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Introduction: Recent Global Developments



The Future is Here: Globalization and the Regulation of the Legal Profession

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How This Conference Came About

- In May 2007, Australia became the first country to have a publicly traded law firm
- In Oct. 2007, the UK adopted its Legal Services Act, which permits regulators to allow MDPs & outside investment
- In April 2008, a Georgetown Symposium focused on these (and other) events. The Symposium's goal was:
 - “to engage in a dialogue that illuminates the challenges that lie ahead for law firms that aim to ... compete on the global stage”
- *The goal of this conference is to ensure that CCJ members and state regulators of legal practice are part of the dialogue and discussion*

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ABS is Part of a Larger Context

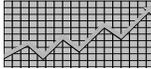
- This conference focuses on “alternative business structure” [ABS] developments (which I will define soon)
- Global *ABS* is part of a larger pattern of global events (that we don’t have time to address), including:
 - Global trade agreements (GATS, NAFTA & FTAs)
 - Global money laundering & anti-terrorism initiatives
 - Global antitrust (competition) initiatives
 - Global regulatory reform initiatives
 - Global legal education initiatives
 - Market developments, including widespread global MJP



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Why Globalization is Relevant to Legal Services

- In 2008, the U.S. exported **trillions** of dollars in goods and services and had **trillions** of dollars in imports
- The most recent data shows **trillions** of dollars (both ways) in foreign direct investment
- Global trade has been steadily increasing 
- Many of these global transactions undoubtedly involved both U.S. and foreign lawyers
- *Note*: in 2008, the U.S. had **billions** of dollars in legal services exports **and billions in imports**

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Statistics Showing Global Development

U.S. Trade in Goods & Services

2008	
Exports	\$1,835,785,000,000 [\$1.8 trillion]
Imports	\$2,516,915,000,000 [\$2.5 trillion]

2007: Foreign-owned assets in the U.S.	2007: US-owned assets abroad
\$20 trillion	\$17.6 trillion

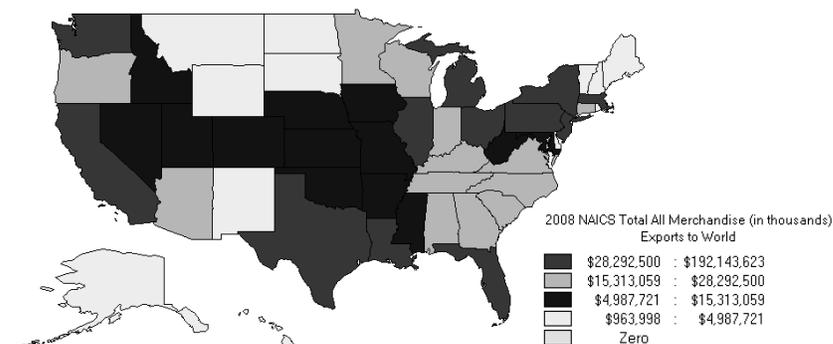
U.S. Cross Border Trade in Legal Services [Modes 1,2, 4]

2007 (the latest data)	
Exports	\$6,424,000,000 [\$6.4 billion]
Imports	\$1,561,000,000 [\$1.6 billion]

Legal Services Trade by Affiliates [Mode 3]

To Foreign Persons by U.S. Firms' Foreign Offices (2006)	To US persons by Foreign Firms' U.S. offices (2004)
\$2.7 billion	\$28 million

Global Trade Affects All U.S. States



- Texas was the #1 exporter in 2008 at **\$192 billion**
- **31 states** had 8-figure exports in 2008 (\geq \$10 billion)
- **All states** except Hawaii had exports *in the billions*
(And even Hawaii exported **\$964 million**)

Globalization and Legal Services – Part 2

2000 Census Data re Foreign- Born Residents

- **All states** had $\geq 19\%$ increase in foreign-born residents between the 1990-2000 census
- **All except 5 states** had $\geq 30\%$ increase in their foreign born resident population
- **19 states** had $\geq 100\%$ increase
- Preliminary data suggests this will increase in 2010

State and Rank	Number of FB Residents	% increase since 1990	State Rank in % increase
California (1st)	8.9 Million	37.2%	37 th
Tennessee (25th)	159,000	169%	6 th
Wyoming (51st)	11,205	46.5%	35 th
<u>Entire U.S.</u>	31.1 million	57.4%	---

The Structure of the Conference



Panel 1: An overview of significant global legal profession developments

Panel 2: Context and relevance of these developments to clients and lawyers *throughout* the U.S.

Panel 3: Where do we go from here? What issues merit further discussion and consideration?

Panel 4: Breakout sessions to discuss your reactions & responses. What ideas are worth exploring further?

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Take A Deep Breath....

- This conference consolidates in 1 day what took 2.5 days at Georgetown
- I will introduce developments from the UK, Australia, the EU & elsewhere
- This whirlwind tour aims to give you the basics now so that the speakers can provide more detail (and the inside story)



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The 2007 UK Legal Services Act [LSA]

- The LSA became final on Oct. 30, 2007
-  ➤ The LSA applies to England and Wales only (but I will call it the “UK” in these slides)
- The Legal Services Act has 3 main parts:
 1. It created a new Legal Services Board (LSB)
 2. It established an Office for Legal Complaints
 3. ***It permits*** (but doesn't require) rules allowing alternative business structures (ABS) such as legal disciplinary practices (LDPs), MDPs, outside equity, and publicly-traded firms

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The New UK Legal Services Board:

- is independent of the government & legal profession
- must have a non-lawyer majority & non-lawyer chair
- oversees the work of the “front-line” regulators
- *An Aside*: to do “reserved” [transactional] work, you must be a solicitor (the UK has a smaller monopoly)
- the LSB applies the LSA’s specified regulatory objectives



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LSA §1-Acceptable Regulatory Objectives

- protect and promote the public interest
- support the rule of law
- improve access to justice
- protect and promote the interests of consumers
- promote competition in the provision of legal services
- encourage an independent, strong, diverse and effective legal profession
- promote & maintain adherence to professional principles
- increase public understanding of citizens’ legal rights & duties



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Implementation of the UK LSA

Russell Wallman will talk about the LSA's implementation. Developments include:



- The Solicitors Regulation Authority (SRA) & the Bar Standards Board (BSB) have already conducted extensive consultations
 - As of 3/09, the solicitors' rules permit LDPs (Legal Disciplinary Practices)
 - As of 7/09, there will be new rules for firms & solos
 - The SRA is considering other significant changes, including rules to allow outside passive investment
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European Union ABS Developments

- In 2003, the EU Commission launched its professional services initiative and commissioned a study
- This study found there were regulatory-induced “suboptimal” outcomes for consumers & therefore:
 - *the lower regulation strategies which work in one Member State might be made to work in another, without decreasing the quality of professional services, and for the ultimate benefit of the consumer.*
- In 2004, the EU Commission issued a report that asked EU Member States to investigate five issues (fee rules, advertising bans, entry requirements, UPL, **and ABS**)
- Jonathan Goldsmith will discuss EU developments

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New South Wales, Australia Events

- **1994-95:** Following a gov't study, the Law Council of Australia issued a white paper on the legal profession
- **1998:** saw many rule changes, including MDP rules
- **2001:** NSW legislation permits publicly traded firms
- **2004-05:** NSW further updated its laws & regulations
 - Steve Mark will discuss regulator responses to the “incorporated legal practices” (ILP) law
- **2007:** Slater & Gordon became the world's first publicly traded law firm

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New South Wales' Statute Said:

- (3) Each legal practitioner director of an incorporated legal practice must ensure that **appropriate management systems are implemented and maintained** to enable the provision of legal services by the incorporated legal practice (ILP)



- Australian regulators turned this statute into an opportunity

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Steve Mark, NSW Legal Commissioner:

- will tell you how he used the statute's 7 words to design a system to better protect clients & the public
- identified 10 areas for which lawyers who wanted to form an incorporated legal practice (called ILPs) would have to show that they had "appropriate management systems"
- had ILP lawyers fill out a self-assessment form

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As an aside....(and a plug):

- Most Supreme Courts have a similar tool available by adding 2 questions to lawyers' annual dues statement:
 - 1) *Are you subject to Rule 5.1?*
 - 2) *If so, have you made the required reasonable efforts?*
 - *The Dues Statement could also say...lawyers...if you want guidance about what Rule 5.1 means, see our helpful website*
- Rule 5.1 Responsibilities of Partners, Managers, & Supervisory Lawyers
- (a) A **partner** in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, **shall make reasonable efforts** to ensure that the **firm has in effect measures giving reasonable assurance** that all lawyers in the firm conform to the Rules of Professional Conduct.

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Other Global “ABS” Developments



- These UK, Australian, and EU Developments are part of a global trend to look at these issues. *E.g.:*
 - **The OECD’s** *Competition Reports on Legal Services (2007) & Professional Services (2000)*
 - **Canada’s** *Dec. 2007 Self-Regulated Professionals Review* includes MDPs but not passive investment

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Global lawyer regulators have been asked:

- Should there be different regulation for lawyers who represent individual, single-matter clients, rather than sophisticated, repeat-player clients?
- Should law firms as well as individual lawyers be regulated? If so, how would this work?
- Is the current regulatory set-up unsatisfactory because it lacks flexibility, hinders innovation and leads to higher costs for clients? [If so, we will want to change it]
- Are your existing regulations necessary to promote appropriate regulatory objectives?

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US Implications (a preview)

- Many think *ABS* can't happen here, but globally, regulators have been surprised at some of the changes they've seen
- As the financial crisis shows, developments elsewhere can have an impact in places one might not expect
- US/UK firms may try to achieve ABS-like results in the US while technically complying with US rules
 - ▶ If this development “jumps the pond,” you may have to deal with it
 - ▶ My bias: It's better to think proactively than have to react quickly. Hence this conference.
- To continue to protect clients and the public, it may be necessary to consider these developments



To Read More About It



- Items listed on the 5-09 CCJ Conference Webpage,
<http://www.law.georgetown.edu/news/documents/CCJ-2009-WebMaterials-final.doc>
 - UK Legal Services Board, <http://www.legalservicesboard.org.uk/index.htm>
 - Solicitors Regulation Authority Consultations on the Legal Services Act,
<http://www.sra.org.uk/sra/consultations.page>
 - NSW Office of the Legal Commissioner, Speeches and Papers & menu links,
http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_speeches
 - Georgetown Symposium, The Future of the Global Law Firm (4-08),
<http://www.law.georgetown.edu/LegalProfession/GlobalLawFirm.html>
 - Selected Articles in the ABA Canons Centennial Symposium,
<http://www.abanet.org/cpr/pubs/symposium.html>
 - Laurel Terry “Presentations” Page (includes UK, EU & 5.1 developments),
<http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm>
- See also Laurel Terry, *The European Commission Project Regarding Competition in Professional Services*, 29 Northwestern J. Int'l L. & Bus. 1 (2009); ... *The Legal Profession as “Service Providers,”* 2008 J. Professional Lawyer 189 (2008); *The Legal World is Flat...*, 28 Northwestern J. Int'l L. & Bus. 527 (2008)