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
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

Why Globalization is Relevant to Legal Services

• In 2008, the U.S. exported \textbf{trillions} of dollars in goods and services and had \textbf{trillions} of dollars in imports.

• The most recent data shows \textbf{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.

\textbf{Note:} in 2008, the U.S. had \textbf{billions} of dollars in legal services exports \textbf{and billions in imports.}
Statistics Showing Global Development

U.S. Trade in Goods & Services

<table>
<thead>
<tr>
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<th>2008</th>
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<tbody>
<tr>
<td>Exports</td>
<td>$1,835,785,000,000</td>
</tr>
<tr>
<td></td>
<td>[$1.8 trillion]</td>
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<tr>
<td>Imports</td>
<td>$2,516,915,000,000</td>
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<tr>
<td></td>
<td>[$2.5 trillion]</td>
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2007: Foreign-owned assets in the U.S. $20 trillion

2007: US-owned assets abroad $17.6 trillion

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

<table>
<thead>
<tr>
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<th>2007 (the latest data)</th>
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<tbody>
<tr>
<td>Exports</td>
<td>$6,424,000,000</td>
</tr>
<tr>
<td></td>
<td>[$6.4 billion]</td>
</tr>
<tr>
<td>Imports</td>
<td>$1,561,000,000</td>
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<tr>
<td></td>
<td>[$1.6 billion]</td>
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Legal Services Trade by Affiliates [Mode 3]

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<td>$2.7 billion</td>
<td>$28 million</td>
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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 (≥ $10 billion)
- All states except Hawaii had exports in the billions
  (And even Hawaii exported $964 million)
Globalization and Legal Services – Part 2

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

### 2000 Census Data re Foreign-Born Residents

<table>
<thead>
<tr>
<th>State and Rank</th>
<th>Number of FB Residents</th>
<th>% increase since 1990</th>
<th>State Rank in % increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>California (1st)</td>
<td>8.9 Million</td>
<td>37.2%</td>
<td>37th</td>
</tr>
<tr>
<td>Tennessee (25th)</td>
<td>159,000</td>
<td>169%</td>
<td>6th</td>
</tr>
<tr>
<td>Wyoming (51st)</td>
<td>11,205</td>
<td>46.5%</td>
<td>35th</td>
</tr>
<tr>
<td>Entire U.S.</td>
<td>31.1 million</td>
<td>57.4%</td>
<td>--- 7</td>
</tr>
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</table>

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?
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)

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
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

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
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

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
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

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
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

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.
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

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?
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

- Laurel Terry “Presentations” Page (includes UK, EU & 5.1 developments), http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm