Law Practice TODAY
THE MONTHLY WEBZINE OF THE ABA LAW PRACTICE MANAGEMENT SECTION

Gluing Law Firms Together
By Will Nathan

June 2010

In 21st century BigLaw practice, when the going gets tough, the rainmakers get going—going somewhere else, that is.

I became a lawyer in 1973. When I began my practice in San Francisco that year, the City's BigLaw firms consisted of ***Brobeck***, Bronson, Cooley, ***Graham***, ***Heller***, McCutchen, Morrison, Orrick, Pillsbury and ***Thelen***. Of those 10 leading San Francisco firms, more than half (those marked in red) are now gone, four by way of bankruptcy (those marked in ***red***.)

This is a subject in which I have more than a passing interest. For one thing, I've written two novels involving San Francisco BigLaw firms that fell apart. More empirically, and acting at the behest of multiple unpaid landlords, my present law firm put one of those BigLaw firms—my own first employer, no less—into involuntary bankruptcy. In addition, my present firm is also special litigation counsel for the Official Committee of Unsecured Creditors in yet another of these BigLaw firm's bankruptcies.

As Tolstoy observed: "Happy families are all alike; every unhappy family is unhappy in its own way." The same can easily be said of BigLaw firms, or at least of failed ones. The causes of their failure are so myriad they defy categorization. Except, that is, for one thing: rainmaker turnover. In 21st century BigLaw practice, when the going gets tough, the rainmakers get going—going somewhere else, that is.

This was not the case in 1973. Back then, obtaining a BigLaw partnership was like getting academic tenure—hard to win, but once achieved, something that you could count on for life. Lateraling into one of these firms was unheard of. And, other than to take up teaching or enter government service, BigLaw partners simply didn't leave their firms. It just wasn't the thing.

A lot has changed since 1973. Nonetheless, at least one undoubted cause for increased rainmaker turnover appears to be underappreciated. Before January 1, 1997 (when the Limited Liability Partnership form of organization first became an option for BigLaw firms in California), each one of the firms on my list of the 10 leading 1973 San Francisco firms had been organized as common law general partnerships.

That meant every partner had each of his or her personal assets at stake in their top 10 BigLaw firm, much like any Lloyd's "name" once ran the risk of utter personal financial catastrophe in the event of heavy losses hitting his or her Lloyd's insurance syndicate. In contrast, the Limited Liability Partnership, as its name suggests, was designed to put the Limited Liability Partnership partner's personal assets beyond the reach of the BigLaw firm's creditors in the same way the assets of a shareholder of a corporation are put beyond the reach of the corporation's creditors.

Between 1997 and the dates of their various bankruptcy filings, each of Brobeck, Graham, Heller and Thelen all converted to Limited Liability Partnerships. All then suffered the loss of multiple rainmakers in their individual run-ups to bankruptcy. And, finally, all then suffered the indignity of becoming bankrupt debtors, stiffing their creditors out of large sums of money in the process.

Think about it. If these four firms had never had the option of conversion to Limited Liability Partnership (or its less utilized but similarly purposed Professional Corporation counterpart), rainmakers considering an early departure from any of these troubled firms would have had to consider that their abandoned firm's creditors could easily come back to haunt them individually.

Not being stupid, such rainmakers would presumably have stayed around long enough to make sure all of their old firm's debts were retired before such firms dissolved, even if the soon-to-be-departed rainmakers suffered personal losses while helping their old firms through traumatic events. Put another way, no rats (read rainmakers) would have left their sinking ships (read failing BigLaw firms) without first putting all passengers (read the BigLaw firm creditors) safely into lifeboats (read making provisions to pay BigLaw firms' creditors in full before dissolution of old firms).

BigLaw bankruptcies bring discredit on the profession. What's more, when such proceedings result—as they almost invariably do—in ultimate losses to creditors, those firms' partners use of limited liability protections violates ethical cannons forbidding lawyers from using the law to do third persons injustice. Combating this phenomenon by requiring all lawyers who practice in group settings to do so *only* as general partners is one way—and perhaps the only effective way—to now glue BigLaw firms together, thereby protecting the public from BigLaw's canny manipulation of existing corporate and creditor-debtor laws. Lawyers have a state-granted monopoly on practicing law and, as the Good Book says: "To whom much is given, much will be required." Including BigLaw's paying its debts.

About the Author

Will Nathan is the pen name for a 2010 Norcal Superlawyer who wishes to remain anonymous. Nathan is the author of two novels, each published by Ferry Press, LLC: *Book of Business* and *Bad Law*. Each of his books has financially troubled San Francisco BigLaw firms as the backdrop. His titles are available as eBooks that may be downloaded to Blackberry and similar electronic reading devices at www.smashwords.com/books.
