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In a troubled year, some bold partners chose to set out on their own. Perfect timing.

The Rise of the LONE WOLF

BY CLAIRE ZILLMAN

PLUS:
- A New Record for Partner Moves
- Charlotte After the Bust
- What Firms Charged in 2009

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Economy Model

In a troubled year, some bold partners chose to set out on their own. *Perfect timing.*

BY CLAIRE ZILLMAN

Daralyn Durie, Mark Lemley, Michael Page, and Ragesh Tangri started kicking the idea around almost 20 years ago, when all four were students at UC Berkeley School of Law. They'd start their own law firm together, someday.

After graduation, the four went their separate ways—clerkships, big-firm jobs—before reuniting at San Francisco's Keker & Van Nest. Durie, Tangri, and Page became partners there; Lemley, an intellectual property professor at Stanford Law School, was of counsel; and all of them helped build one of the country's most potent IP litigation groups, with clients like Genentech, Inc., Google Inc., and Comcast Corporation. But the idea of starting their own firm never faded.

Then came the recession of 2008. "We decided that if we were gonna do it, we were gonna do it now," says Durie, 42. "We were at a point in our careers where we had the confidence to do it and were young enough to have the energy to pull it off. We became beneficiaries of the downturn." On February 1, 2009, the four Berkeley classmates, joined by two other former Keker partners, swung open the doors of their own IP boutique, Durie Tangri.

MoloLamken's Jeffrey Lamken (left) and Steven Molo: The recession made starting their own firm more attractive.

MATT FURMAN

The Durie Tangri partners aren't the only lawyers with an entrepreneurial itch these days. From October 2008 through September 2009, according to *The American Lawyer*'s Lateral Report, 114 partners left The Am Law 200 to start or join small practices, up from 70 in the previous 12-month period. Some notable new start-ups include MoloLamken, whose name partners came from Shearman & Sterling and Baker Botts; Kendall Brill & Klieger, an Irell & Manella litigation spinoff; Chaffetz Lindsey, started by five former Clifford Chance litigation partners; Harrington Dragich, a bankruptcy boutique whose founders were Foley & Lardner lawyers; BuckleySandler, formed from the merger of Buckley Kolar and a group from Skadden, Arps, Slate, Meagher & Flom; Bryant Burgher Jaffe & Roberts, whose partners left DLA Piper, McKee Nelson, and Alston & Bird; and Van Etten Suzumoto & Sipprelle, founded by three partners from McGuireWoods.

Durie says she left 70-lawyer Keker because she wanted to work at a "true small firm." Steven Molo jumped ship from Shearman because he wanted to avoid the unwieldy infrastructure of a large firm. B. Seth Bryant exited DLA Piper and cofounded Bryant Burgher, a minority-owned firm, in part because his efforts to provide interdisciplinary legal teams for companies investing in urban markets had not meshed well with the ambitions of his former firm's corporate practice.

"This is an advantageous time to start a firm," says consultant Joel Henning. "These lawyers are skimming some of the cream off the top of their former firms and catering to clients' cost needs."

Some might think it's insane to leave a large firm to hang up a shingle in the midst of an economic downturn. But those who have gone out on their own think it's crazy to stay put. If the lawyers who started their own firms had different personal reasons for leaving their old firms, their business rationales are nearly identical: It's all about value. The recession has increased clients' price sensitivity, creating an opening for smaller firms with lower, more flexible costs. Boutiques cater to cost-conscious clients by lowering overhead expenses, slashing rates, and offering alternative fee arrangements, while providing the same legal services that their founders offered at their old firms. "This is an advantageous time to start a firm," says consultant Joel Henning of Joel Henning & Associates. "These lawyers are skimming some of the cream off the top of their former firms and catering to clients' cost needs."

"Would we have started this firm had the cataclysmic events of the economy not caused people to rethink things so much? I think absolutely," says MoloLamken's Molo. "But those events have made it better for us. The truth is, it was riskier not to do it."

Molo and Jeffrey Lamken met in 2005, when they both represented Morgan Stanley in its successful appeal of a $1.57 billion jury verdict in a fraud suit brought by billionaire investor Ronald Perelman. After overturning the award, the two litigators kept in touch and referred work to each other—and began to toss around the idea of starting their own firm. Molo says that he and Lamken work together well, with a combined "brains and brass knuckles" approach to the law. "I'm known as the aggressive one, and he's the cool and calculating appellate lawyer," Molo says.

Their discussions about establishing a boutique firm finally jelled over a 2008 dinner at Charlie Palmer's steak house in Washington, D.C. "As time went on, we thought the environment got better," says Molo. "The rent of buildings in midtown Manhattan dropped by 40 percent, you had this incredible pool of talent suddenly become available, and you had a greater cost sensitivity among clients. We thought our law firms were great as large law firms, but we really had a desire to do something that would free us up to do new things in terms of fee structures and clients."

Now Molo and Lamken—based in New York and Washington, D.C., respectively—are trying to rid their firm of the traditional billable hour altogether in favor of incentivized bonus fee structures. In a recent civil appeal case, Molo says, he used a flat fee structure paid in two installments. The client also agreed to pay one of seven bonus amounts if the firm achieved one of seven possible "success outcomes."

"Trials are the easiest things to budget for," Molo says. "If it's an eight-week trial, you can charge a client a flat fee per week." Clients then make bonus payments depending on the trial result or the amount of settlement. "From the client's perspective, it makes all the sense in the world, because they know going into something what it's going to cost," says Molo. He used alternative fee arrangements occasionally at his former firms, Molo says, although it was more difficult because the larger firms were more dependent upon the billable hour.

At Bryant Burgher, a transactional firm that handles small and midmarket transactions in the $50 million range, name partner Bryant charges some M&A clients a minimum fee, plus an additional payment based on the outcome of the deal. "If the deal breaks down, they pay *x*; if it goes through, they pay *y*," says Bryant. In cases where flat or minimum fees don't work, Bryant still uses billable hours, but at rates lower than what he charged at DLA Piper. "Our rates are generally one-third less than large firms' rates," he says.

He's not the only one to cut rates. Mark Suzumoto, name partner at Van Etten Suzumoto, says his rate has dropped 30–40 percent since leaving McGuireWoods. Durie has lowered her rate 20 percent. At bankruptcy boutique Harrington Dragich, James Harrington says he gives clients a "meaningful discount" on what he charged at Foley. (A bankruptcy filing from May 7 indicates that Harrington's partner David Dragich charged client Noble International Ltd. $350 an hour, a $175 reduction from what he charged at Foley.)

"The biggest positive of our firm is that we're delivering the same expertise at a lower cost," says Harrington. That's the reason Noble chief executive officer Richard McCracken kept Dragich on as lead counsel in the company's bankruptcy proceedings after Dragich left Foley—even though Harrington Dragich is the smallest firm that McCracken has ever hired to represent the auto parts maker. "We receive more flexibility and attention with the advantage of an alternative fee," says McCracken.

Durie says that her firm saves its clients time and money by streamlining discovery and focusing on defenses that are "outcome determinative." The strategy has its trade-offs. "You may be giving up arguments that turns out to be good ones, but if it's going to cost us $300,000 or $400,000 to develop that additional defense, is it worth it?" Durie says, "Instead, we'll develop this other defense for $100,000 if we think it's gonna be a winner." This method caters to the limited

budgets of smaller companies, Durie says: “For smaller companies, a 70 percent chance of victory within six months for $500,000 is worth a lot more than an 85 percent chance for victory three years from now for $4 million, because they may not have $4 million to spend.”

Van Etten Suzumoto’s location—30 miles northwest of Los Angeles in Westlake Village, California—enables it to offer suburban clients a cheaper alternative. In November, for instance, the firm picked up as a client a veterinary supply company involved in various disputes with former executives and former distributors. “This company is not going to hire downtown Los Angeles attorneys who charge hundreds of dollars more that what we’re charging,” says Van Etten. “They need good lawyers, but they don’t need those kinds of billing rates.”

Keeping the firm small is also key to reducing overhead, says Suzumoto, whose three-lawyer start-up added one corporate associate in December and one IP litigation associate in January. He says he wants to add another lawyer in the next six months but doesn’t expect his firm to grow to more than ten or 12 lawyers. Other start-up firms are also adamant about staying lean—although many report being inundated with unsolicited resumes from deferred and laid-off lawyers. Molo says he doesn’t want his five-lawyer firm to grow larger than 40 or 50 lawyers over the next five years. Durie says her firm plans to add just a few lawyers to its current staff of 12. Only BuckleySandler had more ambitious near-term growth plans: Cofounder Andrew Sandler, whose firm had 70 lawyers at press time, projects that BuckleySandler will cap its attorney head count at 100. “That’s the number of lawyers we’re going to need to provide our clients with the full spectrum of financial services,” says Sandler, whose regulatory and enforcement firm added its first banking M&A lawyer, David Baris—formerly a partner at Washington, D.C.–based Kennedy & Baris—in January.

“...a combined 'brains and brass knuckles' approach to the law.”

Most boutiques also see a chance to cut costs by avoiding summer hiring. Of the new firms interviewed, only BuckleySandler and Harrington Dragich plan to have a summer class this year—four or five clerks at BuckleySandler, just one at Harrington. “Even in tough times, large firms are going on campus and recruiting, because nobody wants to be the one left behind,” says Molo. “We don’t have to hire first- or second-year lawyers, we’re only going to hire lawyers who have had a few years experience at a minimum.”

With head count small, office space is an expense that’s easily limited. Molo’s firm rents a total of 13,000 square feet in its New York and D.C. offices. “You have a lot more flexibility when you don’t take up ten floors in a big office tower,” says Molo. “If you find a better, more efficient way to operate, you can make a change. You’re not tied down to a ten-year lease.”

These smaller firms are peeling away the layers of infrastructure—administrative assistants, associates, recruiting programs—that exist at large law firms, which Suzumoto says can be discomfiting. “Big firms provide lawyers with a strong sense of security and prestige, and that’s hard to give up,” he admits.

These strategies—flexible fee arrangements, discounted rates, and lower overhead costs—all make sense on paper. But for every lawyer planning the launch of a new firm, there’s a big unknown. What will clients think? To make that calculus even more complicated, lawyers are usually barred from telling clients in advance about departure plans. “Lawyers have a fiduciary duty to tell their firms they’re leaving before notifying their clients. This levels the playing field to compete for clients,” says UC Davis School of Law professor Robert Hillman, author of *Hillman on Lawyer Mobility: The Law and Ethics of Partner Withdrawals and Law Firm Breakups.*

Sandler, in leaving Skadden, abided by Hillman’s protocol: He resigned on a Friday afternoon, and on Monday started calling his clients—which included Merrill Lynch & Co. Inc. and Bear Stearns & Co. Inc.—to tell them that he and 14 other Skadden lawyers would be joining 25 Buckley Kolar attorneys to establish BuckleySandler. Sandler had chosen to combine his team with Buckley Kolar because the Washington, D.C.–based boutique had a strong regulatory practice to supplement his group’s enforcement and litigation practice. Sandler’s team and Buckley Kolar had worked together before and shared many of the same clients. Even so, he says, “I didn’t know if my clients would come with me or not.”

By the following Monday, a week later, Sandler had heard back from most of his clients: A few, like Merrill Lynch, chose to keep their current matters with Skadden, but Sandler says 90 percent of his clients, including Wells Fargo Company, Bank of America Corporation, and Citigroup Inc., agreed to follow him to his new boutique immediately. Sandler says the other 10 percent have since come to BuckleySandler with new matters.

Some clients don’t take much convincing. “I can’t tell you how joyous some of our clients were to find out they were getting 30–40 percent discounts on the rates we charged yesterday,” says Suzumoto. “They got the same lawyers providing the same services at a deep discount.”

Hilary Ware, managing litigation counsel at Google, hired Durie when she was still at Keker to represent the company in the high-profile litigation over its plan to digitize millions of books, and then retained Durie as lead counsel when she left for Durie Tangri. “Smaller firms have the ability to bring greater value to cases,” says Ware. “You spend less money, but usually get the same outcome.”

Boutique founders say that they now have freer rein to take on new clients. “Conflicts were always a problem,” says Chaffetz of the reason he left Clifford Chance, “and the downturn just exaggerated them.” His firm, Chaffetz Lindsey, is currently working on cases against some of the world’s biggest banks—assignments he wouldn’t have been able to take at Clifford Chance, because the banks were clients of the firm. In late December, for example, Chaffetz sued Countrywide Financial Corp. and its parent company BofA for alleged “material misrepresentations” in Countrywide loans insured by Chaffetz’s client, Republic Mortgage Insurance Company. (At press time Countrywide and BofA had not responded to the complaint.) Molo says his firm aims to branch out into plaintiffs work, while Durie is representing smaller Silicon Valley start-up companies that don’t have the legal budget to afford a larger firm.

One challenge for boutiques is convincing clients that a small firm can handle a very large matter. Some firms address the issue by picking a niche. Harrington Dragich opened with the goal of handling work that trickled down from the Chapter 11 filings of General Motors Corporation and Chrysler Group LLC. “We saw the major automotive bankruptcies coming down the road,” says Harrington. “They were a trigger for

Small is beautiful: Jeffrey Lamken (left) and Steven Molo quit big firms last year to open their own litigation shop, MoloLamken.

us to start the firm." Although Harrington Dragich couldn't handle a GM– or Chrysler-size bankruptcy, since opening in May the firm has represented 25 GM and Chrysler creditors, including 14 former Chrysler dealerships whose contracts were rejected in bankruptcy court.

Boutiques are also relying on contract lawyers to staff up for bigger matters. Molo hires experienced contract lawyers to serve as the senior litigation associate on cases, paying them an hourly rate without having to provide full-time benefits. "We can hire people on a case-by-case basis who bring a particular skill set to a matter [who] would exist at a much higher cost if you were to follow the traditional model," he says. Suzumoto says his firm taps contract lawyers when a case requires a specialist, like a tax attorney or patent prosecutor. "We've looked to create a network of specialists who have a specific area of expertise who, frankly, we don't want sitting in an office seven days a week waiting like a Maytag repairman for their call," he says. "It keeps our overhead lower and provides an opportunity for these individuals."

The boutique firms that sprouted in 2009 are doing well financially, according to their founding partners. Although they declined to provide specific numbers on the record, all said that their new ventures are profitable—if not quite as profitable as their old firms. Molo expects to see about a 35–40 percent profit margin in the next year. Suzumoto says that—after three initial months without a paycheck—his firm is firmly in the black. "We knew we wouldn't replicate our McGuireWoods salaries in the first 12 months, but we're hoping to come close in 2011," he says. Likewise, Durie doesn't expect to take home profits as large as she would at Keker, because of Durie Tangri's lower rates and lack of leverage—eight partners, two counsel, two associates—but she says the firm will exceed its initial projections this year.

As much as the new boutique partners are enjoying their early financial success, they seem to relish their newfound autonomy even more. "I was on the executive team of Winston & Strawn," says Molo, who was a partner at the Chicago-based firm before he joined Shearman & Sterling, "but I never had the sense of ownership I do now." The big-firm escapees are now free to run their firms just as they please. At MoloLamken, one goal is to create a new model for associates that encourages hands-on collaboration between partners and associates. "There's no opportunity to layer a case down with 25 or 30 lawyers," Molo says, and because the firm generally doesn't bill by the hour, it's easy for associates to sit in on a case that offers useful lessons. "They can learn by just being there, and we don't have to worry about how to write their time off," he says.

Successfully launching a new boutique is one thing, of course. Keeping it going over the long haul is another. "Sometimes first-rate lawyers will start a boutique for high-end, noble reasons, and it ends up being a big mistake because they lack a sense of what it takes to lead and manage a good firm," consultant Henning warns. But the boutique founders interviewed say they're up to the task of building a firm for the long term. Sandler says he started his own firm precisely because he wanted a new challenge. "There comes a point in life when the resume chase is over," he says. "I wanted a more direct role in the future of an organization. I wanted to be part of a team that really liked practicing together."

"We really had a desire to do something that would free us up to do new things in terms of fee structures and clients."

As for Durie, the firm that she, Lemley, Page, and Tangri first conceived some 20 years ago has turned out to be an "incredibly fun" place to work. "I know everyone I'm working with, and I have a closer relationship with clients," she says. "I'm not stretched as thin as I would be elsewhere. Thirty years ago, a lot of lawyers started their own firm. It's a very organic way to practice. I don't know why more people don't do it."

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