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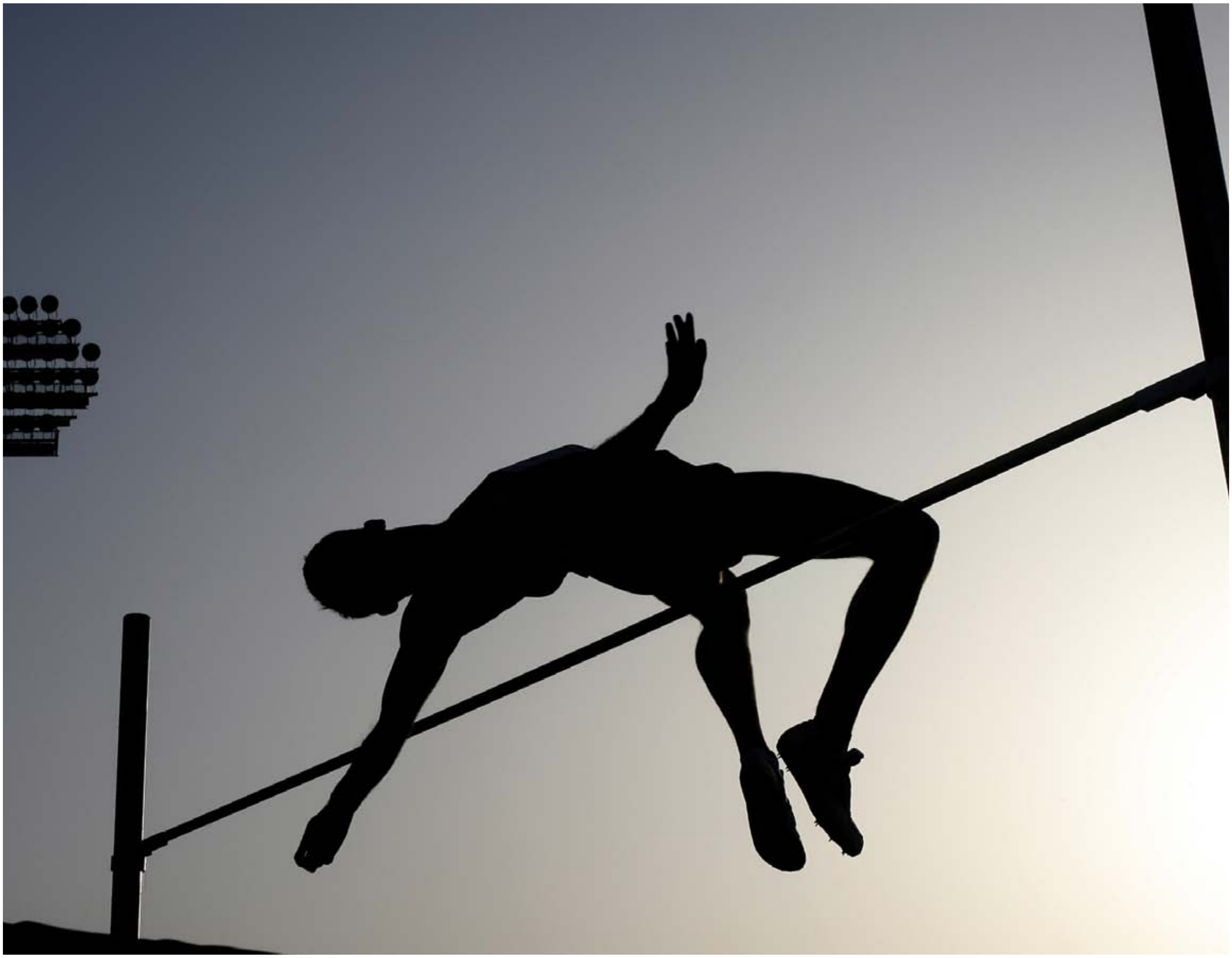

2020 Report on the State of the Legal Market

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The Center on Ethics and the Legal Profession at the Georgetown University Law Center and Thomson Reuters Legal Executive Institute and Peer Monitor® are pleased to present the 2020 Report on the State of the Legal Market *detailing our views of the dominant trends impacting the legal market in 2019 and key issues likely to influence the market in 2020 and beyond.*[1]

Incremental Improvement vs. Radical Change

At the Mexico City Olympics in 1968, a young American athlete named Dick Fosbury stunned the world by setting a new Olympic record in the men's high-jump event, clearing the bar at 7 feet, 4½ inches. What was even more amazing about Fosbury's performance was that he broke the previous record by using an entirely new jumping technique, a radical style that employed a backward twist and was widely derided by experts in the sport. But the new technique — dubbed the "Fosbury flop" — soon came to dominate the high-jump world. By 1972, most Olympic competitors were using Fosbury's style; and in 1976, all three Olympic medal winners had also adopted the new technique. Today, the Fosbury flop remains the premier style in the high-jump event.

At the recent Thomson Reuters Law Firm COO & CFO Forum held this past October, Prof. Willie Pietersen of Columbia Business School used the story of Dick Fosbury to describe how progress occurs in any area of human endeavor. Noting that the Fosbury flop was the fourth technique widely used by high jumpers since 1900,[2] Pietersen pointed out that each of the prior three techniques had prevailed for a number of years, with athletes making incremental improvements each year and jumping higher and higher as the technique was perfected. After a few years, however, each of the techniques was supplanted by a new style that enabled athletes to jump even higher.

Drawing on the high-jump analogy, Pietersen has noted that, in any field of human endeavor, "[t]here are periods of stability, in which continuous, incremental improvements are made, that are periodically interrupted by disruptive, revolutionary changes in which major breakthroughs are accomplished."[3] That means, as Pietersen explains, that "long-term success in business depends on the ability to do two seemingly contradictory things at the same time: improve existing processes and products (continuous, incremental change) and invent totally new, better processes and products (discontinuous, breakthrough change)."[4] And, of course, it is critically important to recognize when periodic disruptive changes are occurring.[5]

This story offers an interesting analogy to where the legal market is today. For the last three or four decades, the legal industry has operated on a model that has been essentially law-firm centric, a model that allowed senior partners in major law firms to control virtually every aspect of how legal services were defined, priced,

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1 The Georgetown Center on Ethics and the Legal Profession and Thomson Reuters gratefully acknowledge the participation of the following people in the preparation of this Report: from the Georgetown Center – James W. Jones, Senior Fellow and Director of Program on Trends in Law Practice (lead author); and Milton C. Regan, Jr., Professor of Law and Co-Director; and from Thomson Reuters – Steve Seemer, Senior Director of Thought Leadership; Joe Blackwood, Analyst in Thought Leadership; and Isaac Brooks, Analyst for Peer Monitor.

2 Early jumpers at the turn of the last century used an elaborate straight-on approach known as the "scissors technique." By 1912, however, the scissors approach was largely replaced by the "Western roll" method developed by American athlete George Horne, a technique that remained prevalent through the Berlin Olympics in 1936. In the years following World War II, the Western roll was overtaken by a new "straddle" technique perfected by both U.S. and Soviet jumpers. And that technique was in turn supplanted by the Fosbury flop in 1968.

3 Willie Pietersen, *Reinventing Strategy: Using Strategic Learning to Create & Sustain Breakthrough Performance* (2002), at 30.

4 *Id.*

5 It is interesting to note that, even after Fosbury's outstanding performance in the 1968 Olympics, many coaches and athletes refused to adopt the new technique, at least until its capacity for sustaining superior performance had been repeatedly demonstrated.

and delivered. Although there have been undercurrents of change evident for some time (probably going back 40 years) and although the 2008 recession undoubtedly accelerated and probably exacerbated those dramatic forces of change, the current model has remained remarkably resilient.

One way to look at the market over the past 10 years is to see it as a period of continuing, incremental improvement in which law firms have adjusted and readjusted the existing model sufficiently to sustain respectable — though certainly not extraordinary — performance.

However, taking that view is seeing only one side of the story. Over this same period, there has been mounting evidence that the underlying model itself is changing, that clients, non-law firm competitors, and even many law firms are now operating with very different assumptions about the role law firm services should play in the legal ecosystem and how such services should be delivered. In the past year or so, this evidence has grown to the point that it seems apparent that a fundamental shift is now well underway.

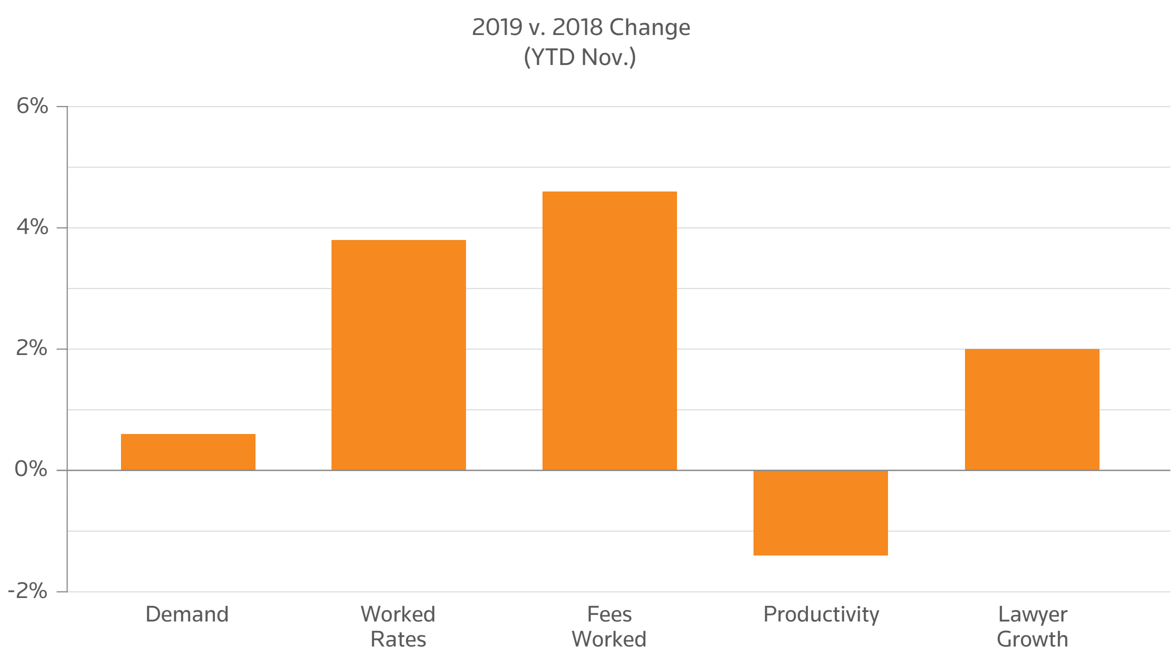
In the sections that follow, we take a deeper look at the new model for law firm services that appears to be emerging and consider the implications of this market shift for law firms engaged in commercial practice.

We begin, however, with a review of the performance of U.S. law firms in 2019, as reflected in Thomson Reuters Peer Monitor data.[6]

Current State of the Legal Market – By the Numbers

During 2019, most firms in the U.S. legal market experienced fairly steady overall financial performance — incremental improvements in most areas similar to what we have seen in recent years. Demand, rates, and headcount all grew during 2019; and while demand grew at a slower pace than during 2018, rate and headcount growth exceeded the year prior. Productivity fell back into negative growth territory, reversing performance from 2018. These key performance indicators are shown in Figure 1. Reflecting these positive trends, average revenue growth across the market was up 5.4% percent for the year.

Figure 1 – Key Performance Measures



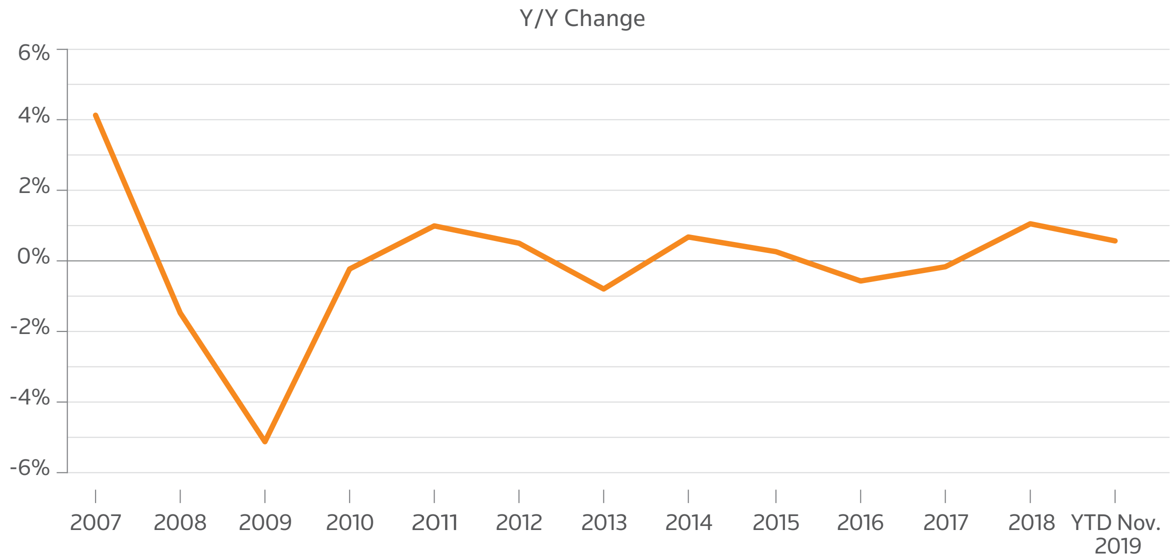
All timekeepers
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

6 Thomson Reuters Peer Monitor® data is based on reported results from 162 U.S.-based law firms, including 51 Am Law 100 firms, 54 Am Law Second Hundred firms, and 57 additional Midsize firms.

In terms of demand growth for law firm services,[7] Figure 2 sets out the variations in annual demand growth for the past dozen years. As can be seen, since 2012, demand growth has been slightly up in some years and slightly down in others, creating a growth pattern that is essentially stagnant. That stagnation continued in 2019, with demand growth virtually flat from the preceding year.

Figure 2 – Growth in Demand for Law Firm Services



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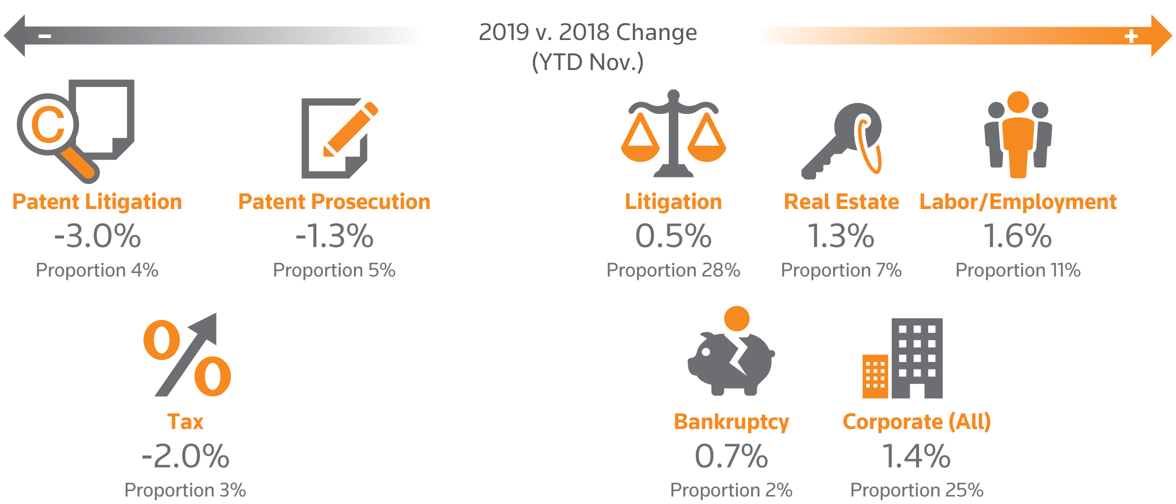
Source: Thomson Reuters Peer Monitor®

Figure 3 breaks down overall demand growth by key practice areas. As shown, demand growth was positive in most practices. Of particular note, Litigation continued to experience positive demand growth (as it had in 2018), reversing a long trend of negative performance. Growth in Bankruptcy moved from negative to positive, perhaps reflecting a much anticipated economic downturn over the next several months. On the other hand, Tax practices, which had grown slightly in 2018, returned to a negative growth territory.

Figure 3 – Demand Growth by Practice



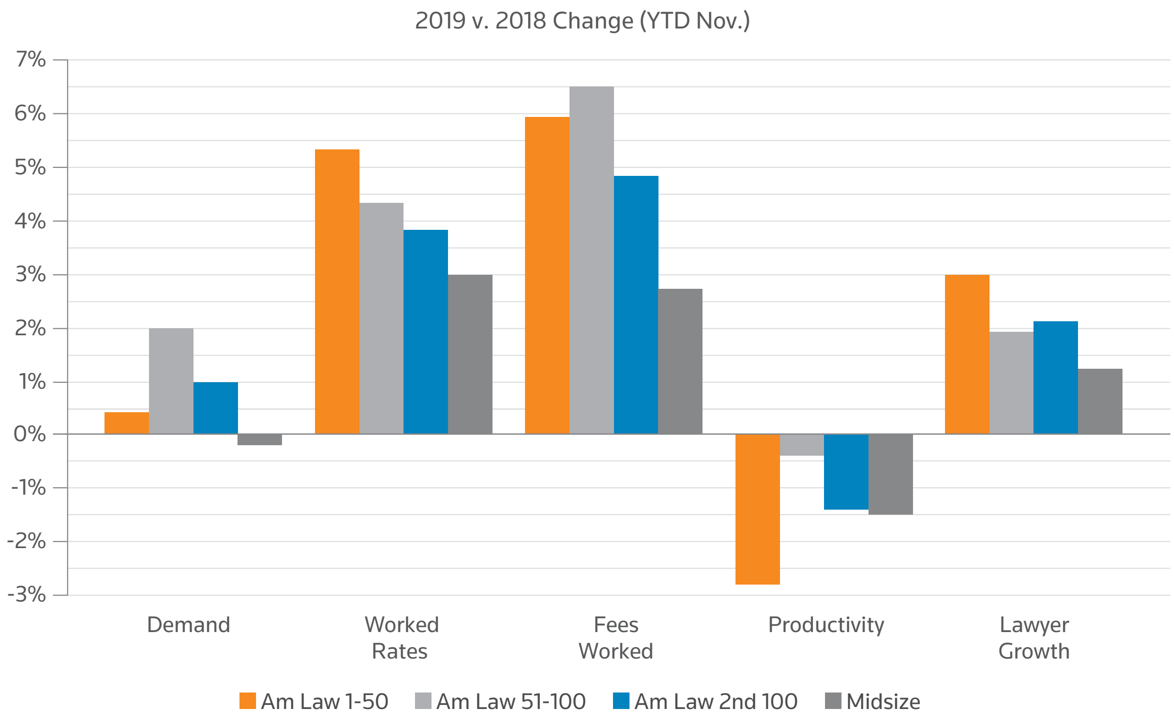
All timekeepers
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

7 For our purposes, "demand for law firm services" is viewed as equivalent to total billable hours recorded by law firms during a specified period.

As in prior years, performance was not even across the legal market during 2019. As shown in Figure 4, on a YTD basis through November, Am Law 1-50 firms and Am Law 51-100 firms outperformed other segments in most key indicators. It is interesting to note, however, that Am Law 51-100 firms outpaced Am Law 1-50 firms in demand growth and in fees worked.

Figure 4 – KPIs by Segment



All timekeepers
Billable time type; non-contingent matters

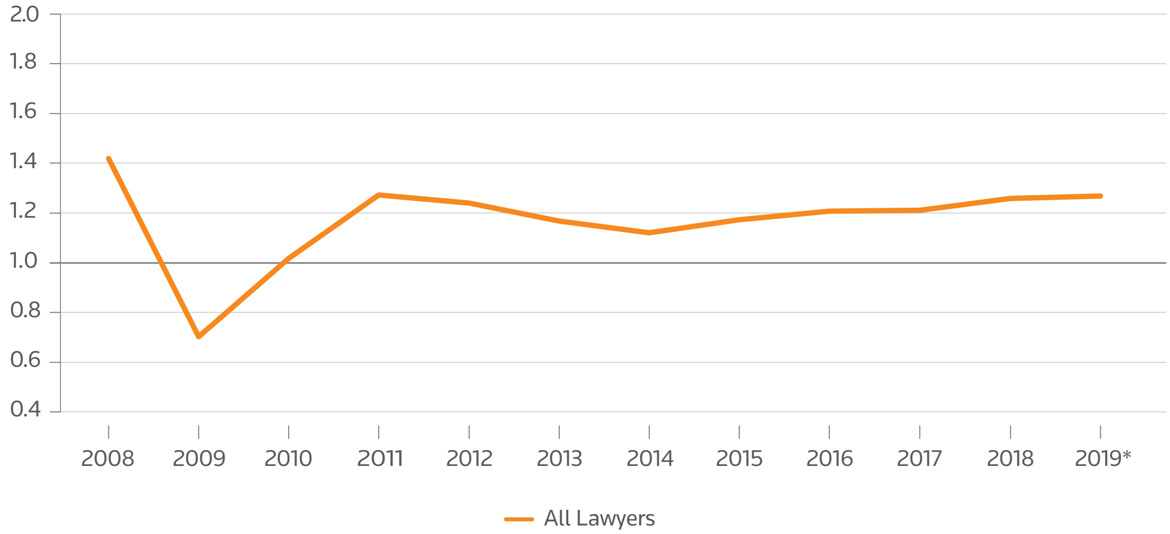
Source: Thomson Reuters Peer Monitor®

In regard to lawyer headcount, Figure 5 shows the annual replenishment ratio for all lawyers[8] over the past dozen years. As it shows, with the exception of the two-year period at the height of the Great Recession, law firms have experienced positive headcount growth in every year, although the growth rate has accelerated in recent years. In 2014, the ratio was 1.12, compared to 1.26 in 2019.

Growth has not been uniform across all categories of lawyers, however. As shown in Figure 6, headcount has grown consistently in recent years only among Associates and Senior/Staff Counsel. In both Partner categories — Equity and Non-Equity Partners — growth in headcount has been negative since 2012.

8 The replenishment ratio compares the rate of incoming lawyers to departing lawyers. Any number higher than 1.0 indicates that a firm is growing in terms of overall lawyer headcount.

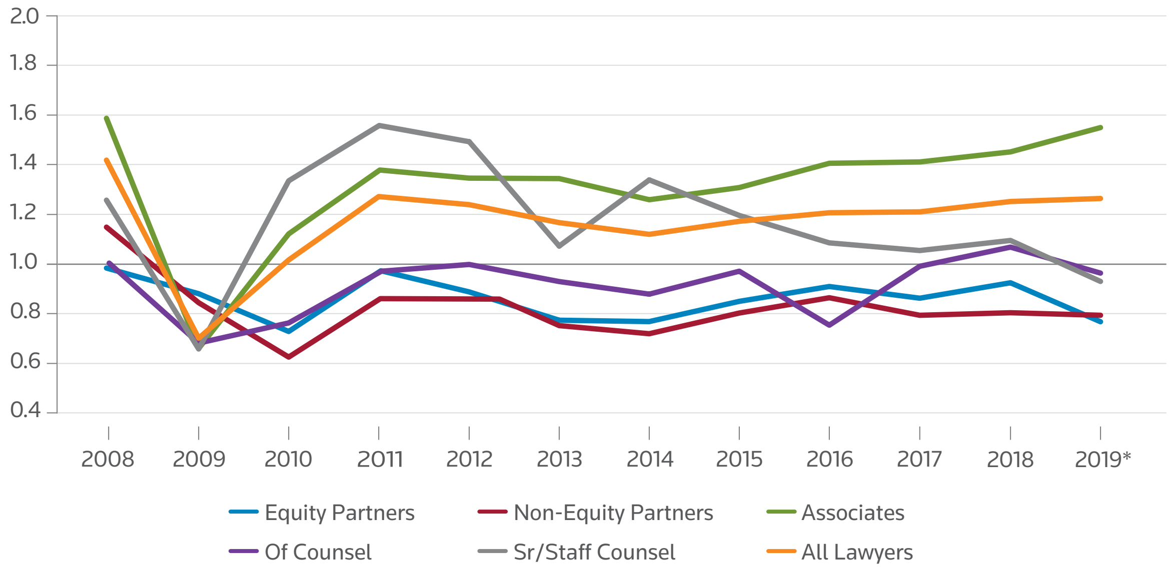
Figure 5 – Lawyer Replenishment Ratio



*Rolling 12 months, through Q3 (Q4 2018-Q3 2019)

Source: Thomson Reuters Peer Monitor®

Figure 6 – Replenishment Ratio by Lawyer Category

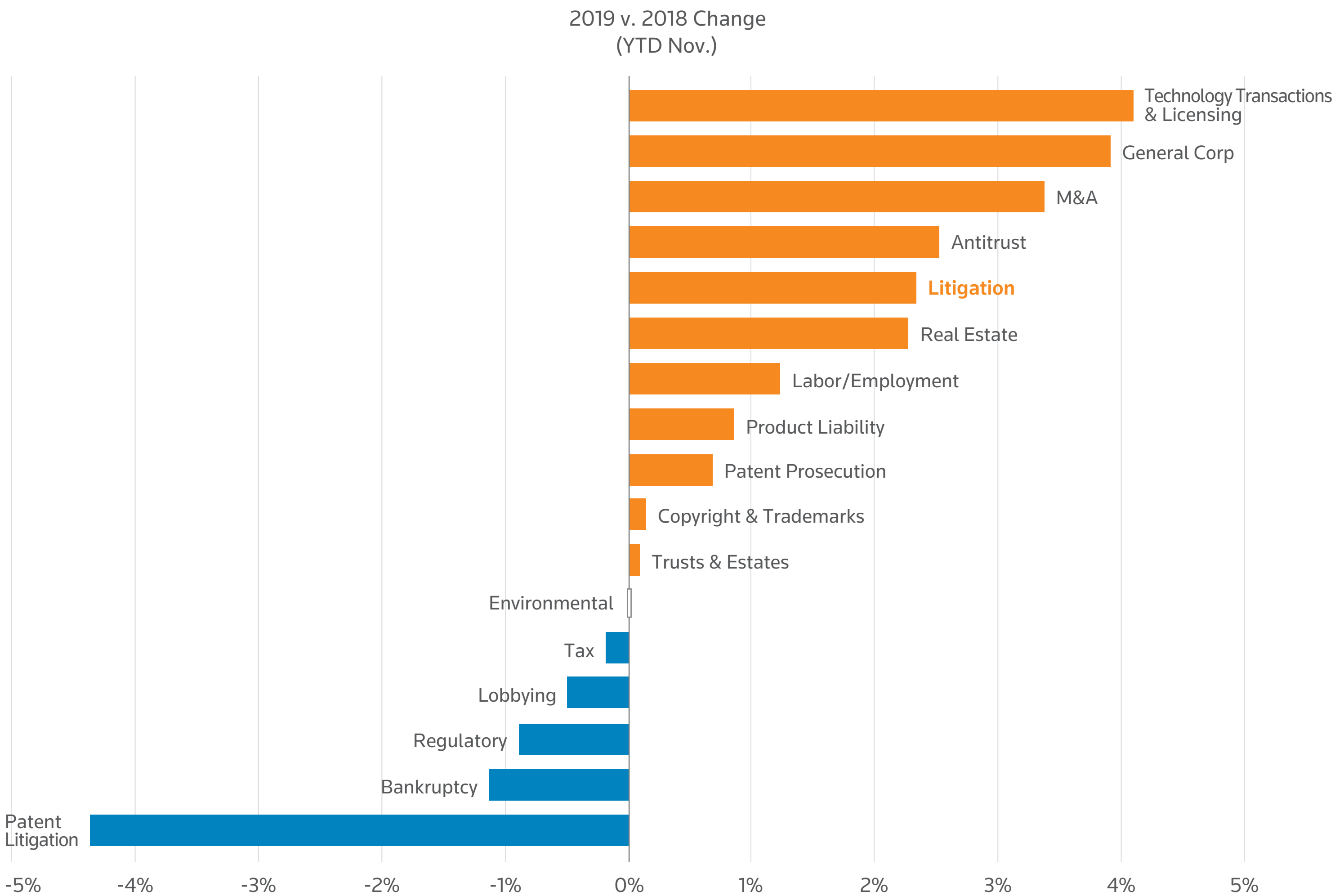


*Rolling 12 months, through Q3 (Q4 2018-Q3 2019)

Source: Thomson Reuters Peer Monitor®

To go a bit deeper into lawyer growth figures, it is interesting to note the primary practice areas in which firms are increasing their headcount, as shown in Figure 7. As indicated, a comparison of YTD November 2018 results with those of 2019, shows primary lawyer growth in the following practice areas: *i*) Technology Transactions & Licensing; *ii*) General Corporate ; *iii*) M&A; *iv*) Antitrust; *v*) Litigation; and *vi*) Real Estate. By contrast, the Tax, Lobbying, Regulatory, Bankruptcy, and Patent Litigation practice areas showed negative lawyer growth during the same period.

Figure 7 – Lawyer Growth by Practice

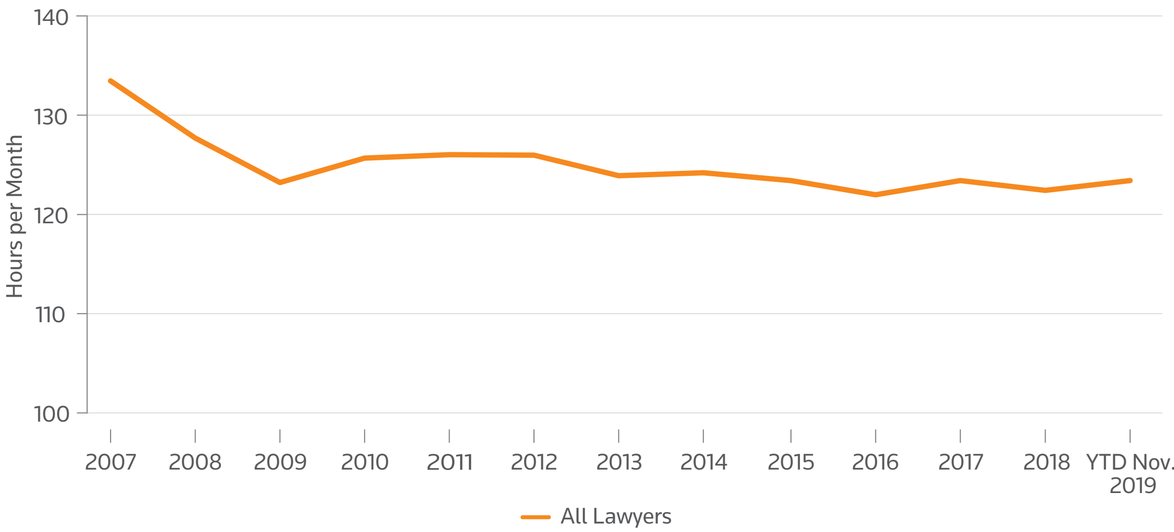


Lawyers only; Contractors excluded

Source: Thomson Reuters Peer Monitor®

Turning our attention to productivity, Figure 8 shows average billable hours worked per lawyer for all categories of lawyers across the market since 2007 (the year the Great Recession began). While the number of worked hours has been relatively stable in recent years, it should be noted that there remains a significant difference between average billable hours today (123 hours per lawyer per month) and those recorded in 2007 (134 hours per lawyer per month). Indeed, the difference equals 132 billable hours per lawyer per year across the market, a figure that represents a significant negative impact on law firm revenues.

Figure 8 – Hours Worked per Lawyer

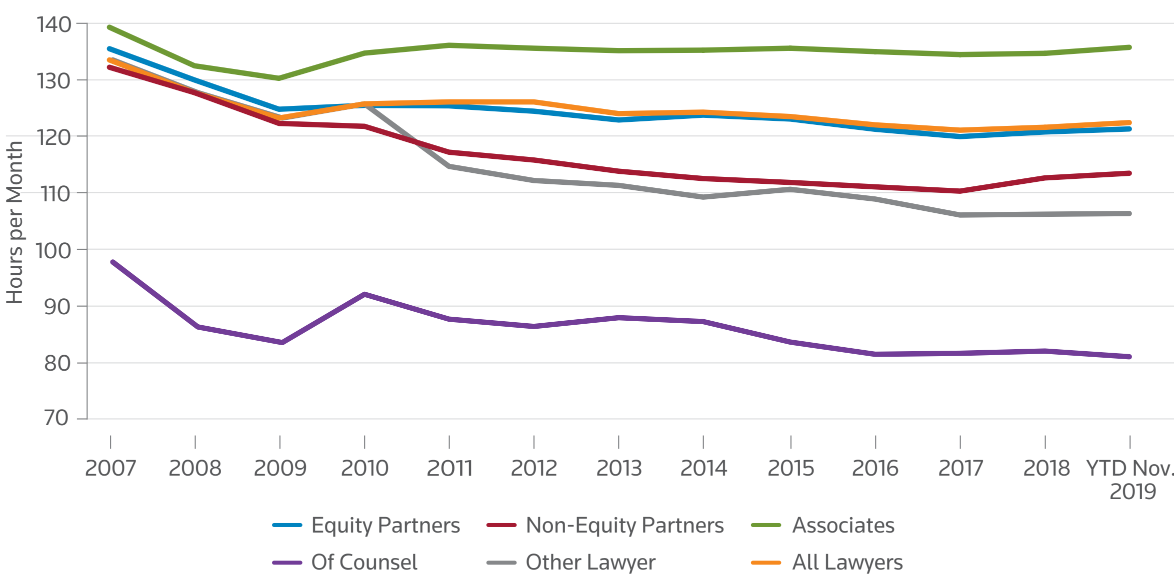


Lawyers only
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

Figure 9 shows more detail regarding hours worked by lawyer, breaking the statistics into lawyer categories. As indicated, the only category of lawyers with billable hours even approximating pre-Great Recession levels is Associates. All other categories of lawyer timekeepers remain down significantly from 2007 levels.

Figure 9 – Hours Worked per Lawyer – By Category

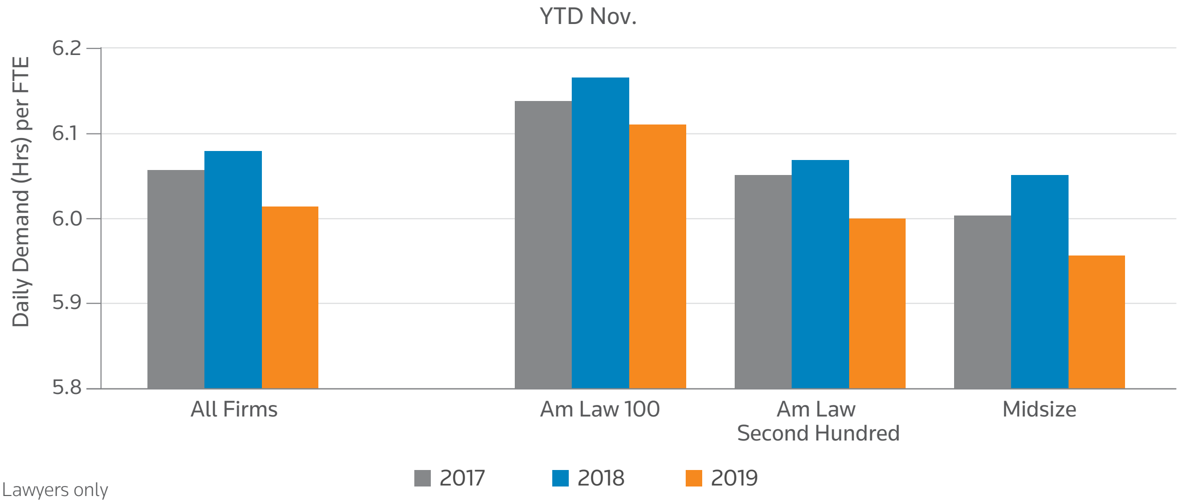


Lawyers only
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

For a more detailed perspective on hours worked per lawyer, Figure 10 shows average daily demand (as measured by billable hours worked) per full-time equivalent (FTE) for lawyers in the three major market segments in each of the past three years. As previously noted, Am Law 100 firms outperformed their smaller firm counterparts in each year. It's notable too, however, that all three categories of law firms experienced a decline in average daily demand from 2018 to 2019.

Figure 10 – Average Daily Demand per Lawyer

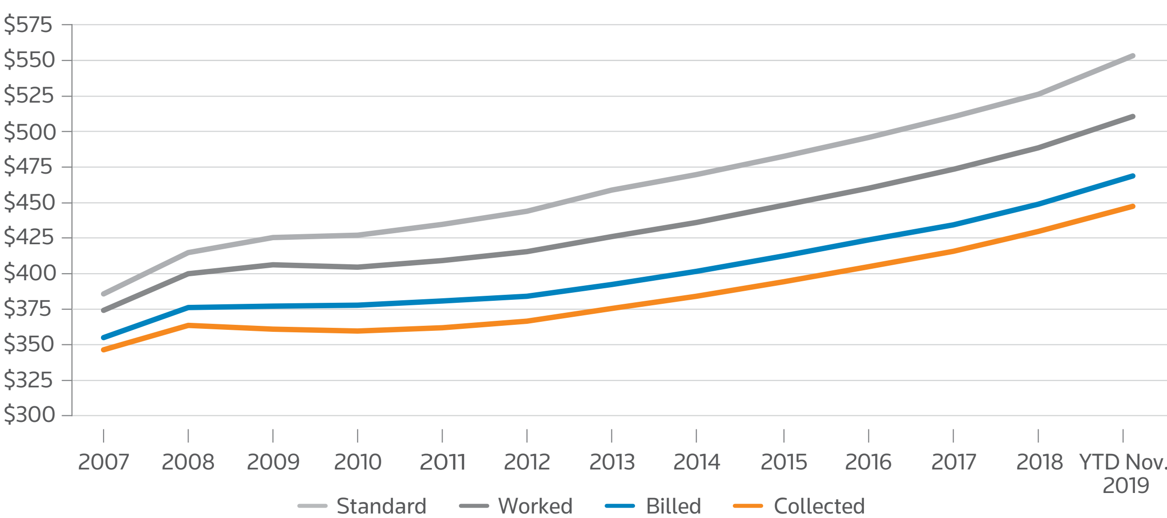


Lawyers only
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

As previously noted, the ability of law firms to steadily increase their rates has been the primary driver of law firm financial performance in recent years. That trend continued in 2019, as shown in Figure 11, with all categories of rates rising — Standard rates by 4.4 percent, Worked rates by 3.8 percent, Billed rates by 3.9 percent, and Collected rates by 3.3 percent.[9] That said, however, the ability to raise rates continued to vary among, and within, different market segments — as shown in Figure 12 — with Am Law 100 firms imposing the highest rates of increase, followed by Am Law Second Hundred firms, and then Midsize firms. Some Midsize firms, however, were able to successfully increase their worked rates at a level comparable to other segments as evidenced in Figure 12. There were also significant differences among practice groups as to rates as well. As indicated in Figure 13, Technology Transactions & Licensing showed the highest growth in Worked rates, followed by Antitrust, Patent Litigation, Copyright & Trademarks, and Tax. Interestingly, two of the largest practice areas (in terms of billable hours) — General Corporate and Litigation — ranked in the middle of the pack in terms of rate growth.

Figure 11 – Lawyer Rate Progression

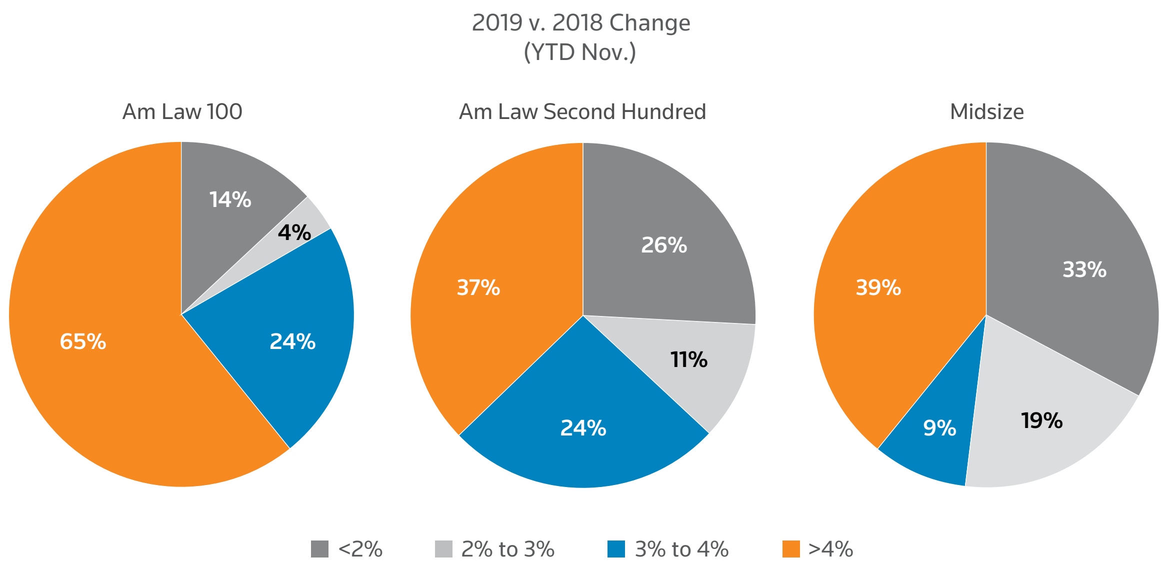


Lawyers only
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

9 *Standard* rates are a firm's published rates, without taking into account any discounts or adjustments. *Worked* rates, also referred to as negotiated rates, are the rates that a firm agrees to with particular clients for work on given matters. *Billed* rates are those rates that a firm actually invoices to clients, reflecting any discounts or adjustments from Worked rates that the firm considers appropriate. And *Collected* rates are those rates reflected in actual payments received by a firm from its clients

Figure 12 – Worked Rate Growth by Proportion of Firms



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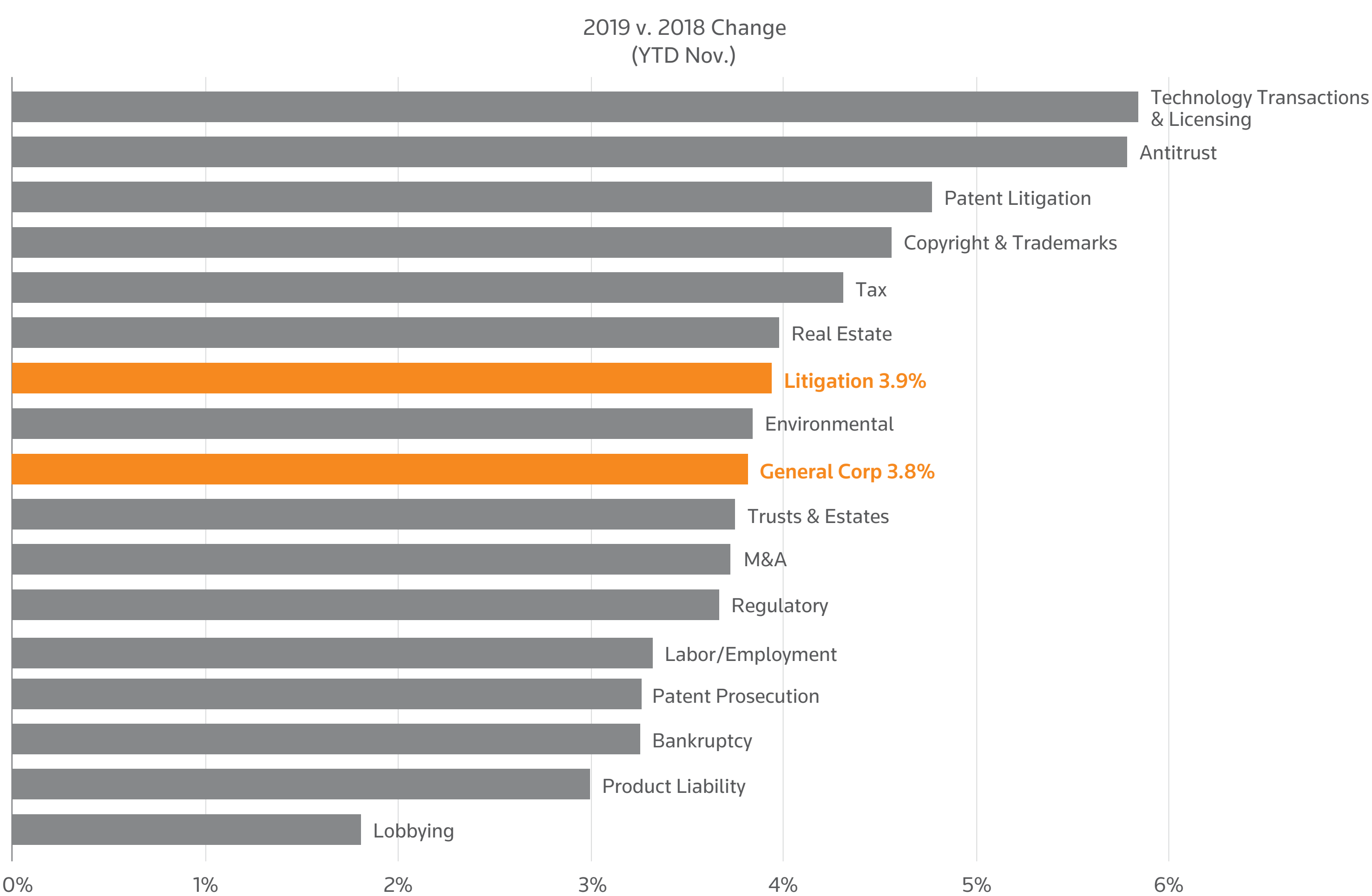
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

Figure 13 – Worked Rate Growth by Practice

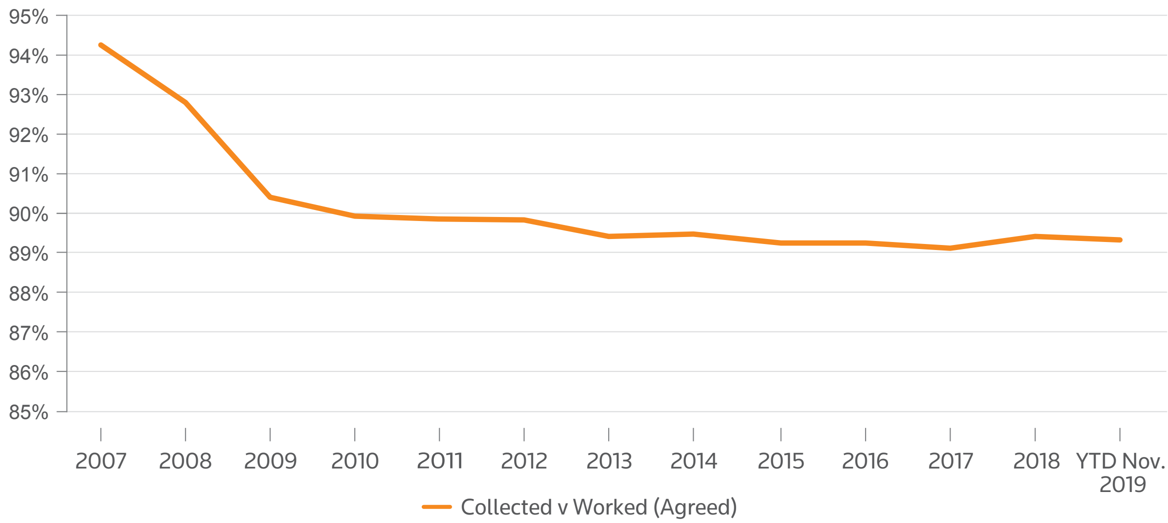


Lawyers only; Contractors excluded

Source: Thomson Reuters Peer Monitor®

As firms have continued to raise their rates, clients have, of course, continued to push back. Interestingly, however, over the past seven years or so client pushback does not appear to have become more aggressive. As shown in Figure 14, since 2013, the Collected rate realization as measured against Worked (or Agreed) rates has remained remarkably stable in the general range of the 2019 rate of 89.3 percent.

Figure 14 – Collection Realization against Worked (Agreed)

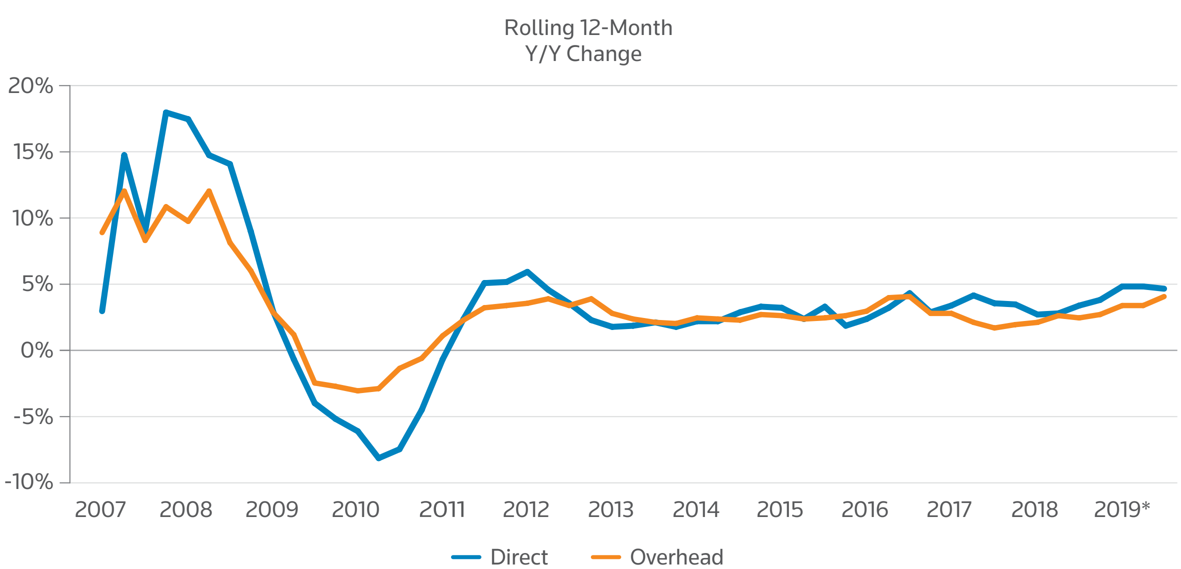


Lawyers only
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

On the expense side, both Direct and Indirect (or Overhead) expenses[10] continued to rise in 2019, reflecting the pattern of the past three or four years. As indicated in Figure 15, Direct expenses rose 4.7 percent and Indirect expenses 4.1 percent. That compares to increases in 2018 of 3.8 percent in Direct expenses and 2.7 percent in Indirect expenses. As shown in Figures 16 and 17, the rates of expense increases varied for different segments of the legal market, with Am Law 100 firms recording the highest increases in both categories.

Figure 15 – Expense Growth

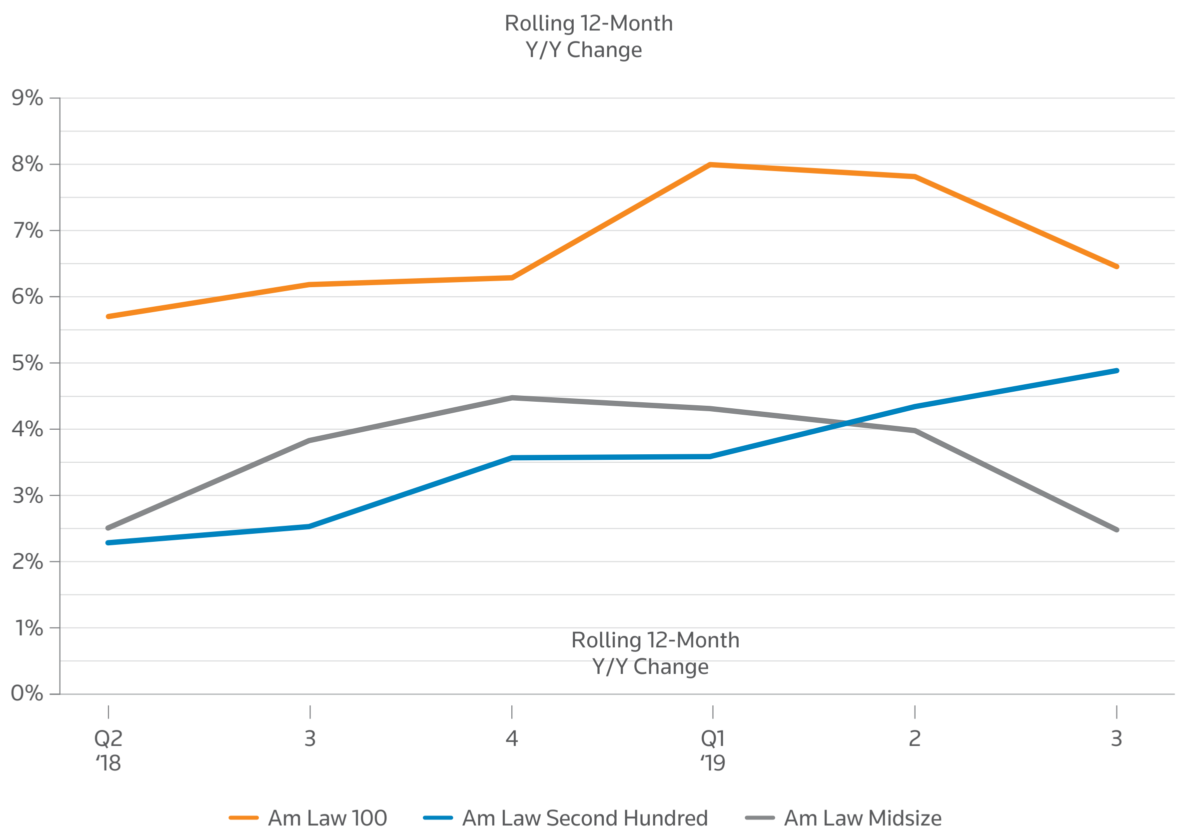


*Rolling 12 months, through Q3 (Q4 2018-Q3 2019)

Source: Thomson Reuters Peer Monitor®

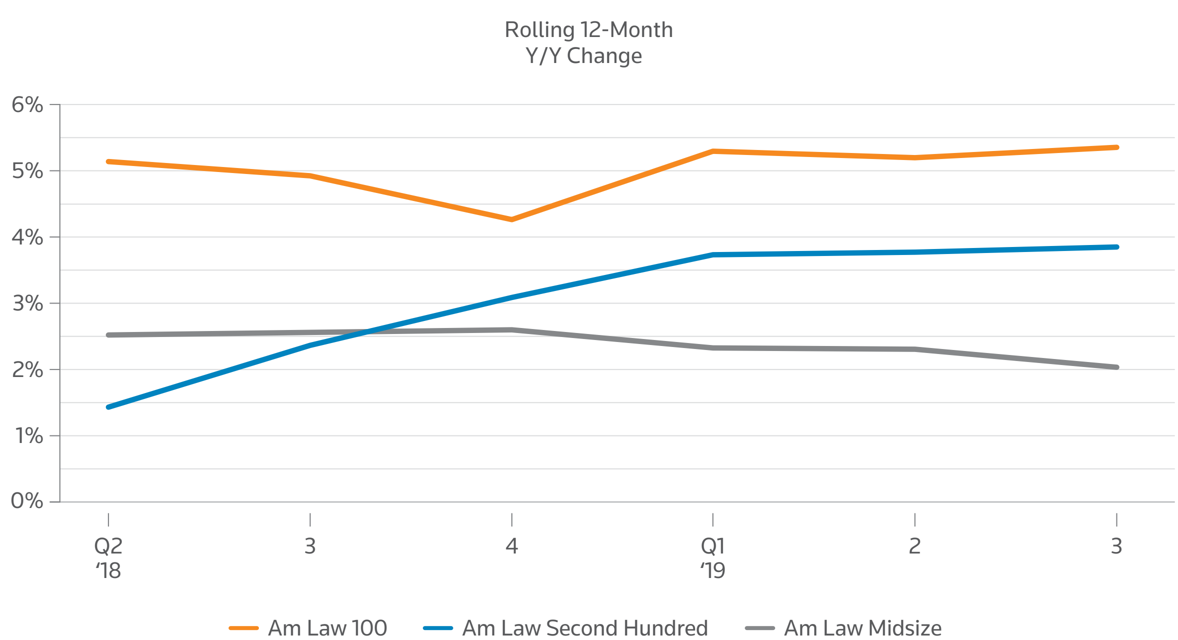
10 *Direct* expenses refer to those expenses related to fee earners, primarily the compensation and benefits costs of lawyers and other timekeepers. *Indirect* or *Overhead* expenses refer to all other expenses of the firm, including occupancy costs, administrative and staff compensation and benefits, technology costs, recruiting expenses, business development costs, and the like.

Figure 16 – Expense Growth – Direct Expenses



Source: Thomson Reuters Peer Monitor®

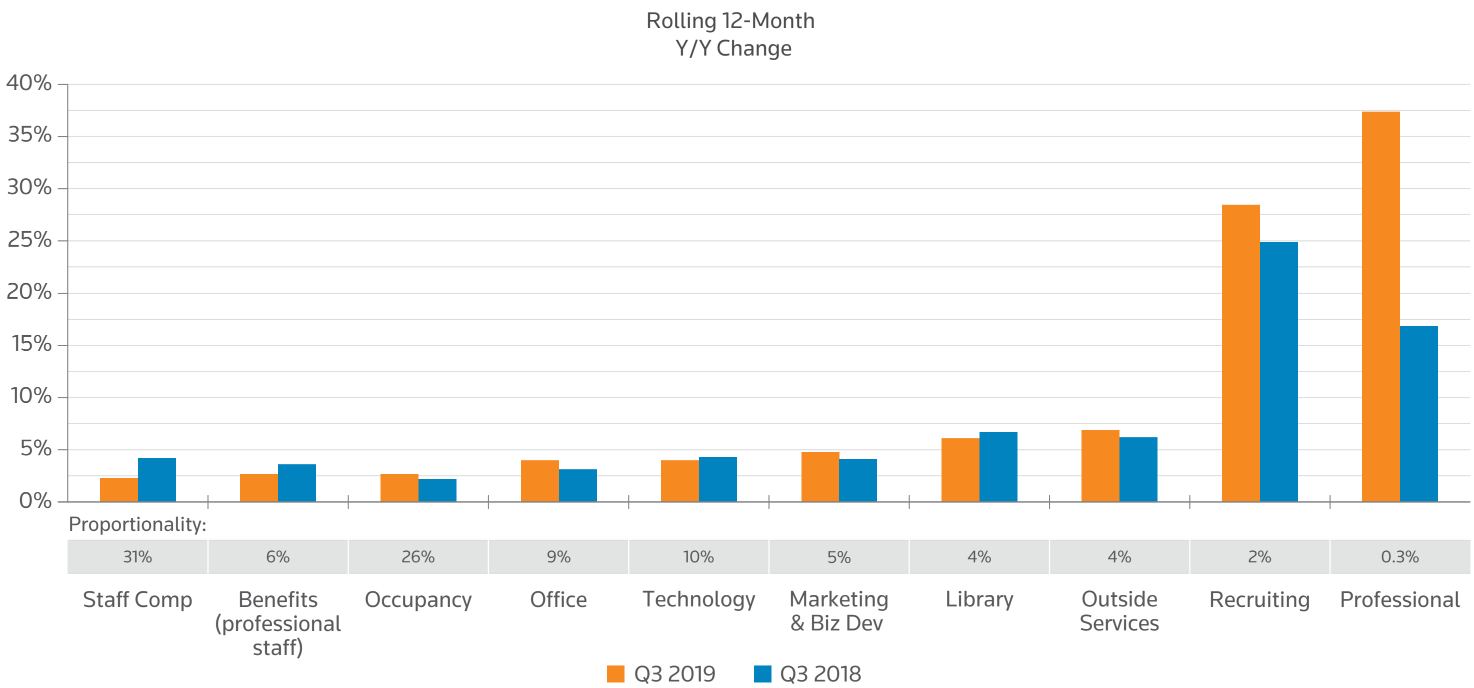
Figure 17 – Expense Growth – Overhead Expenses



Source: Thomson Reuters Peer Monitor®

Looking at overhead expenses in more detail, Figure 18 shows that firms continued to incur significant cost increases for Recruiting and Professional Services, as they had in 2018, although both of these categories represent fairly modest percentages of overall Overhead expenses. Figure 19 shows the same Overhead detail but broken out on a per lawyer FTE basis.

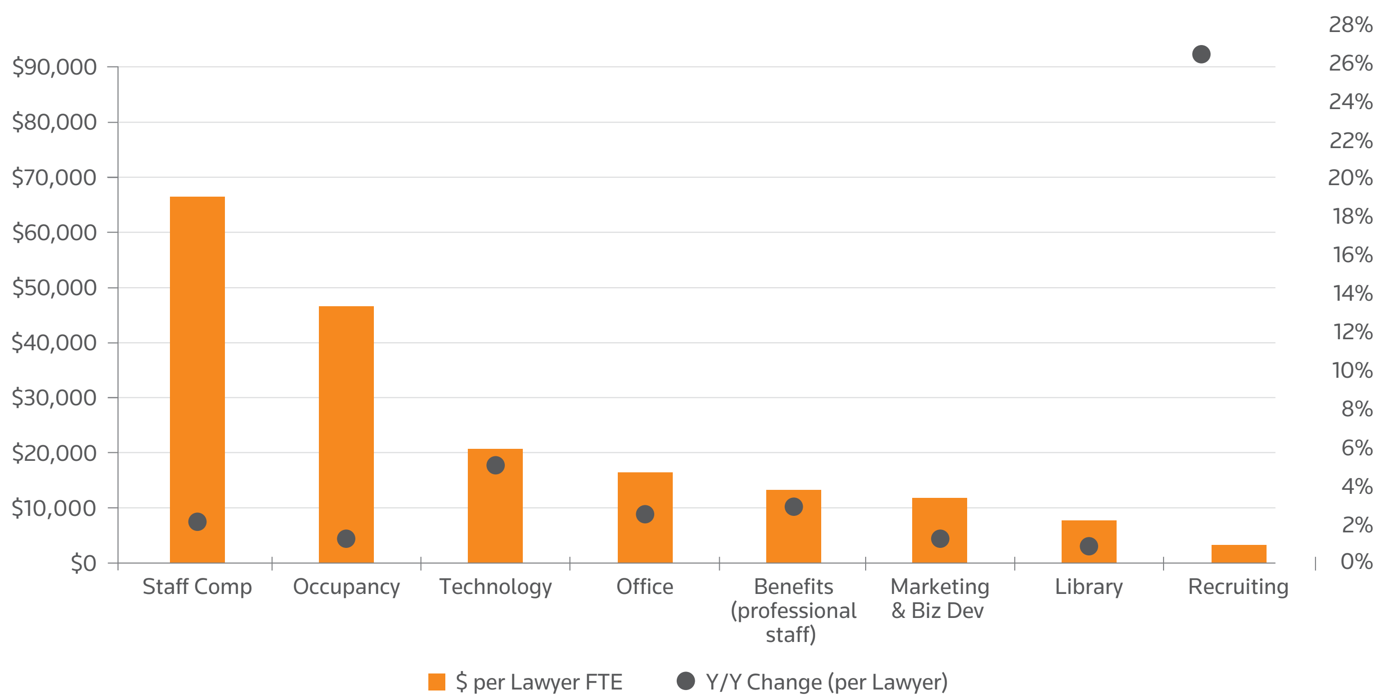
Figure 18 – Overhead Expense Growth by Category*



*Rolling 12 months, through Q3 (Q4 2018-Q3 2019)

Source: Thomson Reuters Peer Monitor®

Figure 19 – Overhead Expense per Lawyer FTE by Category*

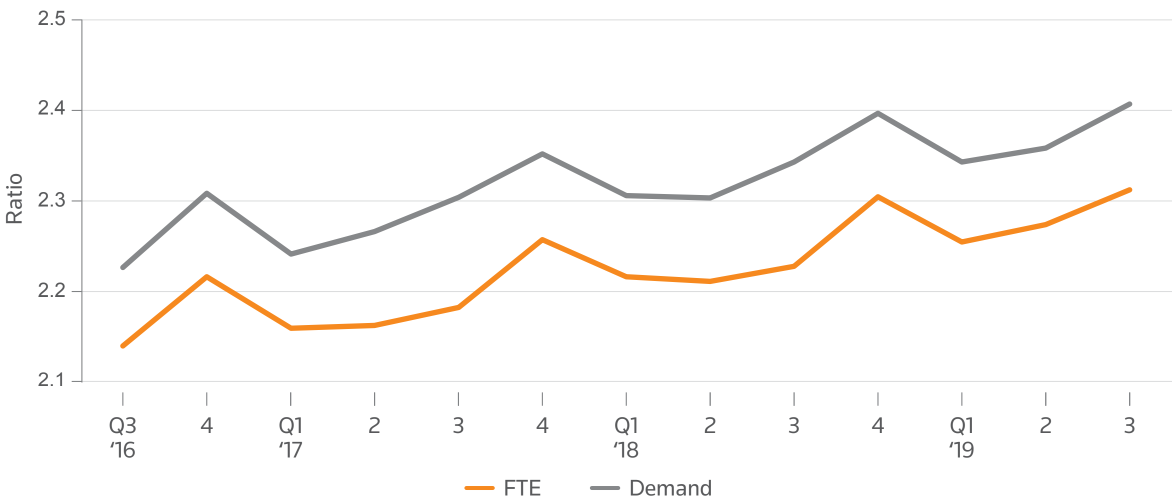


*Rolling 12 months, through Q3 (Q4 2018-Q3 2019)

Source: Thomson Reuters Peer Monitor®

One interesting finding emerging from Peer Monitor® data over the last three or four years relates to the changes in leverage occurring across the market, particularly when viewed on a market segment basis. As shown in Figure 20, Leverage — the ratio of lawyers to equity partners — has increased steadily over the past few years, whether measured on the basis of Demand or FTE.[11] As shown in Figure 21, however, the shape of Leverage looks very different for Am Law 100 firms than it does for Am Law Second Hundred firms or Midsize firms.

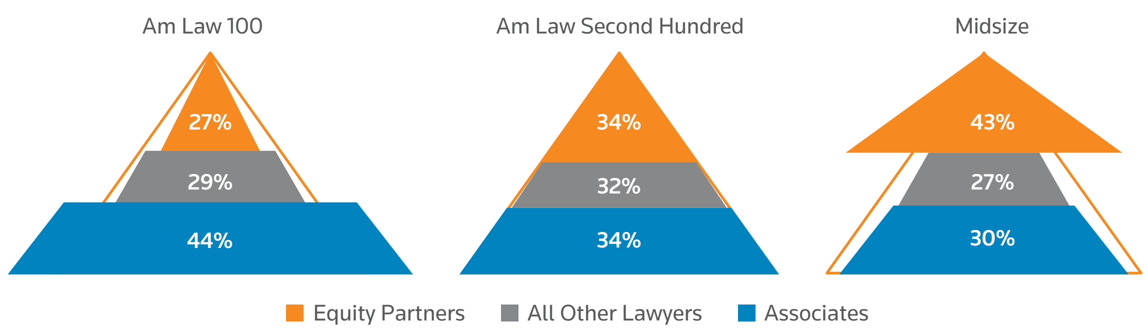
Figure 20 – Leverage (Lawyer to Equity Partner)



Lawyers only; Contractors excluded
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor®

Figure 21 – Average Proportion of Lawyers by Title



Source: Thomson Reuters Peer Monitor®

In summary, during 2019 most U.S. law firms continued to perform reasonably well in the face of challenging market conditions. But the results from the past year also highlight some worrisome trends, including:

- A continuing lackluster performance in demand growth, which has been essentially flat to somewhat negative over the last decade;
- Continuing negative performance in productivity, also reflecting an on-going trend (with the exception of slight improvement in 2018);
- Increasing rate of growth for direct and indirect expenses, continuing a trend of the last three or four years;
- Singular reliance on rate increases to drive positive financial performance; and
- Limited resources to deal with any serious economic downturn in the future.

11 Leverage measured by Demand compares the total number of billable hours of all lawyers to the total billable hours recorded by equity partners. Leverage computed on the basis of FTEs simply compares the total number of FTE lawyers with the total number of FTE equity partners.

Evidence of an Emerging New Model in the Legal Market

As previously noted, one way to look at the market for law firm services over the past decade is to see it as a period of continuing, incremental improvement in which law firms have adjusted their existing service models sufficiently to produce respectable — though not extraordinary — results. The financial performance of law firms in 2019 arguably reflects a continuation of that trend.

At the same time, however, during the past year or so, there has been mounting evidence that revolutionary changes are afoot. These changes will likely erode future performance if firms fail to take account of a new model for law firm services that appears to be rapidly emerging. While hints of these major changes — the strengthening hand of clients, the growth in non-law firm legal competition, and increased innovation by law firms in response — have been evident for some time, they have now come starkly into focus.

DRAMATIC CHANGE IN THE ROLE OF CLIENTS

It has been a dozen years since the Great Recession resulted in clients taking decisive control of the legal market, reversing decades of deferral to their outside law firms. After some bumps and starts, clients are now effectively exercising their new-found power over the market in ways designed to push improved efficiency, predictability, and cost effectiveness in the delivery of legal services. Evidence of these trends includes:

- Revisions to the processes of hiring outside counsel as more clients have come to rely on competitive procurement processes for most major matters, often managed in collaboration with corporate procurement departments;
- Imposition of more vigorous budgeting and billing processes that require law firms to operate in a more cost effective and accountable manner;[12]
- Widespread use of outside counsel guidelines that impose requirements for billing, expenses, staffing, project management, and other matters;[13]
- Increased reliance on legal operations professionals to manage outside counsel relations;[14]
- Widespread disaggregation of services as clients have increasingly opted to create "virtual teams" of lawyers to handle particular projects — with teams consisting of lawyers from one or more outside law firms working with designated in-house lawyers and with other non-law firm service providers (sometimes including project managers, accountants, legal process outsourcers, legal staffing firms, and many others); and
- Increased reliance on in-house lawyers to provide many of the services previously obtained from outside law firms.[15]

SIGNIFICANT GROWTH IN NON-LAW FIRM COMPETITORS

Over the past few years, there has also been significant growth in the numbers and competitive threats posed by non-law firm competitors in the legal market.

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12 A recent survey by Altman Weil reported that 81 percent of 238 corporate law departments responding indicated that they require budgets from outside counsel for all major matters. Altman Weil, Inc., *2019 Chief Legal Officer Survey: An Altman Weil Flash Survey*, Nov. 2019 ("Altman Weil 2019 CLO Survey"), at v.

13 Altman Weil found that such outside counsel guidelines are used by 81 percent of law departments surveyed. *Id.*

14 Altman Weil also found that, in 2019, 46 percent of respondents reported they had full-time or part-time legal operations managers, jumping from 39 percent in 2018. More than 75 percent of large law departments — those with more than 50 lawyers — employ someone in this position. According to the Altman Weil report, "[t]hese professionals manage multiple functions in the department including finance, technology, people, outside counsel relationships, outside counsel spending and day-to-day operations — and they do their jobs well." *Id.* at ii-iii.

15 Altman Weil reported that, in 2019, 49 percent of the average corporate law department budget was spent on internal costs (including primarily compensation and benefits of in-house staff), while outside counsel costs made up only 45 percent of department spend. (The remaining 6 percent went to non-law firm vendors of legal services.) This was the second year in a row when internal spend was the largest portion of corporate legal budgets — something that Altman Weil notes was "unprecedented before 2018." *Id.* at i-ii.

In January 2019, Thomson Reuters Legal Executive Institute, in partnership with the Saïd Business School at Oxford, the Center on Ethics and the Legal Profession at Georgetown Law, and U.K. legal research firm Acritas, issued their second global survey of alternative legal service providers (ALSPs).[16] That survey found that ALSPs constitute a dynamic and growing segment of the legal industry, with global annual revenues for 2017 estimated at $10.7 billion (a 27 percent increase over the $8.4 billion estimated in the first global survey using 2015 data). That translates to a 12.9 percent compound annual growth rate over the two-year period. The larger ALSPs interviewed for the survey expect to grow at 24 percent a year, and the research reflected in the survey supported that high-growth projection.[17]

The 2019 survey also found that corporate use of ALSPs had expanded significantly from the first survey two years before. It estimated that 38 percent of corporations now use ALSPs for Litigation & Investigation Support, 34 percent for Legal Research Services, 32 percent for Regulatory Risk & Compliance services, 32 percent for Document Review & Coding services, and 28 percent for E-discovery services. Overall, in four of these five most common use cases, corporate use at least *doubled* over the two-year period between surveys.[18]

Use of ALSPs was also shown to be increasing among law firms themselves, again with significant growth over the two-year period between the surveys. And, the growth is occurring in all segments of the law firm market, though it is strongest among large law firms.[19] Focusing on the three most common use cases, the 2019 survey found that 65 percent of Large law firms used ALSPs for E-discovery services (58 percent of Midsize firms and 23 percent of Small firms); 50 percent of Large firms used them for Legal Research services (46 percent of Midsize and 37 percent of Small firms); and 52 percent of Large firms used them for Litigation & Investigation Support (43 percent of Midsize and 26 percent of Small firms).[20]

Of course, any discussion of ALSPs would be incomplete without some explicit reference to the Big Four accounting and auditing firms. As described in a recent article by the Harvard Law School Center on the Legal Profession's David Wilkins and Maria José Esteban Ferrer:

> [T]he Big Four legal networks now have a significant presence in every important legal market in the world with the notable exception of the United States. Nor are the legal services delivered by these networks confined to tax. Although tax-related advisory services remain an important cornerstone, the Big Four legal networks are now delivering services in a broad range of legal fields, including premium practices such as finance and M&A, and fast-growing ones such as compliance and employment law.[21]

To cite only some of the more recent examples of Big Four expansions into the legal market:

- In 2018, Deloitte launched Legal Management Consulting to help corporate legal teams "keep pace with the commercial needs of the business" and "to do more with the same or fewer resources;"
- Also in 2018, Deloitte launched a strategic alliance with global law firm Berry Appleman & Leiden to assist corporate clients with immigration issues around the world;
- And in 2019, Deloitte formed an alliance with another firm, Epstein Becker Green, "to support clients who require a global solution for employment law and workforce management issues;"
- In 2017, PwC launched ILC Legal, a U.S. law firm intended to assist clients on international matters;
- Also in 2017, PwC formed Flexible Legal Resources to provide flexible staffing solutions;

16 Thomson Reuters Legal Executive Institute, *Alternative Legal Service Providers 2019: Fast Growth, Expanding Use and Increasing Opportunity*, Jan. 2019 (ALSP Survey 2019). This survey was a follow-up to a similar one conducted in 2017, designed to measure the size and scope of the ALSP segment of the legal market and to measure law firm and corporate usage of and attitudes toward ALSPs. The 2019 survey included 517 responses — 335 from law firms and 182 from corporate law departments.

17 ALSP Survey 2019, at 1.

18 *Id.* at 4-5.

19 For our purposes, Large law firms were defined as those with 175 or more lawyers; Midsize firms as those with between 30 and 174 lawyers; and Small firms as those with 29 lawyers or fewer.

20 *Id.* at 6.

21 David B. Wilkins and Maria José Esteban Ferrer, "Taking the 'Alternative' out of Alternative Legal Service Providers," previously published in *New Suits: Appetite for Disruption in the Legal World*, ed. by Michele DeStefano and Guenther Dobrauz (Stämpfli Vertag, 2019) (Wilkins-Esteban).

- In 2018, KPMG (with the help of former King & Wood Mallesons' global managing partner Stuart Fuller) launched its Legal Operations & Transformation Services unit, designed to support corporate in-house legal functions;
- In 2018, EY Legal acquired Riverview Law, a managed legal services provider previously owned and funded in part by DLA Piper; and
- In 2019, EY acquired from Thomson Reuters the legal process outsourcing firm Pangea3.[22]

INNOVATIVE RESPONSES BY LAW FIRMS

In recent years, law firms themselves have begun to respond to these market changes, sometimes in quite innovative ways. While not all firms have embraced these changes with equal commitment, across the industry there are now clear indications — as outlined below — that many law firms are adjusting to new ways of doing business.

Increased Reliance on Allied Professionals and Specialists — One of the most noticeable trends in law firm management over the past two decades has been the growth in the role of allied professionals in the C-suites of firms of all sizes. Almost all firms of any significant size now have the equivalent of a chief operating officer, chief financial officer, HR director, chief technology officer, etc. Historically, these roles have been primarily inward-facing, dealing mostly with internal firm issues. In recent years, however, many firms have increasingly used specialists as important members of client-facing teams, relying on them for expertise on such topics as pricing, project management, and technology adoption. Interestingly, this development parallels (and may partially be in response to) the growing importance of legal operations specialists within clients' legal departments. Firms utilizing allied professionals in these kinds of client-facing roles — and there are many of them — have generally found such persons highly effective in improving communications with clients. As Reese Arrowsmith, head of legal operations for Campbell's Soup, noted, "the business professionals' presence adds a different perspective than that of a relationship partner focused on the immediate fulfillment of a client's legal needs. They can make sure the firm is delivering services with the same strategy and methods that the in-house operations person has for the company."[23]

Improved Internal Systems — In recent years, many law firms (particularly larger ones) have taken significant steps to improve efficiencies in the delivery of their legal services, to support their pricing strategies, and to make better use of profitability data. The extent of these activities can be seen in the results reported in Altman Weil's most recent survey of 362 U.S. law firms.

In regard to measures to improve efficiencies in legal service delivery, the survey showed that:

- 64 percent of Large law firms and 43 percent of Midsize law firms[24] are using technology tools to replace human resources;
- 64 percent of Large firms and 42 percent of Midsize firms are rewarding efficiency and profitability in compensation decisions;
- 63 percent of Large firms and 27 percent of Midsize firms provide ongoing project management training and support;
- 49 percent of Large firms and 21 percent of Midsize firms have formal knowledge management programs; and
- 38 percent of Large firms and 17 percent of Midsize firms are engaged in the systematic reengineering of work processes.[25]

22 For a more detailed description of these moves by the Big Four, *see* Wilkins-Esteban, at 20-25.
23 Dan Packel, "A Seat at the Table," *The American Lawyer*, Dec. 2019, at 26.
24 For these purposes, a law firm with 250 lawyers or more was regarded as a Large firm, while firms with under 250 lawyers were regarded as Midsize.
25 Altman Weil, Inc., *2019 Law Firms in Transition Survey: An Altman Weil Flash Survey*, May 2019 ("Altman Weil 2019 Law Firm Survey"), at 21.

As to improving and supporting more effective pricing strategies, the survey found that:

- 86 percent of Large firms and 57 percent of Midsize firms are collaborating with their clients on creative fee options;
- 77 percent of Large firms and 44 percent of Midsize firms are developing data on cost of services sold;
- 59 percent of Large firms and 35 percent of Midsize firms are training their lawyers to talk with clients about pricing;
- 76 percent of Large firms and 14 percent of Midsize firms have added a pricing director or staff support;
- 49 percent of Large firms and 17 percent of Midsize firms are setting margin goals in firm and practice group business plans;
- 37 percent of Large firms and 19 percent of Midsize firms are identifying each client's unique pricing preferences; and
- 32 percent of Large firms and 15 percent of Midsize firms are incorporating pricing into all of their planning efforts.[26]

And, in regard to the use of profitability data, the survey reported that:

- 91 percent of Large firms and 72 percent of Midsize firms use profitability data to assess partner performance;
- 89 percent of Large firms and 50 percent of Midsize firms use such data to analyze profitability of individual clients; and
- 78 percent of Large firms and 47 percent of Midsize firms use profitability data to manage their practice groups.[27]

Expanded Partnering & Outsourcing of Services — One of the most interesting trends over the past decade has been the increasing recognition by law firms that, for cost, efficiency, and quality reasons, it is often more desirable for a firm to outsource certain services closely related to its legal work rather than to provide the services on its own. This has resulted in recent years in a significant increase in both outsourcing and partnering with other providers of professional services. (Strong evidence of this trend can be seen in the previously mentioned survey of ALSPs, published by Thomson Reuters and others.)

According to the ALSP survey, a majority of Large law firms[28] are using ALSPs for E-discovery, Non-legal Research, Litigation & Investigation support, Document Review & Coding, and Legal Research.[29] And all of these percentages were up significantly from only two years before.

Moreover, the survey found that, while cost was certainly a factor in firms' decisions to outsource these services, issues of expertise and quality were also important considerations. As the survey report notes:

> Across law firms, cost is recognized as an important driver. But more surprising in this year's report is the extent to which law firms, as well as corporate clients, are turning to ALSPs for specialized expertise. Law firms are most likely to cite the specialized expertise of ALSPs when engaging them for litigation and investigation support, by 74 percent; e-discovery by 62 percent; and non-legal/factual research by 61 percent… .[30]

In most instances, law firms are outsourcing to ALSPs directly as third-party vendors. In some cases, however, there appears to be a preference for partnering arrangements with the third-party professionals. The survey found, for example, that about half of law firms that used ALSPs for either intellectual property management or specialized legal advice provided by licensed lawyers preferred to do so in partnership arrangements. And over 40 percent of firms using ALSPs for litigation and investigation support, legal drafting services, and e-discovery used the partnership approach as well.

26 *Id*. at 24.
27 *Id*. at 34.
28 For purposes of the ALSP survey, a Large law firm is defined as one with 175 or more lawyers.
29 ALSP Survey 2019, at 5-6.
30 *Id*. at 9.

Creation of "Captive" Subsidiaries for Legal Related Services — An even more stark example of the growing openness of law firms to a blended approach — *i.e.*, one that combines traditional legal services with other related professional expertise — to the delivery of legal services is the creation of so-called Captive Subsidiaries. This strategy has seen some law firms in recent years form these in-house subsidiaries to provide a wide variety of law-related services.[31] While this is a strategy that to date has been adopted by only a minority of firms, the number of such firms has expanded significantly over the past few years and the scope of activities of such subsidiaries has become quite impressive. To cite but a few examples:

- Allen & Overy has launched several such entities, including A&O Consulting, aosphere (for regulatory and legislative tracking worldwide), Fuse (for technology innovation and solutions), and Peerpoint (for legal talent access) — all packaged under the firm's Advanced Delivery Solutions;
- Denton's recently launched Denton's Risk Consulting to join a number of other similar organizations pioneered by the firm;
- Eversheds Sutherland recently announced Konexo (described as "an alternative legal services provider"), as well as Eversheds Sutherland Consulting and Eversheds Sutherland Ignite (organizations providing services for in-house law departments);
- Duane Morris operates a wide variety of subsidiaries including, among others, Duane Morris Government Strategies (for lobbying and government relations) and its Tax Accounting Group; and
- Littler Mendelson currently operates a number of subsidiaries including Littler Mendelson Service Solutions (proprietary offerings for employment and labor issues), Littler/Edge (computer access to information/services), Littler CaseSmart (platform for matter management), Littler Workforce Policy Institute (for legislative and regulatory advocacy), and Compliance HR (for HR audit services using AI technology).

The recent ALSP survey found that 44 percent of the law firms responding were at least likely to establish an in-house affiliate within the next five years to focus on document review and coding services. Additionally, 41 percent of firms were likely to do so for services related to the management of corporate transactions, 41 percent for legal research services, 40 percent for project management services, and 39 percent for legal drafting services.[32] While these numbers still do not represent a majority of firms, they are impressive, nonetheless.

Expanded Use of Technology to Improve Legal Work Processes — The growing impact of technology on legal work processes is a reality that has, of course, been evident for some time (going all the way back to memory card typewriters and Xerox machines, if not before.) There is no question, however, that the pace of such technology-driven change has vastly accelerated within the last few years, and there is growing evidence that a number of law firms are not only embracing such change but actively cultivating it. By way of illustration:

- Some firms have launched software development businesses — like Clifford Chance's Applied Solutions or Littler Mendelson's CaseSmart;
- Others have introduced consulting services designed to encourage innovation in legal technology — like Denton's NextLaw Labs (described as "a legal technology accelerator and innovation consultancy") or NextLaw Ventures (a global legal technology venture capital investor); and
- Numerous firms have created a wide variety of on-line services to assist clients in substantive legal areas, including, among many others:
  - Davis Polk (for Dodd-Frank regulations);
  - Denton's (for required disclosures under the European Union Markets in Financial Institutions Directive);

31 "Law-related services" is the term used in the American Bar Association's (ABA's) *Model Rules of Professional Conduct* to describe the offerings of such organizations. As provided in Model Rule 5.7: Responsibilities Regarding Law-Related Services: "The term 'law-related services' denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer." ABA Model Rule 5.7(b).

32 ALSP Survey 2019, at 13.

— Foley & Lardner (for tracking private equity activities);
— Hogan Lovells (for domain name services);
— Mayer Brown (for Brexit impact assessments);
— Minter Ellison (for construction law issues);
— Morgan Lewis (for Federal Energy Regulatory Commission issues);
— Shearman & Sterling (for Foreign Corrupt Practices Act issues);
— Skadden Arps (for consumer financial services enforcement and litigation); and
— Sullivan & Cromwell (for Dodd-Frank developments).[33]

All of the above-described developments — the dramatic change in the role of clients, the significant growth in non-law firm competitors, and the innovative responses by law firms themselves — are now beginning to coalesce in what can realistically be called a new emerging model for legal services.

While it would be premature to say that this new model has become the "norm" for law firms across the market, it is increasingly clear that the market is moving decisively in its direction. To return to Willie Pietersen's high-jump analogy, we are perhaps somewhere between Dick Fosbury's introduction of the "Fosbury flop" in the Mexico City Olympics of 1968 and the total dominance of the new high-jump model evident in the Montréal Olympics of 1976. In the final section that follows, we describe the broad outlines of this new emerging model.

Elements and Challenges of the Emerging New Model

In their previously referenced article, Professors Wilkins and Esteban argue that the easy use of the word "alternative" to describe many of the innovative practices now emerging in the legal market — such as "alternative" legal service providers or "alternative" fee arrangements — seriously understates the true significance of these developments "as the harbingers of impending dramatic changes in the market" and "continues to marginalize and mask their true significance."[34]

The fundamental changes currently at work in the legal market are not, they argue, creating "alternative" ways of delivering legal services, but are instead rapidly replacing the prior ways of delivering such services. They are, in other words becoming the "norm," and they will continue to do so.

The new model that Professors Wilkins and Esteban identify moves away from the traditional law firm-centric model in which unique legal expertise was seen as the primary service clients purchased on a fee-for-services basis, and toward an "integrated solutions" model characterized by value-based pricing.[35] As they note:

> Specifically, we argue that corporate clients will increasingly demand professional services that are "integrated," "customized," and "agile." These demands, in turn, will move what are now considered "alternative" providers, such as technology companies, flexible staffing models, and multidisciplinary service firms like the Big Four, to the core of the market, while putting pressure on law firms to articulate how their services contribute to producing integrated solutions for clients… .[36]

If Professors Wilkins and Esteban are right, and (as noted above) the mounting evidence strongly suggests that they are, then we can fully expect that clients will continue to drive all service providers, including law firms, toward multidisciplinary practice-type services designed to provide integrated solutions to business problems. That, in turn, suggests a new model in which law firms are more collaborative (with clients as well as with other service providers, including non-law firms); more open to developing multidisciplinary approaches

33 These and many other law firm on-line services have been identified by Ron Friedmann of Prism Legal, who has been tracking such activities for a number of years. Mr. Friedmann's current list includes some 67 separate on-line services, though he readily admits that his list may not be comprehensive or complete. https://prismlegal.com/.

34 Wilkins-Esteban, at 2.

35 *Id*. at 3.

36 *Id*.

and solutions; more aggressive in pursuing technology-based solutions; more committed to value-based pricing; more focused on outcomes; and more committed to continuous work process improvements.

As we have noted, many law firms in all segments of the market have already begun to respond to these market changes, some quite aggressively and in innovative ways. But moving toward an integrated solutions model for most firms will not be easy. For some, there will be challenges of scale, as they seek to develop the footprints needed to meet their clients' requirements.[37] For others, identifying, hiring, and retaining talent (non-legal professionals as well as legal) will be particularly challenging.[38] For many firms, innovation may be inhibited simply by the lack of access to adequate capital, as market pressures to reinvent work processes and expand the availability of a multidisciplinary practice workforce may belie the established wisdom that the practice of law is not a "capital-intensive business."[39]

But however difficult such a transition may be, there can be little doubt that market forces are now moving inexorably in that direction. As Professors Wilkins and Esteban summarized:

> [T]he move toward an integrated solutions model is no longer an "alternative" — and therefore marginal — part of the legal ecosystem. Instead, it is increasingly clear that in 2019 and beyond, the entire legal ecosystem, including global multidisciplinary professional service firms, established and startup legal technology companies, international legal talent platforms, top legal process outsourcers, in-house legal departments, and many leading law firms are all focusing their growth strategies on the development of integrated solution platforms that will allow them to increase the value of their legal services.[40]

In the long run, the fundamental choice that most law firms face is to adjust to the new realities of the marketplace or face an increasing erosion of their abilities to compete effectively. The outcome may not be immediate; some law firms may opt to make incremental improvements to the "traditional way of doing things" in the hopes of staving off the inevitable. But sooner or later, the market will prevail. As one commentator noted:

> The risk for most law firms isn't complete obsolescence. There will always be a need for legal work. The risk is marginalization, being pushed to the side to fight with each other for crumbs as others deliver exactly what the market demands. And the market is speaking loudly to those who will listen.[41]

37 On this point, it is interesting to note that we have continued to see record numbers of lateral partner moves and law firm mergers over each of the past several years as firms have attempted to deal with the scale issue. There is no reason to think that such activities will slow down anytime soon. One particularly interesting example is "Project Golden Spike" initiated recently by Dentons to expand its services into major U.S. markets that are currently "underserved" by international and national firms. *See* Dan Packel, "Dentons Chases Big Four's Footprint with 'Golden Spike' Gambit," *The American Lawyer* (on-line edition), Oct. 9, 2019.

38 The talent challenge may be particularly acute with respect to allied professionals. In the technology space, for instance, many law firms have found it difficult to create working environments sufficiently attractive to recruit and retain the talent they need, operating as they do in head-to-head competition with much larger organizations (like the Big Four) or with technology-focused organizations (including start-ups) that offer more innovative and profitable opportunities, including attractive compensation packages with stock options.

39 In its recent law firm survey, Altman Weil found that 43 percent of law firms with 250 or more lawyers have increased their capital reserves in response to changing market conditions, though only 26 percent of smaller firms have done so. Altman Weil 2019 Law Firm Survey, at 51. In the U.S., of course, this problem is exacerbated by regulatory restrictions that make it difficult for law firms to access outside capital investment. We have, however, begun to see some interesting "workarounds" — *e.g.*, the use of subsidiaries or related partnerships that can serve as vehicles for outside investments, and even the use of tools like litigation financing. It is interesting to note that bar groups in Arizona, Utah, and California — driven by access to justice concerns — have recently proposed potentially sweeping regulatory changes that could, if adopted, significantly loosen existing restrictions on fee-sharing with non-lawyers and on non-lawyer participation in the ownership of law firms. *See* "ABA Chief Looks to States on Access Reform Issues (2)," *Bloomberg Law*, Oct. 9, 2019.

40 Wilkins-Esteban, at 26.

41 Timothy B. Corcoran, "Optimizing the Law Firm Ecosystem," *Law Practice*, Sept./Oct. 2019, at 41.

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