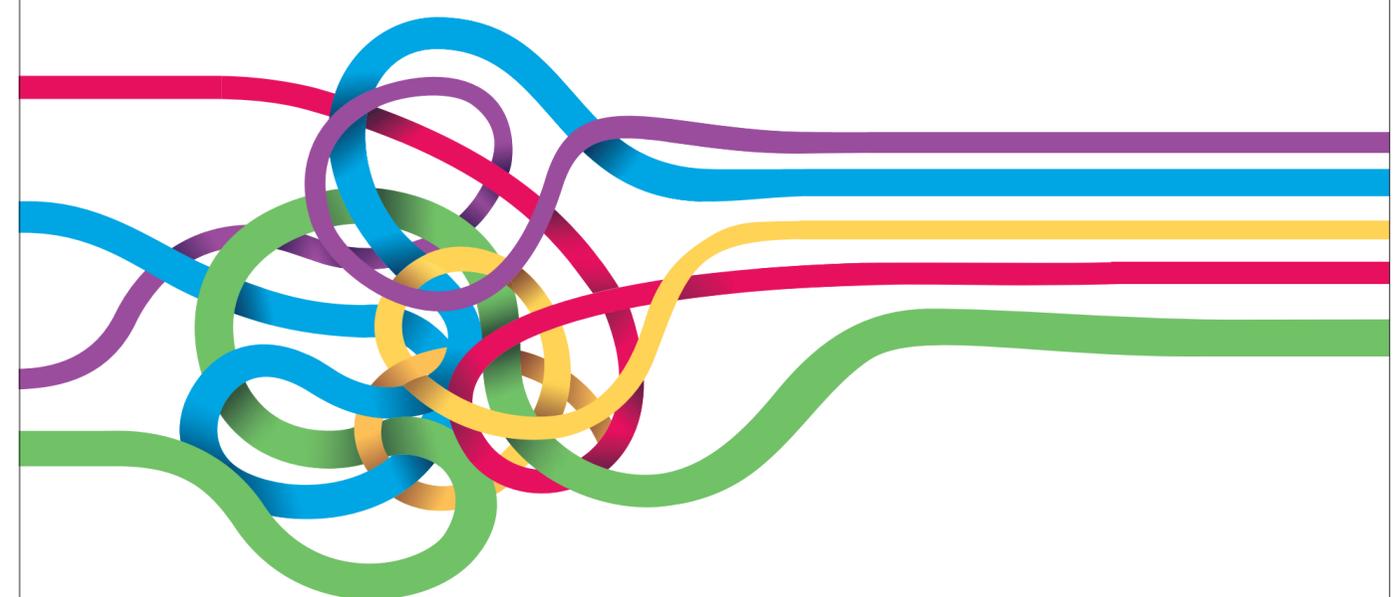
"As the court recognised, sophisticated value investors such as Gamco do not rely on stock market price as reflecting the intrinsic value of a stock," says Tim Cameron, partner at Cravath.

The win could have a significant impact on other investors that rely on value trading strategies. Cravath lawyers say it could have application to other claimants in the class action suit against Vivendi that is going through the courts.

With the statute of limitations being a constant concern for enforcement officials, the SEC and other regulators may have to focus on cases resulting from new regulation, says Mr Meyers. SEC leaders "have talked about how one of the next big waves of enforcement actions is going to be on Dodd-Frank", he says.

The interplay between regulators seeking to enforce new rules and the lawyers who take them on is set to play an enormously important role in shaping the effect of the regulation and the broader landscape of US finance.

	Score		
Standout	<b>25</b>	Acting for Vivendi, the firm rebutted a fraud-on-the-market presumption in a securities fraud case, creating an important precedent.	
	<b>23</b>	Defended HSBC bank against \$6.6bn of Madoff claims by helping to establish that the trustees lacked standing.	
	<b>23</b>	Acted for the noteholders of Mexican manufacturer Vitro to obtain an important fifth-circuit ruling that suggests how foreign insolvencies might be handled by US courts.	
	<b>23</b>	Developed a novel strategy to prove a big business-to-business website was knowingly participating in the sale of counterfeit goods, allowing trademark owners more protection against infringement.	
	<b>23</b>	Secured the dismissal of \$60bn in damages for UniCredit in common law claims arising from the Madoff case.	
	<b>23</b>	Represented Monsanto in the Supreme Court defence of its intellectual property for genetically modified soybeans, clarifying IP law in the sector.	
	Highly commended	<b>22</b>	In a judgment against the US Securities and Exchange Commission in the Supreme Court, the firm clarified the time period that government agencies have to complete investigations.
		<b>22</b>	Acting for Occidental Petroleum Corporation, the firm secured the largest ever arbitration award by applying a new damages calculation that can be replicated in the future.
		<b>22</b>	Reinterpreted ancient statute to appeal an infringement decision in a patent dispute before calculating damages in the lower courts.
		<b>22</b>	Worked with lawyer Sam Israel to bring the Kirtsang case to the Supreme Court, winning an important ruling on whether the principle of first sale should apply to foreign manufactured goods.
<b>22</b>		Protected Align Technology's intellectual property from infringement by ClearCorrect by proving digital files fall under the jurisdiction of the International Trade Commission.	
<b>22</b>		Represented MasterCard in a class action settlement with US merchants, that could end decades of litigation in the payments industry.	
<b>22</b>		Used a novel interpretation of the Morrison case to move a securities fraud litigation case to a German court for its client, Porsche SE.	
<b>22</b>		Representing Bank of America, the firm negotiated the national mortgage settlement, the largest joint state-federal settlement in history.	
<b>22</b>		Used a novel interpretation of environmental law to argue for the removal of lights containing a harmful chemical from New York schools.	
<b>21</b>		Helped former chief executive of IndyMac settle SEC and FDIC cases resulting from the bank's collapse without admitting wrongdoing.	
Commented	<b>21</b>	Defended JPMorgan from class action proceedings relating to residential mortgage-backed securities claims where the plaintiffs are not the original purchasers of the securities at issue.	
	<b>21</b>	Challenged an environmental settlement agreement in the Marcellus Shale drilling dispute by establishing "irreparable harm" on behalf of the Pennsylvanian Oil and Gas Association.	
	<b>21</b>	Achieved two Supreme Court decisions that help companies to challenge class action strategies of plaintiffs, including a win for Standard Fire Insurance Company alongside Robinson & Cole.	
	<b>21</b>	Continued the impressive record of Gibson lawyer Eugene Scalia in challenging the SEC's responsibilities and authorities, through recent arguments against Dodd-Frank reform.	
	<b>21</b>	Successfully challenged the "good cause" exemption granted by the US Environmental Protection Agency to one of Daimler's competitors.	
	<b>21</b>	Acted for the government of Indonesia in its clove cigarette trade dispute with the US, establishing important principles for World Trade Organisation cases.	
	<b>21</b>	Negotiated an unprecedented pre-merger labour agreement to move forward American Airlines' merger with US Airways.	
	<b>21</b>	Using economic experts and a new government estoppel argument, the firm protected Kaplan's right to continue to use credit history as part of its hiring criteria.	
	<b>21</b>	Created a unique hybrid settlement agreement and M&A deal to allow PokerStars to simultaneously end Department of Justice investigations and acquire the assets of a close rival.	
	<b>21</b>	Successfully defended the board of directors of Satyam from litigation after its chief executive had admitted major fraud.	



## What's tangling up your legal team?

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US INNOVATIVE LAWYERS 2013

BUSINESS OF LAW

# ON THE PAPER TRAIL

By streamlining their own processes, firms have been creating value for clients, reports **Caroline Binham**

**D**ewey & LeBoeuf continues to cast a shadow, nearly 18 months after its demise. The biggest law firm failure in history had many causes; perhaps one was its opaqueness over its financial position, not only with the outside world but also with its own partners.

That it misstated its financial health to closely watched annual rankings compiled by the American Lawyer magazine was one shocking detail of the tragedy, but one

that revealed a wider truth about how unaccountable firms' financial reporting is, particularly in the US, where if figures are released at all they can consist solely of revenue and profit per partner.

In that context, K&L Gates' decision to publish detailed annual reports of its finances to a US Securities and Exchange Commission reporting standard – from bank debt to overheads and partner capital – was groundbreaking among its peers.

● BUSINESS OF LAW

	Score	
Standout	<b>Seyfarth Shaw</b> 25	The Transaction Solutions Center manages workflow, resourcing and the disaggregation of legal services while providing transparency and real-time analytics to in-house counsel.
	<b>Weil, Gotshal &amp; Manges</b> 24	Proactively monitoring shareholder activism to provide assessments of company structural defences and strategic vulnerabilities.
	<b>Ropes &amp; Gray</b> 23	Its interactive Risk Matrix tool allows companies to map and evaluate real-time corruption risks across international operations.
Highly commended	<b>Paul Hastings</b> 22	Conducting a scientific experiment to provide evidence for the speed and accuracy of predictive coding over standard technology-assisted document review.
	<b>Axiom</b> 21	Managing the full contract lifecycle for clients by treating contracts as a single discipline cutting across multiple legal practice areas.
	<b>K&amp;L Gates</b> 21	Moving towards greater financial transparency, the firm disclosed a rare level of detail in its year-end financial report.
	<b>Morrison &amp; Foerster</b> 21	A unique partnership with California Institute of Technology develops the firm's associates while attracting new business and talent.
	<b>Perkins Coie</b> 21	Created a Patent Analysis tool to provide clients with a strategic analysis and valuation of their patent portfolios.
	<b>Seyfarth Shaw</b> 21	Developed a Portfolio Tracker for Prudential to manage a litigation portfolio and analyse and report on case metrics.
	<b>Simpson Thacher &amp; Bartlett</b> 21	A new technology service marries legal informatics and advice to help clients make strategic intellectual property decisions.
	<b>Akin Gump Strauss Hauer &amp; Feld</b> 20	Developed agfundinformation.com, a website that formalises and standardises forming hedge funds.
	<b>Cadwalader, Wickersham &amp; Taft</b> 20	Its Cadwalader Cabinet is an extensive online resource combining financial regulation know-how, references and tools.
	<b>Crowell &amp; Moring</b> 20	Designed and implemented the gross margin tool to compensate partner efficiency and incentivise a fundamental change in behaviour.
Commended	<b>Weil, Gotshal &amp; Manges</b> 20	Expanding services to private equity clients with analysis, toolkits and risk assessment for sponsors and their portfolio companies.
	<b>Littler Mendelson</b> 19	Expanding client service platform, Littler CaseSmart, to new service areas and creating Littler GPS, an online tool for employment law.
	<b>Skadden, Arps, Slate, Meagher &amp; Flom</b> 19	Developed legal project management tools to facilitate accurate scoping and pricing of transactions in response to changing client demand.
	<b>White &amp; Case</b> 19	Forming the Innovation and Efficiency Council to implement new ideas and engage lawyers and staff from across the firm.
	<b>Womble Carlyle Sandridge &amp; Rice</b> 19	Its Case Management Facility uses predictive analytics in its legal knowledge management to forecast and improve outcomes in complex litigation.



While it is true that UK-headquartered firms have long published their results with a similar level of detail, particularly those that are structured as limited liability partnerships with certain reporting obligations, this culture has not permeated the US. Perhaps the bold move by K&L Gates will help change that.

The paper trail, meanwhile, has been a key theme for US law firms over the past year for other reasons. Contracts are the bread and butter of commercial lawyers everywhere. They also form the bulk of an in-house legal department's costs, according to Axiom, which calculated that general counsel around the world are spending about \$200bn on creating and administering contracts.

Axiom's mission has been to make the contract process more efficient: a day shaved off could result in massive savings for the company in question.

For example, banks' International Swaps and Derivatives Association contracts – the master agreements that underpin derivatives contracts with investment banks' counterparties – sometimes take more than 100 days to enter into.

Axiom is trying to reduce that by as much as 30 per cent – the savings of the profit being booked earlier far outweigh the cost of administering the contract in the first place.

Like Axiom, Seyfarth Shaw – which is no stranger to streamlining its own processes and costs – has attempted to make contracts, procurement and transactions more manageable for its clients by centralising routine legal work on a web portal: Seyfarth can then select one of its attorneys for work that may carry a higher risk, or outsource less risky work to lawyers in lower-cost centres of the US or overseas who are vetted by the firm.

Contracts can also be the repository of the "smoking gun" in big-ticket litigation. Finding that smoking gun among millions of documents that can be disclosed in such lawsuits, however, is another matter.

Document-review technology has been deployed by the legal market for several years to assist in such searches. Some systems work better than others. Paul Hastings decided to challenge the supremacy of technology by instituting a "man

versus machine" test, pitting a team of young attorneys in a traditional linear review against the more modern system of using algorithms to spot key words in documents. An interesting conclusion was drawn: that for optimal efficiency, it is when man and machine are combined that the best value can be extracted.

It is not only commercial litigators who are keen to find the smoking gun. The financial crisis has awakened public and political interest in business crime as never before. This scrutiny, coupled with ever more aggressive enforcement action by authorities around the world, is increasing companies' risk.

Sweeping overseas anti-graft legislation, such as the US Foreign Corrupt Practices Act and the UK Bribery Act, means the law extends to far-flung parts of the world. Ropes & Gray attempted to map that liability for clients in its Risk Matrix, flagging sectors and jurisdictions to which companies should pay particular heed, as a way of helping them understand where they need to invest in compliance.

A similar concept of using the web to compare and contrast varying legislation was devised by Littler Mendelson, this time in the area of employment law. The firm designed a tool that enables clients to scan state law at the click of a mouse.

Another area of increasing costs for business in the information age is patents. The so-called monetisation of patents – generating revenue by selling or licensing patents – has been rapid, with the industry's value spiking to \$450bn in 2012 from \$19bn the previous year. That arguably has had negative consequences, with "patent trolls" – who aggressively enforce patents often as their main line of business, rather than inventing and making goods that underpin a patent in the first place – an increasing feature of the US courts.

Perkins Coie devised a patent-analysis tool, deployed by its patent paralegals and attorneys, that can quickly cut through vast amounts of information to target the truly valuable patent hiding in a particular portfolio – invaluable information in the context of a merger, sale or litigation.

Given the rising monetisation of patents, such innovations are likely to prove their worth time and time again.

US INNOVATIVE LAWYERS 2013

TRAINING

# LEARN FROM EXPERIENCE

The need for firms to develop and refresh the skills of junior and senior associates is becoming intense, but has its costs, writes **Sarah Murray**

**W**ith the market for legal services shrinking and clients demanding more from their lawyers, US firms are under increasing pressure to develop individuals who have a broader range of skills than in the past, with abilities ranging from accounting and financial analysis to project management.

First, with companies increasingly reluctant to pay high fees for inexperienced lawyers, the need to develop the skills of junior associates is particularly intense.

"The challenge is to make them client-ready as soon as you can," says Mary Sullivan, chief human resources officer at Paul Hastings. "And that's about having well-rounded, business-savvy associates and people who have knowledge and skills that aren't taught in law school."

To fill these gaps in law school teaching, since 2003 DLA Piper has been working with a number of US universities – including the American University Washington College of Law, University of Virginia, Stanford and Berkeley – to promote transactional law training.

Meanwhile, firms are developing their own business-focused training programmes, many of which cover topics that once would only have been found on an MBA.

When designing the curriculum for its business training programme, for example, Debevoise worked with faculty from Training the Street (used by Wall Street institutions) and Columbia Business School.

The three-week programme covers everything from basic accounting principles to financial analysis, modelling and valuation. And the fact that Debevoise turned to organisations that train bankers and corporate executives reflects the drive among firms to develop deeper knowledge of their clients' business.

"Fully understanding what your clients

actually do, as opposed to merely being familiar with the matter directly in front of you, is critical to being an effective lawyer," says Steven Slutzky, a corporate partner at Debevoise who led the development of the programme.

Nor are firms restricting this kind of training to their junior lawyers. The seven-day programme Orrick runs with the Fullbridge Program, a business boot camp, is targeted at senior associates.

For the firm, seven days of senior associate time represents a significant opportunity cost in terms of lost billable hours. Yet, with a changing market calling for senior lawyers to gain a better grasp of their clients' business environment, Orrick believes it is an investment that will pay off.

"We want to ensure that our up-and-coming junior partners have a deep understanding of our clients' commercial issues so that they can be not only trusted legal advisers, but also commercial and strategic advisers," says Siobhan Handley, managing partner for talent at Orrick.

But while sending staff on training programmes is one way of equipping them with skills, much of what lawyers need to know can only be learned on the job, with guidance from more senior colleagues.

This is something Dechert has recognised. To reward its best teachers and identify the most effective training techniques and mentoring styles, the firm has established an Exceptional Teachers Awards programme. Winners receive a commemorative plaque as well as \$10,000.

Of course, the cost of in-house training goes beyond cash prizes. "Mentoring takes a fair amount of partner involvement because complex legal work draws a lot on experience," says Mitt Regan, co-director of the Center for the Study of the Legal Profession at Georgetown Law.

"And for every hour a partner spends on that, that's an hour that could have been billed out or used to develop business."

Moreover, the organisational structure of the legal industry means making this kind of investment can be difficult.

With law firms operating as collections of practices run by individual partners, incentives to invest in the success of the enterprise have traditionally been weaker than in other industries.

"Firms are only going to do that if they can create a culture in which there is a sense of commitment to the firm as a whole," says Prof Regan.

To address this, Paul Hastings has developed a talent management strategy targeting senior lawyers.

The Partner Profile defines the characteristics of what the firm sees as superior

Highly commended  
Commended

● TALENT

	Score	
<b>Paul Hastings</b> 22	Developed a firm-specific partner profile competency framework to manage performance and evaluate partner promotions and lateral hires.	
<b>Latham &amp; Watkins</b> 21	The intellectual property litigation practice employs military decision-making frameworks, empowering junior lawyers to take greater responsibility during trials.	
<b>Dechert</b> 19	Exceptional Teacher Awards recognise top teachers and mentors, while delivering an insight into effective training methods.	
<b>Orrick, Herrington &amp; Sutcliffe</b> 19	The firm has made a substantial commitment to training senior associates to become effective partners.	
<b>Debevoise &amp; Plimpton</b> 18	A financial training programme designed for investment bankers is given to incoming lawyers in addition to a mini MBA.	
<b>DLA Piper</b> 18	Supported and expanded a course developed by Prof Daniel Bradlow that focuses on the practical skills needed to become a transactional lawyer and is now taught at nine top-level schools.	
<b>DLA Piper</b> 17	Created Break Into Law, an initiative bringing existing programmes under one umbrella to improve equality, diversity and inclusion in the legal profession.	
<b>Paul Hastings</b> 17	Designed a scorecard to track performance and cultivate a culture of action and accountability within the firm.	

performance and outlines expectations for partners.

It is now being used to evaluate both potential incoming partners and the performance of existing partners.

Ms Sullivan believes that this kind of initiative helps create a coherent corporate culture.

"We all know it's more powerful to have a team working together," she says. "But there was no mandate for change before."

Today, with clients demanding more

from their lawyers, this mandate for change has pushed training up the agenda – and not only as a way for firms to distinguish themselves from competitors but also to increase their ability to attract and retain high-performing lawyers.

"We're in a moment where it makes a lot of sense for firms to move in this direction," says Prof Regan.

"But it will depend on the extent to which they can wean themselves from being focused on short-term profits."

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'For every hour a partner spends on that, that's an hour that could have been billed out or used to develop business'

## THIS PREDICTION NEVER CAME TRUE...

“Nuclear powered vacuum cleaners will probably be a reality within 10 years.”

Alex Lewyt, President of vacuum company Lewyt Corporation, 1955, *The New York Times*



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## US INNOVATIVE LAWYERS 2013

INDIVIDUALS

# CREATIVE AND PROACTIVE

The top 10 agents for change



## Michael Aiello

**Partner and chairman of global corporate department, Weil, Gotshal & Manges**

Michael Aiello has built a reputation as one of the top dealmakers in the industry, and has been at the forefront of developing an unusually proactive and strategic corporate legal practice. His department responded to the rise in shareholder activism with a programme to anticipate moves by activist hedge funds and defend hostile takeovers. This recasts the mergers and acquisition lawyer from a reactive adviser to a more strategic role.

The firm monitors stock movements and public filings, allowing it to warn companies if there is likely to be an activist event.

Lawyers provide analysis of a company's defences and vulnerabilities before creating strategic plans to prepare for specific activists and proxy contests.

Since Mr Aiello, 44, took over the practice at the start of 2012, the firm has risen in the global league tables for private equity and M&A deals. He has advised on some high-profile deals, representing Sanofi in its largest-ever transaction – the \$20.1bn hostile acquisition of Genzyme in 2011.



## Michael Fitzgerald

**Partner, corporate department, head of the Latin America practice group, Paul Hastings**

Michael Fitzgerald, an innovator from his early days as underwriter to Merrill Lynch, decided to pursue a career in Latin American emerging markets at a time when few firms had expertise in the field. As part of the corporate, securities and Latin America practice group that left Dewey LeBoeuf following its collapse in 2011, Mr Fitzgerald helped a Mexican client complete a hostile tender offer as the coffee machines were being repossessed from the Dewey offices.

In 2004, he worked with the Mexican tortilla manufacturer Gruma to issue the first perpetual bond sold by a corporation. In 2011, Mr Fitzgerald was instrumental in the creation of Mexico's Fibra, the first investment vehicle on the Latin American market comparable to a US real estate investment trust.

While he identified the potential of Mexico before it became "the place to invest", he has retained a commitment to innovation. Clients praise his deep understanding of Mexican law and ability to offer advice.

**An innovator from his early days**



## Kenneth Gallo

**Partner and co-chair, antitrust practice group, Paul, Weiss, Rifkind, Wharton & Garrison**

Kenneth Gallo, as managing partner of Paul Weiss's Washington DC office, has built a team of lawyers to position the firm competitively against much larger firms and offices.

His plan to create a "non-traditional DC office" has seen leading partners added in the fields of securities, product liability and appellate litigation, complementing Mr Gallo's own strengths in the two areas of practice that have dominated his career: antitrust and patent law.

Mr Gallo's innovative patent work was demonstrated in his representation of biotechnology company Genentech. He has successfully defended the company against a \$1bn misappropriation of intellectual property claim related to its development of Lucentis, a leading treatment for age-related blindness, and is involved in a number of other patent cases that sit at the forefront of scientific innovation.

In antitrust matters, Mr Gallo is involved in MasterCard's battle with merchant plaintiff groups, in one of the largest class settlements in history. He speaks on behalf of a diverse group of co-defendants.



## Michael Goodman

**Senior counsel, commercial, Nike**

Michael Goodman's focus has been on the process design and re-engineering that are changing the way legal work is done.

Over the past four years, Mr Goodman has designed and implemented technological and creative solutions to restructure the way Nike manages contracts and assigns work to law firms and legal providers.

He has piloted technologies to automate the creation of supply and non-disclosure agreements so they can be created with a few clicks of the mouse.

The Transaction Solutions Center that features in the Business of Law category this year is the result of a collaboration with law firm Seyfarth Shaw. A redesigned process allows routine transactional work to be assigned and managed more efficiently, halving completion time.

Most recently, Mr Goodman developed a conceptual model for a "design sandbox" to help global companies organise and simplify the implementation of contract management systems. He is developing the concept to be used as a training tool for Nike.

He is quick to point out that implementing change is only part of the battle. Equally important is guiding the cultural shift and acceptance of new tools.

**Implementing change is only half the battle**



## Maximilian Grant

**Partner and global co-chair of the intellectual property litigation practice, Latham & Watkins**

Maximilian Grant drew on his experience as a Navy SEAL team leader when tasked with rebuilding Latham & Watkins' intellectual property litigation team. Hiring in technically trained lawyers and applying military decision-making frameworks, Mr Grant created a "special operations" team that involves junior members and decentralises decision-making.

Mr Grant joined the firm in 2002, after serving as deputy assistant secretary of defense and before that as an aide to Senator John McCain.

In 2008, following the departure of a number of patent litigation partners, he went to Latham's leadership with a plan to rebuild the practice. The IP Litigation group has since recruited 15 lateral partners and 60 technically trained associates and technical analysts, doubled revenue and increased profitability significantly.

"There is much talk about law firm management, but almost none about leadership, which is distinct," says Mr Grant.

His own leadership style has been to train and authorise junior lawyers to make decisions at an earlier stage in their careers, encouraging the sort of initiative that Mr Grant says gives a legal team the edge in a trial.

## US INNOVATIVE LAWYERS 2013



## Douglas Meal

**Partner, Ropes & Gray**

Douglas Meal, a seasoned trial lawyer, fell into his role as a privacy and data security specialist "by accident" when long-standing client The TJX Companies, a retailer, experienced a data security breach in 2007.

With little established law in the field of data security and privacy, Mr Meal was in the unusual position of defending the victim of criminal activity against a class-action suit brought by card issuers. He has since represented Sony, Heartland Payment Systems, Wyndham Hotels and others with highly publicised data breaches.

Mr Meal plays a leading role in Ropes & Gray's privacy and data security practice and is considered a pioneer in the field. He is currently engaged in a first-of-its-kind litigation in which his client, the retail company Genesco, is challenging non-compliance penalties imposed on it by a leading payment card brand.

Genesco's case goes to the heart of his work in this area by questioning the enforceability of Payment Card Industry Data Security Standards (PCI DSS), the rules governing responsibility for financial loss resulting from breaches in data security.

**Mr Meal is considered a leader in the field**



## Trevor Nagel

**Partner, chair of the global sourcing and technology transactions group, White & Case**

In big business sourcing transactions, the lawyer's role has traditionally been limited to drafting and negotiating terms and conditions. Trevor Nagel has helped to change that and says his main contribution has been "instilling in businesses the recognition that lawyers must be engaged throughout the life cycle of strategic sourcing initiatives".

Before studying law, Mr Nagel was a social psychology academic. Understanding organisational behaviour has helped him to think differently about the interrelationships and incentives that underpin complex strategic sourcing arrangements.

Mr Nagel's focus has shifted to the governance structures that underpin long-term vendor relationships. This led to integrating suppliers and transactions in multi-vendor environments using standardised relationships and sophisticated panel governance regimes. The result is the unique Infrastructure Cooperation Agreement created for Best Buy.



## Robert Reynolds Jr

**Partner and chief executive of SeyfarthLean Consulting, Seyfarth Shaw**

The common thread running through the career of Robert Reynolds is revising the model for legal services delivery. He has embraced a move towards standardised legal solutions and is helping his firm redefine its market and how it serves its clients.

As a transactional lawyer working on restructuring, outsourcing and technology deals, Mr Reynolds saw a gap in the market for combining legal advice with a broader range of business solutions. He says the global recession pushed clients to demand much more creativity and innovation from their firms: "They needed more than matter-by-matter solutions. They wanted changes in thinking and better strategies."

Mr Reynolds helped to launch SeyfarthLean Consulting, which provides integrated legal, management and technology solutions. He now focuses on strategic advisory services and programme management techniques. With Michael Goodman at Nike, he led the development of the Transaction Solutions Center featured in this report.

**He saw a gap in the market for combining legal advice with business solutions**



## Erika Rottenberg

**Vice-president, general counsel and secretary, LinkedIn**

Erika Rottenberg began her legal career at Silicon Valley law firm Cooley before moving in-house at a series of technology companies. She served as general counsel at Creative Labs and SumTotal Systems before joining LinkedIn as its first full-time lawyer. In five years she has overseen a new level of engagement with global privacy regulators, and an initial public offering.

Ms Rottenberg's first job after graduation was as a teacher in Alaska, but even then she was honing her skills. She acted as chief negotiator for the 2,400-member local teachers' union on a contract valued at \$250m.

She is an active contributor to social causes through pro bono programmes, creating opportunities for LinkedIn's legal team and outside law firms, including a programme to provide legal counsel to immigrants.

Jeff Weiner, chief executive, praises the leadership she has shown in government relationships, privacy issues and navigating new regulatory environments, as well as her personal "dedication and passion for our mission, culture and values".

INNOVATIVE INDIVIDUALS SUPPORTED BY



## US INNOVATIVE LAWYERS 2013

IN-HOUSE

# CENTRAL TO ENTERPRISE

In-house lawyers can be essential in enabling innovation in business, writes **Reena SenGupta**

It is a foregone conclusion that corporate counsel working for an innovative company will be innovative? That is a question that exercised the research team this year in compiling the FT's in-house lawyer rankings.

It is widely accepted that lawyers working inside a company will reflect that com-

pany's culture and way of doing business. But it is less well established that those lawyers will then automatically reflect the innovation of their business colleagues. The default perception of the industry has been of the in-house lawyer as gatekeeper or, at the very best, an occasionally useful business enabler.

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Rich harvest: lawyers are involved in the creation, development and commercialisation of new products at **Monsanto**

But an examination of the featured 2013 legal teams shows how this perception is far off the mark. These teams reveal how essential in-house lawyers can be in enabling innovation in their businesses and how their own operational innovations impact the bottom line.

Legal teams such as those at Google and Monsanto operate in environments that are all about innovation. Both have recently had substantive successes, such as Google's copyright victory against Viacom and Monsanto's win in the Bowman case, which ensured its right to protect the intellectual property in its genetically engineered seeds. "Law is an enabler and integral to our strategy," says David Snively, general counsel at Monsanto.

Their value is also easily recognised by their commercial colleagues. Eric Schmidt, executive chairman of Google, says that, with systems now being so complex, lawyers have become more important in running the business. "In areas that are sensitive, they have to be half product designers and half lawyers."

These companies tend to attract lawyers who are less defined by the traditional parameters of the legal profession.

In effect, they are less risk averse and themselves more willing to innovate. The average age of Google's lawyers is 30,

paralegals in the department have coding skills and there are no lines drawn between lawyers and non-lawyers.

At Monsanto, the lawyers are involved in the creation, development and commercialisation of new products. As with Google, the lines between lawyers and the business are not rigid. Hugh Grant, Monsanto chief executive, says: "If you came into a Monday morning meeting, you would be hard pushed to tell who the lawyer was because they are in the push and pull of what we need to get done."

The downside of working in entrepreneurial organisations is that the lawyers sometimes find themselves at the centre of controversial debate.

For example, in Europe and the US, Google finds itself dealing with awkward privacy issues and sometimes at odds with regulators. For Monsanto, the team has to deal with adverse public perception.

Are these teams templates for the 21st-century legal department? Certainly the business leadership and value creation of their corporate counsel are essential traits of legal teams at entrepreneurial companies. But even teams in more traditional industries such as real estate and automotive find themselves at new frontiers.

Take for example Chrysler's venture with Sprint, the telecoms company. The

## US INNOVATIVE LAWYERS 2013

### IN-HOUSE LEGAL TEAMS

Organisation	Total	Size of legal team (inc. support staff)	Description
<b>Google</b>	<b>36</b>	600+	Google requires its lawyers to innovate, often by seeking to extend or change rules, regulations and laws. They play an essential role in enabling the company to expand into new areas.
<b>Monsanto</b>	<b>36</b>	160	The team helps the business to create and protect its products in a very competitive industry, while also playing a leading role in substantive legal victories.
<b>Prologis</b>	<b>33</b>	47	Lawyers have moved to become a business-generation function with the chief legal officer sitting on the investment and executive committees. The team has created a standardised approach to leasing arrangements.
<b>Chrysler Group</b>	<b>32</b>	66	A change of general counsel marked a new way of working for the lawyers that was demonstrated in the collaboration with Sprint on connected vehicles.
<b>Verizon Enterprise Solutions</b>	<b>32</b>	265	A radical transformation of the company's business has been enabled by the legal team. Standardised contracts and process management have sped up the time to market and ways of working.
<b>GlaxoSmithKline</b>	<b>30</b>	611	Bespoke tools and training have improved dispute management. The team also measures the value the approach delivers to the business.
<b>Honeywell</b>	<b>30</b>	587	A multi-faceted legal function has controlled litigation through analysing underlying causal behaviours. It has also played a fundamental role in the company's growth.
<b>Mondelēz International</b>	<b>29</b>	301	Lawyers deftly handled the spin-off of Kraft and forming the new team at Mondelēz.
<b>Nike</b>	<b>29</b>	213	A process of function transformation has seen the legal team innovating with e-auctions for external advisers and designing new processes to automate contract management.
<b>LinkedIn</b>	<b>28</b>	25	Developed "TeachIn" sessions to educate outside counsel about the business, created new pro bono initiatives and led greater engagement with regulators on privacy and data security issues.
<b>Microsoft</b>	<b>28</b>	1090	Having scaled up the use of legal process outsourcing in more than 150 countries to standardise and streamline procurement contracts, the team is moving this out to other parts of Microsoft.
<b>BT (US and Canada)</b>	<b>27</b>	24	Structured legal process outsourcing relationships and a new contract lifecycle management tool are delivering savings and improving value management.
<b>Atmel Corporation</b>	<b>26</b>	20	Created a value measurement tool for outside counsel using data and algorithms to improve performance. The team has also started to correlate fees with value delivered.
<b>Pfizer (Litigation)</b>	<b>26</b>	42	Taking a balanced-outcomes approach to litigation has seen better alignment of the lawyers with the company's overall business objectives.
<b>Yahoo (IP transactions)</b>	<b>25</b>	2	The team has led on a series of intellectual property transactions as the company goes through a reinvigoration after the appointment of its new chief executive.
<b>Prudential</b>	<b>24</b>	450	Co-founded the "Inclusion Initiative" with DuPont and National Association of Minority and Women Owned Law Firms, which encourages corporate legal departments to focus a portion of their external spending on "diverse" law firms.

Winners

Standout

Highly commended

Commended

**The downside of working in entrepreneurial organisations is that the lawyers sometimes find themselves at the centre of controversial debate**

leadership enable entrepreneurship, equally important to business success is the operational innovation of the other teams in the ranking.

Legal teams at Verizon, Microsoft, BT and Nike, for example, are transforming their commercial contracting processes in varying ways. Their initiatives are business critical.

According to research by the International Association of Contract & Commercial Management (IACCM), the average business loses the equivalent of 9 per cent of its revenue each year from weaknesses in contracting.

"In-house counsel frequently act as change agents who transform the performance and economic contribution from the contracting process. But, if they operate in the traditional mode of control and risk avoidance, they become a barrier to competitiveness," says Tim Cummins, IACCM chief executive.

Both Microsoft and BT have scaled up their outsourcing arrangements and developed contract management tools.

Microsoft is now taking its relationship with Integreon, the legal process outsourcer, to 150 countries while BT is building a contract management tool that will eventually be used by the business. In the case of Verizon, a dramatic overhaul of

how the enterprise business sells to customers has seen the legal team streamline and automate its contracting process to enable the new approach.

Sales times are approximately five times faster for the business and require less input from the lawyers.

The necessity for speed and efficiency has become a commercial imperative for all the companies featured in the ranking.

This is not necessarily new but the scale and sophistication of the corporate counsel response to these demands is.

Combine this with innovations in dispute resolution put forward by GlaxoSmithKline and Pfizer, and a different picture emerges. Outsourcing to low-cost providers, automation, a change in the way that commercial contracts are negoti-

ated, and an emphasis on dispute avoidance and settlement would appear to make lawyers redundant.

However, when Martin Burvill, executive lead on the Verizon project, was asked whether the new system would replace his lawyers, he laughed. "Do I need my talent doing this work when I could use them elsewhere?"

The answer for him and the other commercial referees in the research is clearly no. Redeployment and gaining additional skills are the order of the day.

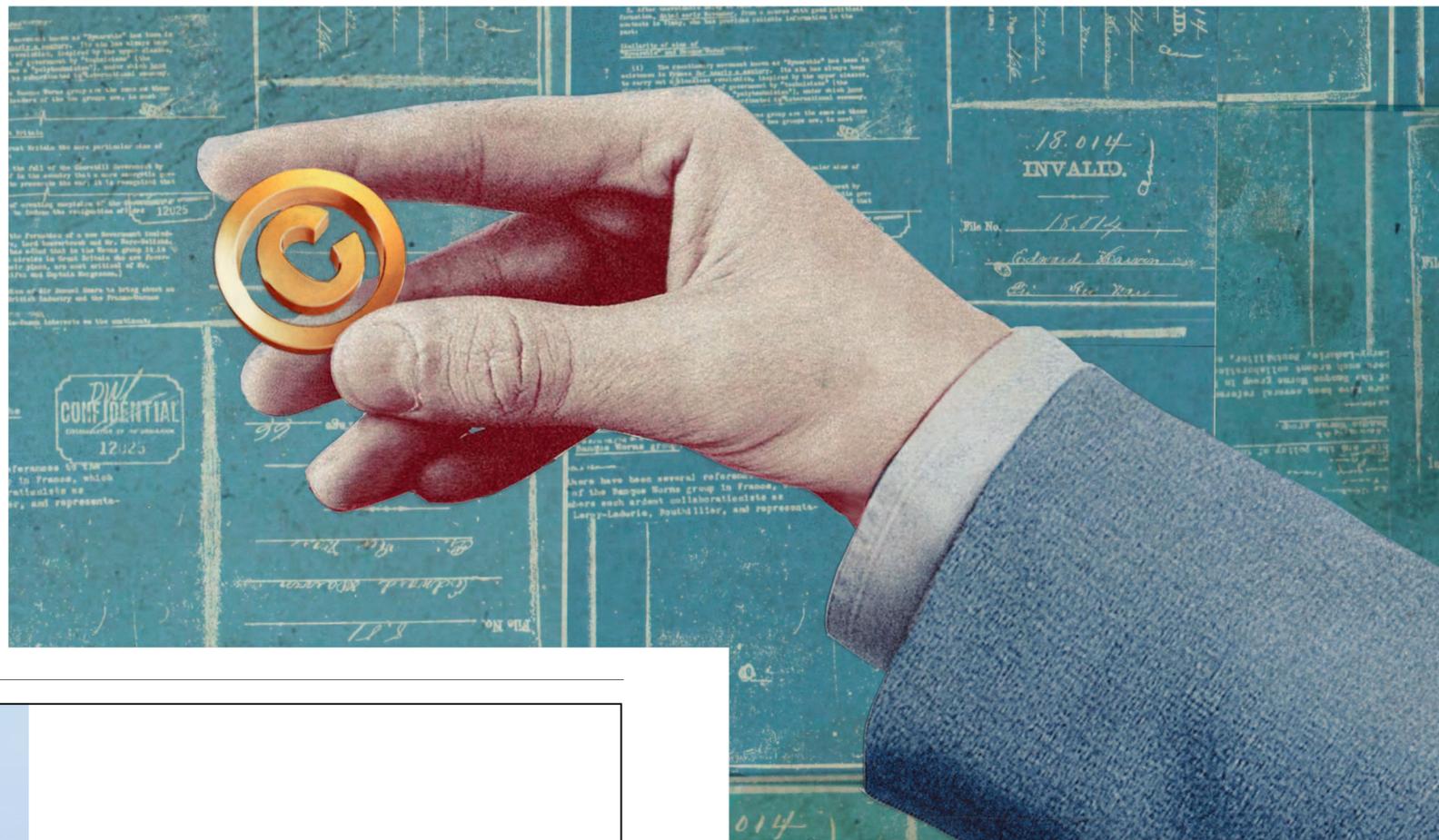
RESEARCH FOR IN-HOUSE TEAMS SUPPORTED BY  
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# CRACKING THE CASE

Fresh legal ideas can give new business concepts room to thrive, writes **Richard Waters**

**W**ith rapid technological advances and the new demands of a changing commercial landscape, business as usual is no longer enough. It takes creative thinking to fit new opportunities into old legal, regulatory and business norms. That is the common thread running through the most commended entries in the Lawyers to the Innovators category this year. Fresh legal ideas can give new business concepts room to thrive. Problems that demand a different

approach are often far from unique. For instance, when US electronics retailer Best Buy decided to replace its single-supplier technology outsourcing deal with Accenture with an arrangement involving multiple technology vendors, it reflected something common in big companies: the desire to bring fresh thinking and more competition into their IT arrangements. Building the right incentives into multi-vendor deals at the outset to drive desired, co-operative behaviours has been a chal-

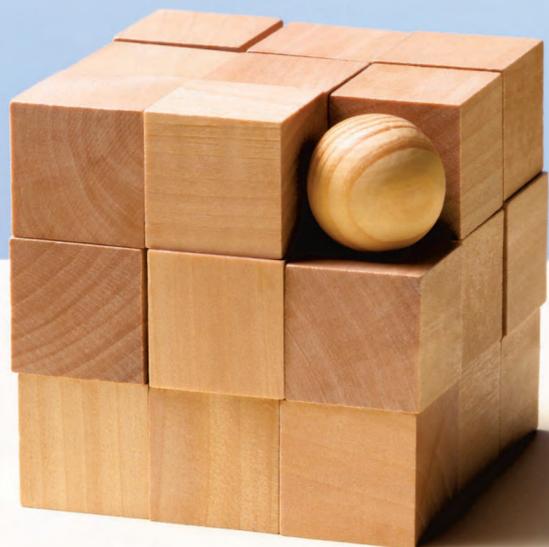


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● LAWYERS TO THE INNOVATORS

	Score	
Standout	<b>White &amp; Case</b> 25	Created a new infrastructure co-operation agreement for Best Buy to govern the relationship between suppliers in a multi-sourcing arrangement, promoting co-operation and co-ordination.
	<b>Skadden, Arps, Slate, Meagher &amp; Flom</b> 24	Played a pivotal role in a unique patent carve-out plus mergers and acquisitions deal to monetise MIPS Technologies' intellectual property portfolio.
	<b>Latham &amp; Watkins</b> 23	Helped ViaSat overcome regulatory hurdles with an original argument to prove that in-flight internet broadband connections met the definition of "fixed" connections.
Highly commended	<b>Orrick Herrington &amp; Sutcliffe</b> 22	Defended EMC against Oasis in a high-stakes patent infringement case that has far-reaching implications for patent troll defences.
	<b>Paul, Weiss, Rifkind, Wharton &amp; Garrison</b> 21	Helped Emmis Communications monetise its local programming and marketing agreement with ESPN, allowing ESPN access to the FM band and Emmis to refinance.
	<b>Simpson Thacher &amp; Bartlett</b> 21	Developed new payment mechanisms to allow Tesla Motors to repay its \$455m Department of Energy loan nine years early.
	<b>Weil, Gotshal &amp; Manges</b> 21	Successfully appealed a court ruling against online ticket sales agent StubHub, protecting internet businesses' immunity under the Communications Decency Act.
	<b>Jones Day</b> 20	Played a leading role in social entrepreneurship and impact investing, including on the development of flexible purpose corporations in California.
	<b>Katten Muchin Rosenman</b> 20	Worked with Winkvoss Capital Management to create the first exchange traded fund for a digital asset, which will allow wider investment in Bitcoins.
	<b>Morrison &amp; Foerster</b> 20	Co-chaired the group that defined the flexible purpose corporation, a new model allowing companies to include social and environmental goals as a purpose.
	<b>Skadden, Arps, Slate, Meagher &amp; Flom</b> 20	Advised SurveyMonkey in a combined transaction that allowed the company to stay private longer through an \$800m debt and equity recapitalisation.
	<b>DLA Piper</b> 19	A formal collaboration with a range of professional services firms to support client innovation through corporate ventures.
	<b>Latham &amp; Watkins</b> 19	Helped NET Power secure finance and support for a pilot plant project for a new energy technology that has zero carbon emissions.
Commented	<b>Orrick Herrington &amp; Sutcliffe</b> 19	Successfully obtained a court order allowing Microsoft to take over cybercriminal Citadel Botnet's control infrastructure and remove malware from more than 2m computers.
	<b>Ropes &amp; Gray</b> 19	Successfully defended ProShares in a class action brought against the company's exchange trade funds and in a patent troll attack.
	<b>Cravath, Swaine &amp; Moore</b> 18	Represented Barnes & Noble in several strategic investment deals, ensuring the client maintained flexibility to form new partnerships and adapt to changing market conditions.
	<b>Crowell &amp; Moring</b> 18	Formed a practice group to service companies expecting to capture new opportunities created by the introduction of new top-level domain names.
	<b>Debevoise &amp; Plimpton</b> 18	Represented Kate Spade in trademark litigation against Saturdays Surf NYC, obtaining complete victory in a highly expedited trial.
	<b>Morrison &amp; Foerster</b> 18	A plant IP group that works to protect companies through patenting new seed varieties and providing strategic IP and litigation advice.
	<b>Morrison &amp; Foerster</b> 18	Helped numerous biopharmaceutical companies navigate the process of obtaining patents, enabling the development of "blockbuster" drugs.
	<b>Paul Hastings</b> 18	Represented PayPal in its strategic partnership with Discover that allowed for a new development in payment methods.
	<b>Paul, Weiss, Rifkind, Wharton &amp; Garrison</b> 18	Continues to defend Genetech and Biogen against numerous attacks on patent rights for high-profile therapies, ensuring the companies' ability to continue to innovate.
	<b>Ropes &amp; Gray</b> 18	Representing Genesco in litigation challenging payment card company fines after a data breach.
<b>Cooley</b> 17	The firm defers 100 per cent of legal fees until capital is raised to support start-up companies to establish in the industry.	
<b>Paul, Weiss, Rifkind, Wharton &amp; Garrison</b> 17	Represented Ericsson in several strategic acquisitions and licensing deals, helping the company to become a leading internet protocol TV middleware provider.	

lenge, says Trevor Nagel, a partner at White & Case, and Robert Hasty, a counsel at the firm. "We found that they sometimes worked at the commencement but then remained static and unable to adapt to market changes."

The problem stems from the adversarial relationship between the different suppliers. Each contracted to solve a particular piece of the puzzle, they have little incentive to work together to find common solutions, forcing the customer to act as "traffic cop" in co-ordinating the work.

The solution, says White & Case, was a new governance structure that gave suppliers more reason to work together. Along with individual contracts, suppliers also signed what the company termed its "infrastructure co-operation agreement".

This handed bonuses or other credits to suppliers based on service levels that were assessed across all of them. Also, it gave them the opportunity to bid for extra work as Best Buy's needs changed - leading to an "oligopoly" among the technology companies with all having the chance to benefit from more work in the future.

Patents have been another source of new legal thinking as the perceived value of intellectual property has ballooned.

"You couldn't walk into a boardroom in Silicon Valley without them saying, 'If [another company] is worth X because of their patents, we should be worth 2X,'" says Kenton King, a partner at Skadden Arps in Palo Alto. Perceiving the value of a company's IP and turning it into hard cash, however, are very different things.

For MIPS Technologies, a struggling microprocessor company, the problem was

exacerbated by the need to protect the value of a declining business while realising the value of the patent portfolio.

The patents, says Mr King, were like "loose nukes". In the wrong hands, they could cause untold damage - either being turned against MIPS or its customers after sale to another entity, or against the buyer if MIPS retained some of the rights. To complicate matters, the MIPS board decided to sell the patents and the business to separate buyers to maximise the proceeds. That created an extra problem for lawyers: working out which patents would need to stay with the business to protect its new owner, when they had no way of knowing how strong a patent portfolio the buyer would have already.

In the event, some 500 patents were carved out and sold to a consortium for \$350m, with the remaining 80 patents staying with the operating company, which was sold for \$100m. Licences were devised to protect the consortium and its customers from claims under the patents MIPS retained, while MIPS itself received a grant-back licence for patents it had sold.

A second notable patent case involved work by Orrick to defend data storage company EMC against a claim from a non-practising entity, or patent "troll". The law firm first succeeded in having the EMC case separated from similar claims against unrelated companies.

But the case was notable mainly for an exhaustive investigation into the origins of the patents, which were based on work carried out some 20 years before. While only one inventor was named, Orrick was able to establish that a second person

should have shared in the credit - which automatically invalidated the patents.

Meanwhile a case involving the US Federal Communications Commission highlighted the challenges of fitting new business objectives into old regulatory frameworks. Satellite company ViaSat wanted to launch an in-flight broadband service for airline passengers. Under its licence from the FCC, however, it was limited to selling a service to "fixed" users. Pursuing the rule change could take five years as other

interested parties came out of the woodwork to complicate the process, according to Latham & Watkins, which advised ViaSat. The solution the lawyers alighted on was to argue that the in-flight service met the FCC's definition of a fixed service, as the terminals inside aircraft would remain fixed in relation to the satellite. Armed with that, they were able to seek waivers under the existing rule to move, though the work, originally targeted for completion in six months, still took a year.

US INNOVATIVE LAYWERS 2013

US INNOVATIVE LAYWERS 2013

FINANCE

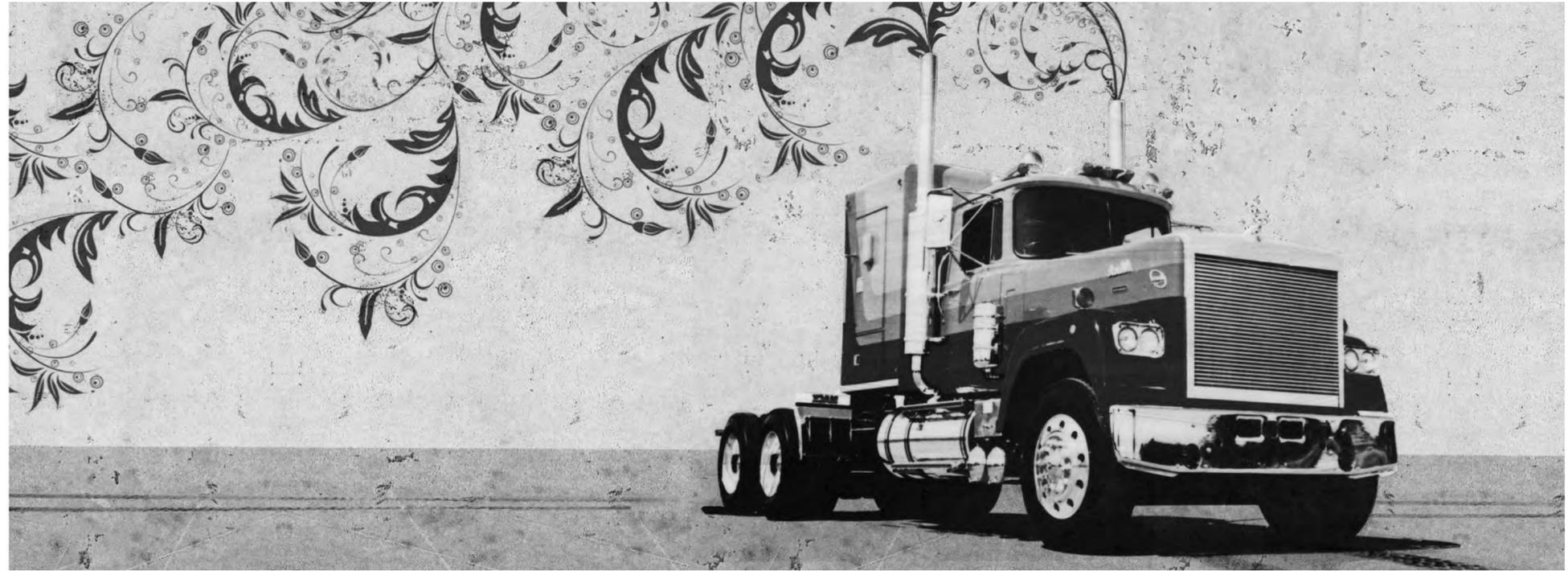
# NOVEL SOLUTIONS

Law firms sometimes have to come up with new and unusual ways to save companies from collapse or refinance them, writes **Vivianne Rodrigues**

**W**hen the US credit markets dried up and many debtors found it impossible to meet their obligations at the height of the financial crisis, it was the lawyers who found novel solutions to circumvent the squeeze in financing. Five years later, these experts who honed their skills in the crisis are still coming up with creative ways to keep their clients out of court, get creditors paid, avoid the liquidation of companies and save jobs. One of the most dramatic examples was Davis Polk's work to help the Mashantucket Pequot Native American tribe in a

\$2.2bn out-of-court restructuring for debt related to the Foxwoods Resort Casino. The Mashantucket Pequot had overleveraged themselves in expansion and, because the casino was on sovereign tribal land, standard bankruptcy laws did not apply. Davis Polk engineered a restructuring that honoured senior creditors and allowed junior debtholders to exchange bonds for ones with longer maturities. "Foxwoods was a particularly challenging case as it involved the restructuring of five tranches of debt with different levels of seniority, for a sovereign nation and in

the absence of governing law," says Marshall Huebner, co-head of the restructuring group at Davis Polk. Off the reservation, the bankruptcy of Brazil's oil company OGX, involving \$3.6bn worth of bonds, assets and investors throughout the globe, is shaping up as a particularly challenging Chapter 15. But the case is also indicative of the growing number of high-profile, cross-border, large-scale projects springing up across the globe. These call for large investment sums and greater liquidity. For lawyers they also represent an oppor-



FINANCE

	Score	
<b>Davis Polk &amp; Wardwell</b>	25	Advised Bank of America in the Foxwoods restructuring, the firm introduced a novel legal structure to keep proceedings from going to the bankruptcy court.
<b>Cravath, Swaine &amp; Moore</b>	24	Helped Cincinnati Bell convert its data centre into a first-of-its-kind real estate investment trust, followed by a carve-out initial public offering, reducing massive debt.
<b>Latham &amp; Watkins</b>	24	Advised Barclays and Bank of America Merrill Lynch to minimise uncertainty risk in a Reverse Morris Trust, creating a new tax-free spin-off.
<b>Mayer Brown</b>	24	Helped create a new bond that uses storm surge as a trigger to help New York Metropolitan Transportation Authority meet catastrophe insurance needs.
<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>	24	In a four-year restructuring saga, the firm deleveraged Realogy's multibillion dollar debt, culminating in one of the largest initial public offerings of 2012.
<b>White &amp; Case</b>	24	Restructured the debt burden for Iconix by the first securitisation of an intellectual property portfolio.
<b>Chadbourne &amp; Parke</b>	23	Advised Société Générale on financing for the first liquefied natural gas project without completion guarantee in the US.
<b>Cravath, Swaine &amp; Moore</b>	23	Worked with Credit Suisse on the financing of Reynolds Group Holdings' high-yield debt offering, utilising a fungible tack-on structure to increase liquidity.
<b>Davis Polk &amp; Wardwell</b>	23	Introduced Chapter 15 bankruptcy to Japanese client Elpida, allowing greater bankruptcy protection for its US intellectual property.
<b>Latham &amp; Watkins</b>	23	Created an original strategy to build consensus and enable an unusual merger agreement between client US Airways and AMR.
<b>Morrison &amp; Foerster</b>	23	Guided Residential Capital in bankruptcy proceedings, allowing it to operate during restructuring – a first for a financial company.
<b>Orrick, Herrington &amp; Sutcliffe</b>	23	Advised Rialto Water Services on takeover of the Californian city's water utility, the first public-private partnership using water and wastewater assets as a partnership vehicle.
<b>Simpson Thacher &amp; Bartlett</b>	23	Created a unique fund structure with Blackstone Group, making institutional investors the sole limited partners of their respective funds.
<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>	23	Devised, with Credit Suisse, a \$5bn covenant-light secured financing for the Australian mining company Fortescue, helping to transform the company's fortunes.
<b>Weil, Gotshal &amp; Manges</b>	23	Represented Mashantucket Pequot tribe on Foxwoods Casino out-of-court restructuring.
<b>Cravath, Swaine &amp; Moore</b>	22	Represented Goldman Sachs and JPMorgan in a \$1bn secured term loan facility for Navistar, overcoming unique restrictions.
<b>Morrison &amp; Foerster</b>	22	Skilfully negotiated insolvency proceedings for MF Global's trustee, obtaining an unusual global settlement from the UK administrator and SIPC trustee.

Standout

Highly commended

Commended

tunity to test restructuring tools and financing structures involving a multitude of assets, creditors and investors. "Cross-border cases are not only becoming more frequent, but they are also becoming deeper and more complex," says Mr Huebner. The depth and size of US capital markets has meant investors are more receptive to finding ways to work through these atypical cases. David Thatch, a partner at White & Case, says: "Capital markets here are very efficient and organised. At the same time, we have sophisticated investors seeking and willing to buy new products that have the potential for higher yields. That's an advantage." White & Case worked with brand management company Iconix through a restructuring and securitisation that enabled the company to use its intellectual property as security for debt and a source of cash flow to service those obligations. Iconix is now well placed to grow the number of brands it manages by leveraging its intellectual property to issue debt. It uses cash flows generated from licensing agreements to service principal and interest repayments on its borrowings. "Many companies have unique assets that can be used to create valuable sources of financing," says Mr Thatch. "But they are not always that easy to spot as they are not immediately convertible to cash like traditional securitisation assets."

While deals exploring companies' intellectual property or brands are not completely new, the securitisation of assets of all kinds is increasingly being used as an alternative for companies seeking to raise funds at lower borrowing costs. Financing was also at the centre of a case involving Navistar, in which Cravath, Swaine & Moore represented Goldman Sachs and JPMorgan as joint lead arrangers of a \$1bn secured term loan facility for the truck and engine maker. In 2012, Navistar brought production to a halt, so as to be able to transition to a new technology that would permit its heavy-duty diesel engines to meet the standards of the US Environmental Protection Agency. Time was of the essence. But a traditional approach would not work. The truckmaker's charter restricted it from pledging "all or substantially all" its assets without consent of some 66 per cent of stockholders. Any solution needed to avoid triggering the stockholder vote. Cravath's approach was to distinguish between sales and pledges. The firm developed a collateral package that protected lenders and permitted the syndication of the financing, while remaining clear of charter and contractual restrictions. Cravath employed a "collateral exclusion waterfall" that would exclude certain asset categories from the collateral package in ascending order of importance to the lenders if required, to ensure compliance with the "all or substantially all" charter restriction. The collateral structure and "collateral exclusion waterfall" mechanism devised by Cravath permitted the syndication of the financing. Navistar was then able to transition its engines to the new technology and resume normal operations. "Sometimes, when there's no clear precedent to draw from, the very endgame of a case becomes your 'guiding light'," says Tatiana Lapushchik, a partner at Cravath. "The endgame is for the financing to be successful, especially where the financing is critical to allow a company to remain in business."

The securitisation of assets of all kinds is increasingly being used as an alternative

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US INNOVATIVE LAWYERS 2013

LATIN AMERICA FINANCE



# PIONEER SPIRIT ACROSS BORDERS

Several imaginative corporate finance deals in Latin America have been a chance for law firms to showcase their range of skills, reports **Jude Webber**

**S**tructuring deals in Latin America has never been so complex. Some of the region's recent standout operations – including a \$6bn capital increase, the largest ever in Chile; Colombia's first foreign initial public offering; and an \$11bn debt offering in Brazil, the biggest by an emerging markets company – required

solutions that were remarkable, even from seasoned cross-border lawyers. Hurdles have included incorporating a US Chapter 11 bankruptcy into a Mexican telecoms restructuring; winning over conservative private-sector lenders in a Brazilian polyolefin project in Mexico; and overcoming a cap on revenues in the first privatisation of a big US airport, in Puerto Rico. Trailblazing operations like these have seen the novel application of US project financing techniques and New York securities expertise to sophisticated operations in a region where New York law dominates. Take the Maxcom telecoms deal in Mexico, which involved a simultaneous debt restructuring and equity tender offer, plus the Chapter 11 filing, in order for Ventura Capital Privado to be able to take over a company otherwise headed for default.

“Here you have a Mexican venture capital fund using tools from the US to take over a Mexican company,” says Mike Fitzgerald, chair of the Latin America practice at Paul Hastings, which designed the formula. The clincher proved to be incorporating the US bankruptcy filing into the mix. White & Case had to draw on US, English and Mexican law, and mobilise 45 lawyers from seven offices for 30 months, for what it calls “the most complex and innovative project development and financing ever undertaken in Latin America” – the \$4.5bn Brazilian-financed Etileno XXI polyolefin project in Mexico. National development banks, international export credit agencies, multilateral lending agencies and 10 commercial banks also had to be kept onside.

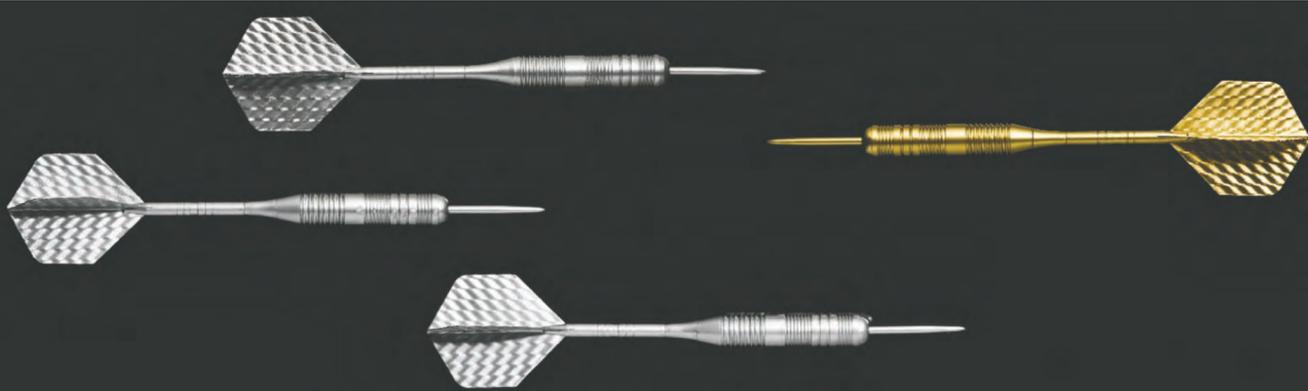
“Taking eight governmental lenders, which tend to be the most conservative lenders in the market, and making them comfortable writing cheques for between \$300m and \$800m to sponsors and a state-owned feedstock provider doing a joint true limited-recourse international project financing – that was the most significant challenge,” says Carlos Viana, White & Case partner. An IPO of the Spanish holding company through which Mexico's Cemex holds part of its Latin American operations was a lifeline for the indebted cement company – but only after Skadden, Arps, Slate, Meagher & Flom essentially wrote the rule book for a foreign company seeking to list in Colombia. Cemex also needed to win

over creditors to participate in its second debt restructuring in three years, so the lawyers incorporated an “early bird” priority allocation plan rarely used for bank debt restructurings. One party involved in that transaction also notes: “Colombia is a ‘hot’ market and this will open the door for foreign issuers to do something similar.” Petrobras's \$11bn debt issue in May is unlikely to be replicated in terms of size, but showing the market it is possible to tailor a six-tranche offering spanning both fixed and floating-rate notes and maturities from three to 30 years, and to open the deal on a Friday and close the following Monday, teaches valuable lessons. “One limitation in emerging markets used to be the inability to access the capital markets quickly. Now that large issuers can overcome that, accessing the capital markets can be a very useful tool for financing energy and infrastructure projects, as well as development more generally,” says Francesca Odell, partner at Cleary Gottlieb Steen & Hamilton, which structured the operation. The \$6bn capital increase by Chile's Enersis, represented by Chadbourne & Parke, was unprecedented in that the majority shareholder was contributing assets while minority shareholders paid cash. In another novel touch, the company tapped the American Depository Share market by allowing ADS holders to trade rights on the New York Stock Exchange. The Puerto Rico airport sale to Aerostar Airport Holdings, advised by Cleary Gottlieb Steen & Hamilton and Pillsbury Winthrop Shaw Pitman, could be a test case for other US airport sales. As well as securing \$410m financing, Aerostar had to find a way to maximise profits other than by increasing airline fees, which are capped. Cleary structured the deal not as typical project financing but so Aerostar's revenues would go into a pledged account, giving it flexibility and discretion to fund its operations.

Debt financing was another area of innovation. Paul Hastings represented Credit Suisse and Citigroup on the first international issue of Mexican peso-denominated secured dollar-indexed notes in Axtel, the telecoms company, allowing it to refinance within weeks, rather than the months usually needed, and avoid bankruptcy. But cross-border legal teams, fluent in Spanish and Portuguese, with the imagination to apply US tools to Latin American deals are only part of the new environment. One person who asked not to be named says: “If you have a lawyer working with a client that is plain vanilla, they won't develop innovative skills. Law firms need to aim for those complicated clients so that they can develop... their skills. There is also a cost involved with innovation, but that is something clients are willing to pay.”

**White & Case mobilised 45 lawyers from seven offices for 30 months for the Etileno XXI project**

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US INNOVATIVE LAWYERS 2013

● FINANCE – LATIN AMERICA

	Score	
Standout	25	<b>Skadden, Arps, Slate, Meagher &amp; Flom</b> Took Cemex through restructuring and helped create laws and regulations to allow the first listing of a foreign company on the Colombian stock exchange.
		<b>Cleary Gottlieb Steen &amp; Hamilton</b> 23 Helped Petrobras launch a \$11bn floating-fixed rate notes offering with six tranches in one weekend.
Highly commended	23	<b>Cleary Gottlieb Steen &amp; Hamilton</b> Acted for Puerto Rico airport operator Aerostar on the lease agreement and a unique financing, leading to the first privatisation of a major US airport.
	23	<b>Paul Hastings</b> Represented Citigroup and Credit Suisse in the first capital markets restructuring of Mexican company debt, including innovative peso-denominated, secured dollar-indexed notes.
	23	<b>Paul Hastings</b> Achieved simultaneous US Securities and Exchange Commission-registered tender offer, Chapter 11 filing and Mexican equity and bond tenders to allow Venture Capital to takeover Maxcom.
Commented	22	<b>Chadbourne &amp; Parke</b> Raised \$6bn for Enersis, the largest capital increase in Chile, through a global rights offering and registration of ADSs in the US.
	22	<b>Mayer Brown</b> Represented BNP Paribas as lender to the Via Parque Rimac toll road project, the largest ever Peruvian currency financing for a non-sovereign issuer.
	22	<b>Pillsbury Winthrop Shaw Pittman</b> Advised Aerostar on the public-private partnership of a Puerto Rican airport, setting an example for future US airport PPP deals.
	22	<b>White &amp; Case</b> Advised Braskem from development through project financing of the first Mexican-Brazilian cross-national greenfields plastics project.
	21	<b>Allen &amp; Overy</b> Advised the Royal Bank of Canada on private placements for the pioneering Puerto Rico airport privatisation.



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