SMOCK
LAW FIRM CONSULTANTS

DÉJÀ VU ALL OVER AGAIN

2012 TURNED OUT TO BE BETTER THAN MOST THOUGHT IT WOULD, BUT IT IS CLEAR NOW THAT EFFECTIVE MANAGEMENT EXECUTION IS NEEDED FOR FUTURE SUCCESS

SMOCK LAW FIRM CONSULTANTS' LEGAL MARKETPLACE OUTLOOK FOR 2013 AND BEYOND

John S. Smock, Partner
Peter A. Giuliani, Partner
Joseph V. Walker, Partner
Gary B. Fiebert, Partner

This monograph presents the results of Smock Law Firm Consultants' (SLFC) annual survey of the legal marketplace conducted in early January 2013.

- It is similar in scope (and questions) to the *"start of the calendar year"* surveys we have conducted in prior years. The survey also asked the respondents to make comments on each of the questions. Thus, we have comprehensive quantitative and qualitative responses in most areas of questioning.

- To add context, we augmented the quantitative results of the survey with extensive phone interviews. In late December 2012 and early January 2013, we conducted phone interviews of law firm CEOs and COOs (some separately and some together) representing 24 separate law firms. We asked three things – how these firms and their competitors did in 2012, what they expect for 2013, and what longer term trends they see in the next few years and beyond.

- Finally, we confirmed the results of updated primary research we conducted first in late 2011 on the longer term trends facing the legal marketplace to provide a longer term perspective.

This monograph is presented in the following sections – an overall summary, demographics of the survey respondents, 2012 performance and results; expectations for 2013, longer term management trends, SLFC's longer term trends revisited, and SLFC's comments and recommendations.

SUMMARY

Our annual survey this year provided interesting results. Many law firms entered 2012 on a downer (that is, the last few months of 2011 were slow and that did not portend well for 2012). That appeared to hold – for at least the first six months. In mid to late summer of 2012, there was not a lot of optimism when SLFC's partners asked – on trips to various cities – how law firms were doing. In fact, there was more than a little bit of real worry and concern voiced about the remainder of 2012.

But for the majority of firms, the last four to six months did take a decided turn upward – led in many cases by either resurgence or tangible improvement in the transactional practices. Overall firm results were considered to be quite positive for 2012, not as strong as 2010, but certainly stronger than 2011. On average, most respondents' practices saw positive increases (in fact, 19 of the 20 we queried about did) and the rate increases (98% raised their rates) generally held. Alternative fee arrangements (AFAs) moved up in importance, but not dramatically, and firms focused their management improvement efforts on those steps (e.g. – dealing with underperforming partners, practice team/group management) that could have a real impact on enhancing revenue.

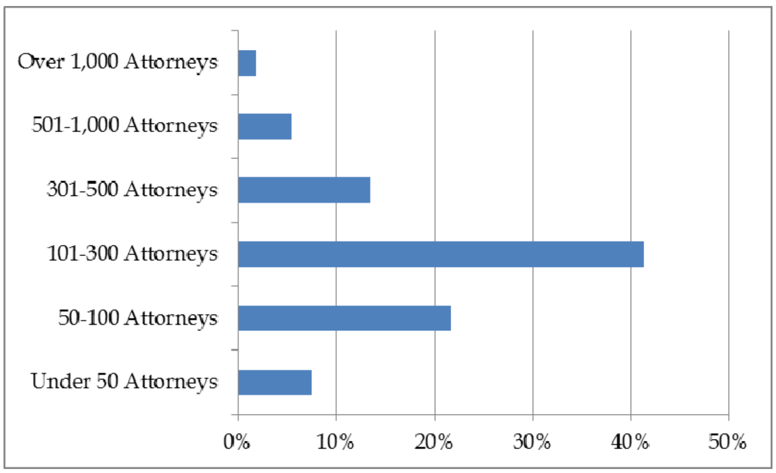
In looking at 2013 and in stating their expectations, most firms went back to the tried and true *"cautiously optimistic."* But, our interviews revealed that most firms appear to be entering 2013 with a bit more *"optimism"* than *"caution."* Yes, uncertainty still holds the reins of a good bit of the economy, but there is less uncertainty this year – and firms, on average, thought all 20 of the 20 practices listed would grow. Rates have been raised again and the focus remains on revenue enhancement and, dare we say it, some real growth.

In developing our conclusions and recommendations (the final sections of this monograph), we found ourselves back in the same place, to a degree, as the last two years. The legal market is changing and evolving – evolutionarily, not radically. As the four of us reflected on what we wanted to say, we remembered a description provided by a phone interviewee of that American philosopher, Yogi Berra, and his expression of *"déjà vu all over again"* and thought it a perfect fit for our overall title. And, in making recommendations, we realized that an issue of concern to many firms (and to us in advising a wide range of law firms) was the effectiveness of execution (as in *"yes, we know what to do, but getting to do it and sticking with it are the tough points"*). So, we called on another American philosopher, Larry the Cable Guy, and his dictum *"git-r-done."*

We applied *"git-r-done,"* or effective execution to what we consider to be the *"Big 8"* primary areas of opportunity (up a bit from 2012's *"Big 6"* and with a little change of the definition. Those eight areas of opportunity are **dealing with underperforming partners, client feedback, client succession, practice teams/groups management and organization, refocusing firms'/practice teams' marketing efforts, AFAs and matter/case budgets, culture, and strategic planning and implementation.** We focus our suggestions directly on practical things that can be done this year.

SURVEY RESPONDENTS' DEMOGRAPHICS

Between January 3rd and January 14th of 2013, 162 law firms completed the survey (a greater than 65% increase over the preceding year) and there was good balance in the leaders/managers who responded – 48% were the Managing Partner/CEO and 52% were the Executive Director/COO. There was also reasonable balance in the size of firms responding, as shown below. The larger law firms responded in greater numbers – the combined number of larger responding firms (301-500 and over 500 attorneys) rose to 23% of the firms responding from 15% the year before.



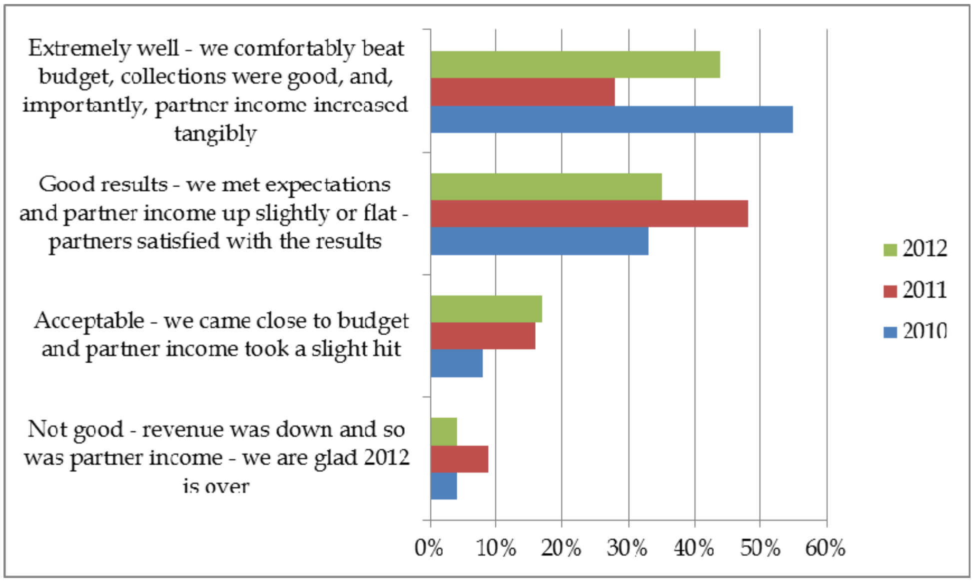
We asked the respondents to tell us the area of the country of the headquarters office or largest office and to categorize the *"reach"* of the firm. The results are shown below. In both cases, the distribution is much broader than in prior years. If you take the Northeast, Middle Atlantic, and Southeast as *"the East,"* they constitute 42% of the respondents, compared to 41% in the Midwest. 81% considered their market to be regional, national, or global.

Area of Country of HQ or Largest Office	
Northeast	14%
Middle Atlantic	10%
Southeast	18%
Midwest	41%
Southwest	16%
Mountain	3%
West Coast	4%

Type of Firm	
Local	19%
Regional	54%
National	23%
Global	4%

HOW DID YOUR FIRM DO IN 2012?

Based on the experience of many firms through the first six to eight months of 2012, we thought that the results for 2012 would fall off from 2011, which in turn fell from 2010. But, based on very positive results experienced by many firms in the last four to six months of the year, the 2012 results were quite good. Admittedly, these are relative findings – considerably better than 2011, but not as strong as 2010. For instance, 44% for 2012 answered *"extremely well,"* compared to 28% last year (but still behind the 55% in 2010).



The survey's qualitative comments were also generally quite positive – *"we had a significant number of closings in December – our collections in December were better than any other month is the Firm's history; a record year due to cost control combined with productivity; we continue to be successful in competing against national firms based on the quality of our lawyers and on billing rates; we did a better job of paying high performers well and not over-rewarding the underperformers."* Not all responses were positive – *"demand, as measured by hours, continues to trend down, and collections lagged in 2012; we had too much capacity and it hurt results."*

We drilled down a bit deeper to see how the responding firms **practices** did in 2012 by rating 20 different practices in one of three categories (*3=solid increase, 2=flat, and 1= down*) – so, the higher the score the better. These results are shown below.

Practice	2012 Rank	Rating Score
Intellectual Property Litigation	**1 (tie)**	**2.5**
Energy	**1 (tie)**	**2.5**
Patent Prosecution, Trademarks, Copyrights	**1 (tie)**	**2.5**
Real Estate	**1 (tie)**	**2.5**
Health Care/Life Sciences	**1 (tie)**	**2.5**
Regulatory/Government Affairs	6 (tie)	2.4
Financial Services	6 (tie)	2.4
Public Finance	6 (tie)	2.4
Commercial Litigation	9 (tie)	2.3
White Collar Litigation	9 (tie)	2.3

Practice	2012 Rank	Rating Score
Immigration	9 (tie)	2.3
ERISA/Employee Benefits	9 (tie)	2.3
General Corporate Representation	9 (tie)	2.3
Mergers & Acquisitions	9 (tie)	2.3
Environment	15 (tie)	2.2
Corporate Securities	15 (tie)	2.2
Labor and Employment	15 (tie)	2.2
Insurance Defense	18	2.1
Bankruptcy/Financial Restructuring	19	2.0
Antitrust	**20**	**1.9**

**The Rating Score is the weighted average calculated by dividing the sum of all weighted ratings by the number of total responses*

There was a five way tie at the top for 2012 – **energy; health care/life sciences; intellectual property litigation; patent prosecution, trademarks, and copyrights; and real estate** – all with a rating score of 2.5. Right behind (at a rating score of 2.4) were three more practices – financial services, public finance, and regulatory/government affairs. Five practices followed at 2.3 and three more at a rating score of 2.0. In fact, 19 of the 20 practices can be considered up for the year (a rating score 2.0 or greater). Only one practice fell below a rating score of 2.0 – antitrust. The respondents' comments shed some light on the reasons – *"saw a real increase in trust and estates for tax reasons; our corporate banking and M&A were up considerably; for once, real estate's growth offsets dips in other practices; regulatory was up and litigation was down; and 2012 highlights the advantages of having a diversified set of practices."* And, as was stated by a phone interviewee, *"our transactions practice had its best year in the last six."*

As in prior surveys, we asked the responding firms to rate **specific strategic operational improvements** (from a list of 19) they had focused on in 2012 using the following scale (3=*high priority have and are addressing*, 2=*know it needs addressing – but not a top priority, and 1=not on our radar screen*). So, any score above 2.0 can be viewed as a positive response. The responses are shown in the following table.

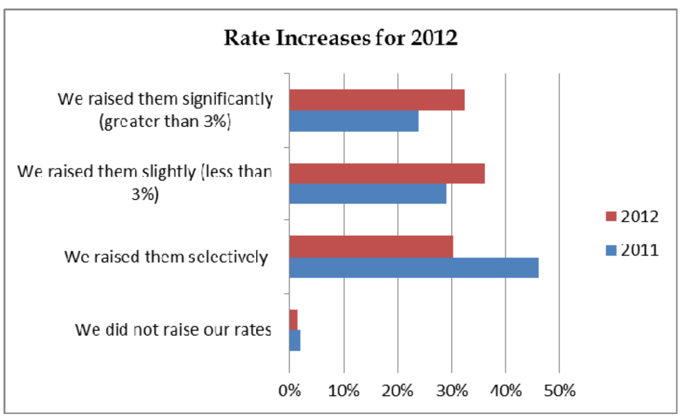
Practice	Rank	Rating Score
Dealing with underperforming partners	**1**	**2.7**
Practice group management improvements	**2 (tie)**	**2.5**
Practice group planning and execution	**2 (tie)**	**2.5**
Individual partner business development planning and execution	**2 (tie)**	**2.5**
Increased lateral hiring	**2 (tie)**	**2.5**
Better associate training and development	6 (tie)	2.4
Industry focused marketing	6 (tie)	2.4
Regular, formal client feedback	6 (tie)	2.4
Firm strategic plan development/ revision	6 (tie)	2.4
Better firm strategic plan implementation	6 (tie)	2.4

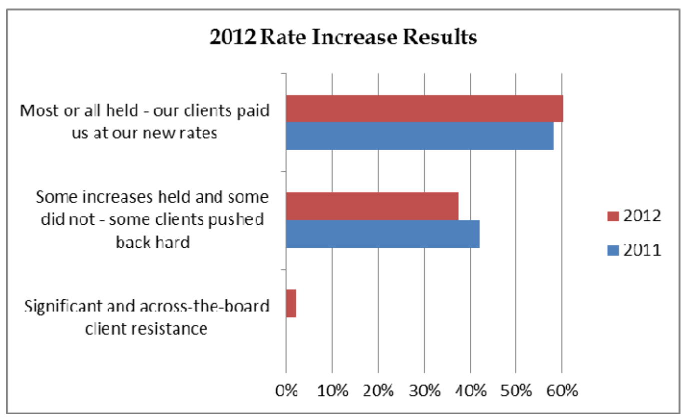
Practice	Rank	Rating Score
Website revision/improvement	6 (tie)	2.4
Alternative fee approaches (AFAs)	12	2.1
Smaller mergers/acquisitions	13	2.0
Project management techniques/training	14	1.9
Revising partner compensation	**15 (tie)**	**1.5**
Revising partner structure – equity/ income	**15 (tie)**	**1.5**
Firm governance restructuring	**15 (tie)**	**1.5**
Cutting back on practices and/or people to restore and/or maximize profit	**15 (tie)**	**1.5**
A large merger	**19 (tie)**	**1.4**
Revising the associate salary structure	**19 (tie)**	**1.4**

The highest rated management improvement, convincingly, was **dealing with underperforming partners** (as in the two preceding years). The next 10 (of 20) were only 0.1 point apart (four were tied for second place and six for sixth place). As with last year, our conclusion was that law firm managers were focused on solid and potentially useful improvements – those things that can have a real impact on performance – if effectively executed.

The qualitative comments were not extensive. But, some were interesting – *"management issues were quiet in 2012, likely due to increased productivity; we completed a strategic plan in 2011…it has made a difference; our focus is on practice team development and execution."*

Relative to **rates**, the broad cross section of law firms raised rates for 2012 as a continuing strategic move – as shown. Over 98% of the firms raised their rates with the largest group raising them *"slightly."* And interestingly, 58% said that *"most or all held"* and 42% said *"some held and some did not."*

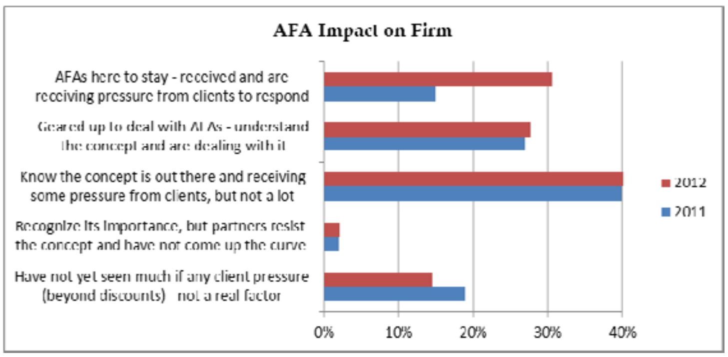


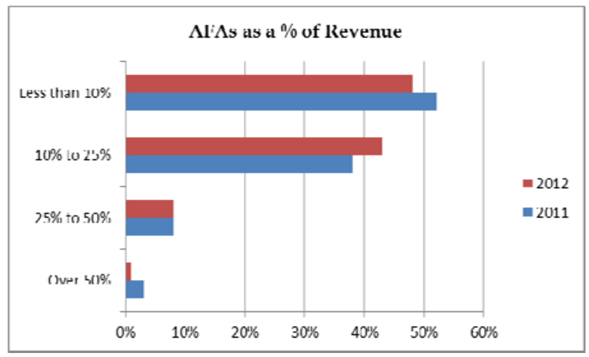


Even though there is continuing pressure on fees, 2012 saw rate increases pick up a little faster than in 2011. It may be that, on the average, clients were a bit more lenient in 2012 than before. We will see whether the comment recently made in a client survey for a client of ours that *"the rate pressure is coming back, stronger than before"* holds. The qualitative comments on attorney rates for 2012 included – *"as the cost of doing business continues to increase, we must be able to pass some of those costs on to clients; it is clear that larger institutional clients want AFAs; we raised our rates on average 5% and this resulted in an effective rate increase of 3% to 4%."*

While the responses across the board are still relatively dismissive of AFAs, it is clear that – through 2012 – the landscape is changing. Last year, only 15% responded positively to the comment *"AFAs are here to stay, received and are receiving pressure from clients to respond"* – but this year that percentage doubled. This was matched by a decrease (from 19% to 15%) who agreed with the comment *"have not yet seen much if any client pressure (beyond discounts) – not a real factor."* As with the quantitative responses, the qualitative responses were mixed – *"the most significant increase has been demand for improved budgeting and project/matter management; still more pressure to freeze rates or discounts than to use AFAs; we are using AFAs proactively to attract new work and provide pricing certainty to clients; AFAs are cutting across all of our practices now."*

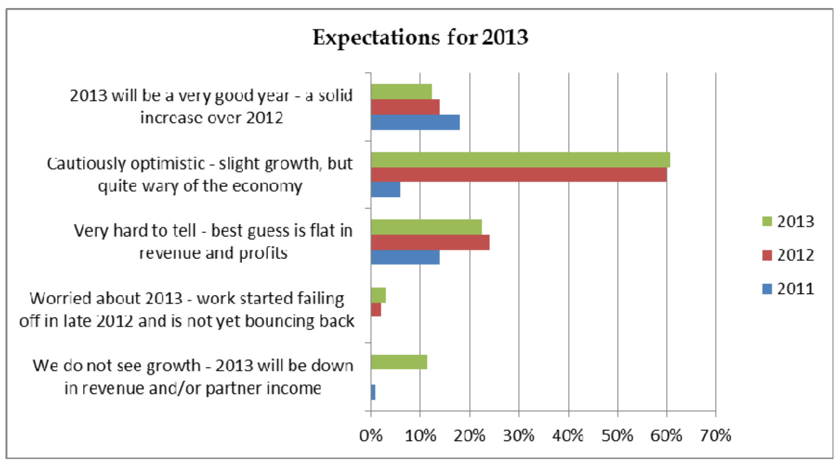
But to SLFC, since we hear from clients in conducting client interviews as part of strategic planning assignments, we believe AFAs are becoming more and more of a factor – particularly among larger companies. And, since most firms want to do more and more work with larger clients, AFAs will be much more of a factor. In other words, *"ignore it at your peril."* Also, the needle is moving on the percentage of revenue that AFAs constituted. Last year 52% responded it was less than 10% - this year that dropped to 48%. And, the percentage of respondents who said AFAs constituted 10% to 25% of fees moved up from 37% in 2011 to 43% in 2012. There is clearly movement underway and a trend here. We believe that focusing on AFAs, creating a capability to anticipate, deal with them, and monitor their results is becoming more and more important to law firm management.





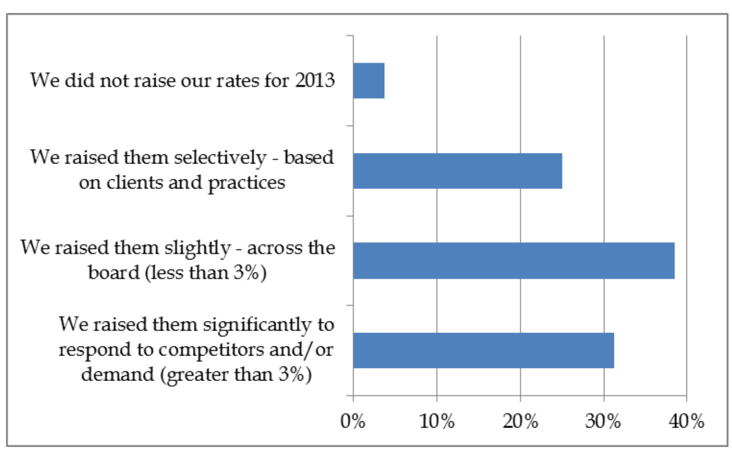
EXPECTATIONS FOR 2013

As we did for 2010, 2011 and 2012, we asked the firms about their **general expectations** for the next year. The quantitative or statistical, responses were very close to last year. When one looks at the economic issues out there – national debt, job creation or lack thereof, etc. – the most rational answer – as it has been for the last two years – has to be *"cautiously optimistic."* That certainly bore fruit in 2012 – results were much better than expected, but they could have been worse. And, since most firms we interviewed are looking at a flat or close to flat 2012 budget, the probability of doing better than expected is probably significant for 2013.



That cautious optimism was underscored by the comments of the respondents. *"2013 could be a very good year, but we will continue to budget conservatively; 2013 should be good, the partners are risking investments in the firm and they are paying off; 2013 is a cipher, litigation is slow, and the transactional practices are strong, but it could go the other way; and a lot depends on the first and second quarter."*

In that context, it is evident that it behooves well managed law firms to raise rates annually – not merely as a positive strategy, but as a defensive move. If a firm falls behind its primary competitors in rate increases, the impression is clearly created that *"they are not as good."*



There were not large differences between what firms had done with rates for 2012 and 2013. For instance, rates were raised *"significantly"* (more than 3%) for 2013 by 31% of the respondents and 32% in 2012. For 2013, 38% raised them *"slightly"* as compared to 36% in 2102.

We also drilled down on the 2013 expectations by **practice** for 2013 (*3=solid increase, 2=flat, 1=down*). The results are shown below. The higher the score, the higher the expectation.

Practice	Rank	Rating Score
Health Care/Life Sciences	**1**	**2.7**
Intellectual Property Litigation	**2**	**2.6**
Commercial Litigation	**3 (tie)**	**2.5**
Financial Services	**3 (tie)**	**2.5**
Energy	**3 (tie)**	**2.5**
Mergers & Acquisitions	**3 (tie)**	**2.5**
Regulatory	**3 (tie)**	**2.5**
Real Estate	**3 (tie)**	**2.5**
General Corporate Representation	9 (tie)	2.4
Labor and Employment	9 (tie)	2.4

Practice	Rank	Rating Score
Patent Prosecution	9 (tie)	2.4
White Collar Litigation	9 (tie)	2.4
Corporate Securities	13 (tie)	2.3
Environment	13 (tie)	2.3
ERISA/Employee Benefits	13 (tie)	2.3
Immigration	13 (tie)	2.3
Public Finance	13 (tie)	2.3
Bankruptcy/Financial Restructuring	18 (tie)	2.1
Insurance Defense	18 (tie)	2.1
Antitrust	20	2.0

Health care/life sciences finished at the top of the list (not surprisingly, based on prior years and the fact that 2013 is the year of a good bit of Obamacare implementation), **intellectual property litigation** was a strong second and six practices tied for the third (see the chart). Importantly, all 20 practices were projected – on average – to grow in 2013. This is a strong underscoring of our belief that there is a bit more optimism than caution in *"cautious optimism."*

The survey comments on practices were generally positive, but one is of note – *"if Washington would stop screwing around, and provide something other than fiscal uncertainty, perhaps capital markets would unlock, deals would get done, and the rest of us could go back to work."* The phone interviewees comments reflected the survey comments – *"we are very optimistic…we project a revenue increase of 3.5%; it looks good, but economic factors are still challenging – it causes us to go from being wild-eyed cheerleaders to cautious optimists."*

As in prior surveys, we asked the respondents to rate each of 20 **strategic/operational improvements** relative to their expected focus for 2013 (*3= at the top of our list – a top priority, 2=may be addressed – but not a top priority, and 1-will probably receive no attention*). Continuing its importance, *"dealing with underperforming partners"* was at the top of the list (3rd year in a row) – followed by individual partner business development planning and execution. There were six strategic/management improvements tied for third – focused on practice groups, industries, client feedback, lateral hiring, and strategic planning – **all focused externally and all aimed at revenue enhancement, so we believe the focus is right**.

Many or most of these efforts (particularly the more highly rated ones) are multi-year ones – *"these are all areas that we have spent a lot of time on and/or continue to spend a lot of time on."* And, more than one said *"same as 2012."*

Strategic/Operational Improvement	Rank	Rating Score
Dealing with underperforming partners	**1**	**2.6**
Individual partner business development planning and execution	**2**	**2.5**
Practice group planning	**3 (tie)**	**2.4**
Practice group management improvements	**3 (tie)**	**2.4**
Industry focused marketing	**3 (tie)**	**2.4**
Regular, formal client feedback	**3 (tie)**	**2.4**
Better firm strategic plan implementation	**3 (tie)**	**2.4**
Increased lateral hiring	**3 (tie)**	**2.4**
Better associate training and development	9	2.3
Firm strategic plan development/revision	10 (tie)	2.2

Strategic/Operational Improvement	Rank	Rating Score
Website revision/improvement	10 (tie)	2.2
Alternative fee approaches	12	2.1
Project management techniques/training	13 (tie)	2.0
Smaller mergers/acquisitions	13 (tie)	2.0
Cutting back on practices and people to restore and/or maximize profitability	15	1.5
Revising partner compensation	16 (tie)	1.4
Revising partner structure – equity/income	16 (tie)	1.4
Firm governance restructuring	16 (tie)	1.4
A large merger	16 (tie)	1.4
Revising the associate salary structure	20	1.2

Since *"increased lateral hiring"* is such a strong current effort of most law firms, we then asked about **growth plans for 2013** by personnel category (*1= decrease, 2=same number, and 3= growth*) and then compared these responses to prior years, as shown below.

	2013		2012		2011		2010	
	Rank	**Rating Score**	**Rank**	**Rating Score**	**Rank**	**Rating Score**	**Rank**	**Rating Score**
Associates	3 (tie)	2.2	1 (tie)	2.8	1	2.7	1	2.6
Equity Partners	2	2.5	2 (tie)	2.4	3	2.4	2 (tie)	2.4
Income Partners	4	2.1	2 (tie)	2.4	2	2.6	2 (tie)	2.4
Of Counsel	1	2.7	5	2.2	4 (tie)	2.2	4 (tie)	2.1
Paralegals	3 (tie)	2.2	4	2.3	4 (tie)	2.2	4 (tie)	2.1
Staff	6	1.9	6	2.0	6	2.1	6	1.8

These figures are quite consistent year-to-year – but, they do underscore the importance of adding qualified associates. Many firms continue to see their number of associates fall off – often as a result of cost cutting moves and just as much from partners hoarding what would normally be considered *"associate work."* Also, law school hiring is either *"down"* or *"way down"* depending on the firm. In 2013, that problem will probably become even more acute.

We should note that one of the phone interviewees described expectations for 2013 as *"déjà vu all over again"* – so to give credit where credit is due, we appropriated that Berraism for our overall title.

LONGER TERM MANAGEMENT TRENDS

We also asked the responding firms to *"look over the horizon"* and rate 20 talked/written about future trends in the legal marketplace. (*4=a significant trend that will impact our future; 3=a trend of significance that will not greatly impact us; 2=this trend may or may not happen, but will have little impact; and 1=this trend will not occur and/or impact the U.S. legal marketplace*)

Longer Term Legal Management Trends	Rank	Rating Score
Clients' continuing and increasing focus on value (i.e. – results/cost)	**1**	**3.7**
Need for improved skill sets in project management, fee estimation, etc.	**2**	**3.3**
Reductions in equity partners to those who *"really bring in the bacon"* and function as true owners	**3**	**3.2**
More legal work from larger companies to medium sized firms across the country and less to the much larger firms	**4**	**3.1**
Deleveraging of law firms – more partners and less associates	**5**	**3.0**
Declining value of and emphasis on law school recruiting – lateral associates the primary means of hiring	6 (tie)	2.9
Client insistence on alternative fee arrangements (AFAs)	6 (tie)	2.9
Clients' use of diversity and diversity statistics as a primary decision factor in selecting counsel	6 (tie)	2.9
Increased law firm mergers and acquisitions over the next five years – continuing consolidation	9 (tie)	2.8
Less large company/client market share to the large, multi-office firms and less to smaller mid-size firms	9 (tie)	2.8

Longer Term Legal Management Trends	Rank	Rating Score
The rise in the overall importance of teams – reflected in partner compensation systems to reflect multiple attorney performance	9 (tie)	2.8
Increasing use of non-attorneys to support practice management, project management, pricing, client acquisition, etc.	12 (tie)	2.7
Restructuring work assignments and workload to meet varies lifestyle needs	12 (tie)	2.7
Globalization affecting virtually all businesses and business oriented law firms	12 (tie)	2.7
Continued consolidation of larger law firms with parallel creation of focused smaller boutiques	15	2.6
ACCA and other groups publishing specific law firms' rates and rating individual law firm performance	**16 (tie)**	**2.4**
The rise of the virtual law firm – many attorneys practicing from home	**16 (tie)**	**2.4**
More large company/client market share to the large, multi-office firms and less to smaller mid-size firms	**16 (tie)**	**2.4**
Backroom research and/or document review done offshore	**19**	**2.1**
Outside investment in U.S. law firms – like the UK and Australia	**20**	**2.0**

The highest rated trend (remember the higher the rating score, the more significant the trend) was **clients' continuing and increasing focus on value** – which clearly reflects the results of the individual interviewees and our own beliefs. The second highest rated was the **need for improved skill sets in project management, fee estimation, etc.** In third place was **reductions in equity partners to those who *"really bring in the bacon."*** This rank order is exactly the same as in early 2012.

There were very few comments on these longer term trends, but one is worthy of note – *"most young lawyers today, like young doctors, do not really want to be owners – they want interesting work, a good salary and benefits and the ability to have that continue. In other words, they seem to want to be employees."*

Our phone interviewees (the 24 firms we talked to by phone) saw some different trends – *"a trend to lateral associate recruiting as opposed to law school recruiting; increasing costs of multi-office networks; in-sourcing by general counsel (in response to continuing outside counsel rate increases); and a need to put a premium (in management) on maximizing firm profitability."*

SLFC LONG TERM TRENDS RESEARCH (REVISITED)

Smock Law Firm Consultants conducted extensive research in the fall of 2011 to determine a short list of long term trends in the legal marketplace. That initial effort was intended to go beyond the present, closer term trends (such as flat demand, succession planning, alternative fee arrangements, etc.). Specifically, we focused on the next ten years and beyond.

The six long term trends – confirmed by a special research update in late 2012 remain:

- **The shift to value** (results/cost)
- **True client responsiveness** – anticipating needs, responding, and investing in the relationship
- The *"**rise of the importance of teams**"* and the *"cult of the individual disappearing"* – a client business environment driven trend
- **Globalization of the legal marketplace** – an *"international"* marketplace, not an overseas one
- **Technology** – one or more applications (not yet known) will dramatically alter the practice of law
- **Non-attorneys in creative and expanding roles**.

CONCLUSIONS AND TAKEAWAYS

This section provides our conclusions based on the quantitative and qualitative survey responses, our late 2012/early 2013 interviews of law firm CEOs and COOs, and, importantly, our own experiences in serving a wide range of law firms in these matters for longer than we would care to admit.

How Law Firms Did in 2012

- Although the numbers were comparable, this year (2012) was a directly opposite experience from last year's results (i.e. – generally the last half of 2011 was a downer following a strong first half), 2012 finished very strong for most firms – either resulting in a very good year or saving the year for firms for which the first six to eight months were not good.
- We have concluded once again that the firms who have done well are more inclined to participate in our survey. If you had a really bad year, responding to a survey like ours and describing what caused that bad year is probably an unpleasant experience to a CEO or COO.
- It is important before we discuss the conclusions from this year's survey, that we repeat a comment we have made last year and in various ways over the last few years. Clearly, *"the legal market is still one of the most profitable industry segments in the U.S. economy."*
    - Even with the supposed client resistance, on average law firms keep getting about a 3% price increase each year – not what it used to be, but certainly ahead of inflation.
    - The margins are enormous. Not so good management gets a firm in the low to mid 30% range, reasonable management gets a firm in the 40s, and excellent financial management can achieve 50% or greater (although this statistic can be misleading – because of the varying percentage of partners to overall attorneys).
    - There are very few constraints on billing. Clients do complain, but they still (generally) pay. While not always the case, legal services are usually important to a client and cannot be ignored. Clients may not like it, but they know that these are necessary costs of doing business.
    - There is no question that being a lawyer and practicing in a well-run business law firm is considerably more rewarding than being an architect/engineer, a primary physician under Obamacare, or most other professions.

- The legal marketplace has moved another year *"down the pike"* since we developed our conclusions and suggestions for last year's monograph. We said last year that *"the results clearly show a need for continuing management effectiveness"* – and that certainly can be said again (strongly and emphatically) for this year – thus the title of our monograph this year – *"**Déjà vu All Over Again**."*

- In last year's monograph, based on the responses then received (from the survey and interviews) and our own knowledge of the market, we identified what we called the *"big six common issues/concerns"* and wrote about ways to address them.

  - The *"Big Six"* last year were **underproductive partners, client responsibility succession, practice group/team management, partners not behaving as owners, lack of marketing and business development effectiveness, and lack of effective strategic plan development and implementation**.

  - While the mood of the survey respondents this year (looking back at 2012 and ahead to 2013) is a good bit more positive (because of 2012's end of year positive results), the underlying marketplace influencing economic factors have not improved that much.

  - There is still considerable (if not more) pressure coming from clients (on costs, staffing, rates, audits, etc.); capacity remains a problem, as a number of attorneys in most firms are still not as busy as they could or should be; and growth in top line revenue is every bit as difficult as it was.

- Our overall conclusion, then, has to be – in spite of generally better results than expected in 2012 are optimism for 2013 – the legal marketplace remains a highly competitive environment that requires considerably more planning, management and management execution, relevant data analysis, and focused marketing (that actually leads to new work) to be successful.

<u>2013 AND BEYOND RECOMMENDATIONS</u>

There are no new earth shattering areas of focus or ideas to enable law firms to perform better in 2013 and beyond. There is no *"holy grail"* or *"silver bullet."* But, our four partners have put a good bit of thought into our advice to the legal marketplace this year on improvements law firm managements can make that could have a differentiating near term effect on performance. Thus, we believe that there is both an overarching recommendation and a series of recommendations based on the major areas of opportunity we have isolated this year. While not earth shattering, we believe our recommendations are practical and that they work.

- Our overarching recommendation is to focus on and improve the firm's ability to *"**execute**"* – that is, do what you say you have to do very, very well. Or, in the words of that other great American philosopher, Larry the Cable Guy, *"git-r-done."*

- We have suggestions where we suggest you apply that effective executing – the *"Big Eight"* areas of opportunity for law firm improvements in 2013 and beyond.

<u>Execution – *"Git-R-Done"*</u>

One of the most difficult elements of management has always been execution – the art and science of actually getting *"things"* accomplished. There have been numerous business books written on the topic (two of the best are Peter Drucker's <u>Management: Tasks, Responsibilities, Practices</u> and Larry Bossidy's and Ram Charan's <u>Execution: The Discipline of Getting Things Done</u>.

- While there is broad based recognition of the importance of management execution in the legal marketplace, lawyers and the firms they populate have a history of poor execution – be it strategic, managerial, or administrative. Virtually any firm of any size can tell stories (both ancient history in their firm and some of more recent history) of ineffective committees meeting over and over again but never taking any action. There are Management/Executive Committees that meet two or four times a month and talk things to death – but do very little. And, there are Managing Partners in many firms that just cannot make decisions on anything but the most trivial administrative matters and sometimes even that is difficult.

- If the environment in 2013 and for the next couple of years is truly *"déjà vu all over again"* and our (SLFC's) four partners, as well as most law firm leaders, believe that it is, then the winners and the losers are not necessarily going to separate themselves merely by the strength of their ideas, but also by their ability to get done what they know they have to get done. Simply put, not only does effective execution get things of value done, but it earns the respect of a Firm's partners, its clients, and all of its people. Accomplishment breeds accomplishment.

We are not attempting in this monograph to fully describe and opine on *"how to get things done"* in law firms. Rather, we are pointing it out as a critical area of focus for success in 2013. In their book on execution, Larry Bossidy and Ram Charan describe three building blocks for execution – leadership behavior, cultural change, and having the right people.

- **Leadership behavior** is becoming better understood in law firms. How a managing partner (or a practice leader) both spends her/his time and communicates is particularly critical to getting things done across the Firm or practices.

- If a law firm has a culture of non-performance or a tolerance for things not getting done, then a **culture change** is necessary. There has to be a culture of accomplishment in order to achieve continuing and widespread execution effectiveness.

- Finally, **the right people have to be in place** throughout a firm's management structure. For instance, if a firm has an ineffective marketing director, getting all the things done that need to be done will just not happen – even if there are other solid performers in the marketing function.

The *"Big Eight"* Areas for Improvement

Last year, we had the big six issues to address (listed earlier in this document). We have adjusted our focus slightly and identified the *"Big 8"* areas of opportunity – both because we see eight areas where *"real hay"* can be made and for a nostalgic purpose – that is, eight rather than seven or nine because three of our four partners (John, Peter, and Gary) were Big 8 consultants when there was a Big 8 of accounting firms (now the Final Four).

- The results of the last three years have "***dealing with underperforming partners***" at the top of law firm management needs. We recognize that this is a problem that will not fully go away, regardless of the effectiveness of the attention placed on it. We wrote a fairly extensive monograph on this topic in mid-2012 and we invite you to **click through** to it. Taking from that monograph, we believe there are concrete steps that firms can take to address, both in the short and longer term.

  - **Short term** – (1) define within your firm, what unacceptable underperformance really means; (2) confront (either at the Firm or practice level) those who fit that definition (there has to be a direct intervention – it cannot be avoided); (3) for those we want to improve, develop an improvement program/plan with measurable milestones (not just billable hours) and objectives; (4) routinely and periodically measure, evaluate, and communicate results of that program/plan; and (5) directly deal with those who do not achieve their improvement programs.

  - **Longer term solutions** – (1) streamline the partner expulsion process; (2) ensure that those promoted have demonstrated specific and measureable equity partner performance, and formalize that in the selection process; (3) clearly state equity partner expectations (to all attorneys); (4) ensure professional development programs at the partner level; and (5) define (and evaluate) the role of each partner within her/his practice team.

- Another area that appears on the list of things law firms need to do (and that lends itself to excellent execution) is that of **client feedback**. First, set up a program of regular client feedback to the firm through in-person client interviews/meetings and documentation of their results. Then, for significant clients, institute a program of regular client service planning – that is, sessions involving all the timekeepers (and appropriate others) who serve that client. The objective of those sessions is **not** to get more work, but to develop specific ways/steps to serve the client better (which usually results in more work).

- Related to client feedback is an area of opportunity critically important to clients – **client succession planning**. In interviews we conduct of our law firm clients' clients, we hear that *"we want to know the next generation of attorneys who will work with us."* Doing so is difficult in many firms, it directly threatens a number of senior partners – but, it must be done. There are straightforward ways to deal with it – (1) make succession planning part of the client service planning mentioned above; (2) require that all partners (over 55) responsible for major clients outline and annually update their succession plans, as part of the compensation process; and (3) where appropriate, involve clients in the discussion.

- Again, with a strong execution mindset, do **practice teams/groups management and organization** right. Curiously enough, most firms still have not done that – they go only part of the way there. Doing it right includes (1) assigning all timekeepers to a primary practice, where their performance follows them; (2) assigning leadership/management responsibility for each team to a single attorney and ensuring that she/he delegates to all in the group; (3) directly rewarding those leaders for their responsibilities and performance; (4) requiring effective planning and budgeting as the primary management process within each team/group; (5) providing appropriate training for practice group leaders; and (6) ensuring that the practice teams are focused primarily on client needs (industries, services, etc.), not just legal specialties (e.g. – corporate and litigation).

- While most firms of any size (and many quite smaller law firms) have acted on the need for a specific marketing program and resources, many are still focused on the wrong things, so **refocus firms'/practice teams' marketing efforts** on actually bringing in work to the firm by (1) making the primary marketing element of the firm its practice teams, not its individual partners; (2) measuring marketing results in both additional work from present clients and new work from new clients, not the number of ads placed or the number of people who came to the health care seminar; (3) assigning specific resources to support the marketing efforts of each practice team; and (4) focus the branding efforts on the firm's areas of differentiation (where it is truly excellent) and the value provided clients, not on redoing the logo (which is not the brand) and spending lots of $ on image advertising.

- While the amount of involvement by firms in **AFAs (alternative fee arrangements) and matter/case budgets** varies widely, clients (as we hear in the client interviews we conduct) want their outside counsel to get actively, not passively out ahead of the issue. Thus, we suggest, relative to AFAs that (1) partners and associates are given introductory training on the topic; (2) non-attorneys be directly involved in developing, creating, monitoring, and adjusting AFA arrangements; and (3) **active suggestions** to clients be made to utilize AFAs, when that is seen as valuable by the client.

- It is becoming evident in the competitive environment in which our law firm clients practice that **culture** is critical to serving clients and attracting and retaining attorneys. Yet, even in well run, cohesive firms the perception and definition of culture varies, often on a partner-by-partner basis. Sometimes, firms have developed *"core value"* statements and/or statements of culture – but they are usually not effectively communicated or enforced. And often, culture is used as an excuse for not doing what needs to be done (as in, *"our culture prevents us from dealing with underperforming partners"*). Our practical, execution oriented suggestions for culture include (1) undertaking a serious effort to truly define and communicate the culture, understand what differentiates it, and communicate what behaviors are consistent with the culture and or violate the culture; (2) training all people (attorneys and staff) in the culture and its expected/encouraged and prohibited behaviors; and (3) clearly rewarding or sanctioning those who adhere to or violate the culture.

- Finally, the last *"Big 8"* area of opportunity is effective **strategic planning and implementation/ execution of the strategic plan**. By early 2013, most law firms have undertaken strategic planning (at the firm and practice levels) in some way, shape, or form. Some swear by it and others firmly believe that the whole idea/process of strategic planning is *"BS."* However, the concept, for most, is a proven management tool in industry and law firms, even in light of our contention that it has been considerably less effective – across the legal market – than it could or should be. Under the rubric of *"effective execution,"* we offer the following practical solutions – (1) doing full firmwide strategic planning (with broad based partner inclusion) on an agreed upon schedule every three to five years; (2) focusing on the importance of implementation – developing, monitoring, and evaluating achievable implementation plans; (3) communicating, across the firm, plan achievements and, importantly, things that did not go so well; and (4) ensuring that firm strategic planning also encompasses the practice teams and their *"roles"* in overall firm direction.

* * * * *

This completes our annual look at the marketplace – we hope it has been useful to you and your firm. We welcome your questions and comments. The below paragraphs provide an overview of Smock Law Firm Consultants and our willingness to go into considerably more depth on this information, if requested.

ABOUT SMOCK LAW FIRM CONSULTANTS

Smock Law Firm Consultants is a focused strategic management consulting firm serving law firms (our primary industry concentration), other professional service firms, and commercial entities. Founded in 1991, we have seen our law firm practice grow from 25% of our revenue to a steady state of greater than 75% of our revenue. We focus consulting assistance to law firms broadly on strategy development and strategy execution. We help law firms address and resolve those key issues that have a major impact on a firm's near term success and its long term direction and focus.

This involves seven key areas of practice – (1) **strategic planning** at firm and practice levels; (2) **strategic plan implementation and execution**, in essence, helping clients do what they said they would do; (3) **mergers and combinations assistance**, helping identify, negotiate and implement combinations; (4) **practice team/group management**, helping the practice team concept achieve its potential; (5) **law firm economics**, helping our clients improve profitability and deal with longer term financial issues; (6) **operational excellence**, improving both the effectiveness and efficiency of firm operations; and (7) **strategic management issue resolution**, assisting in resolving issues of vexing management concern.

We believe three key factors set us apart.

- The primary success factor for any consulting firm are the results achieved by our clients – in both the near and longer term. Our law firm client references can speak directly to those results.
- Our *"first string"* and, actually, our only string (Smock, Giuliani, Fiebert, and Walker) is, simply, **the most experienced group on senior consultants serving the legal profession**. The four partners bring a collective relevant experience of greater than 160 years and each has greater than 40 years of varying but relevant experience in law and professional firm management.
- We always tailor our approach to every consulting assignment to the unique needs and requirements of the client. We are known for our **originality and creativity** in doing that and for our scrupulous avoidance of *"law firm management dogma."*

Smock Law Firm Consultants' partners go into a good bit of effort to develop this annual survey and interpret its results. We do it for three reasons – (1) it provides considerable input into the market we serve; (2) we hope, it is useful to clients and non-clients alike in considering the coming year and beyond; and, importantly, (3) it enables us to demonstrate our knowledge of the market and set us apart from those consulting firms we compete with.

We also recognize that merely writing a monograph in response to a survey does not either focus on issues of importance to a specific firm or answer questions about the material a firm's management may have. Thus, **we have decided to make ourselves available to present the material/answer questions on it to managements of firms who would be interested.** Any one of our partners would be willing to do that – either in-person or by phone conference. If there is interest on your part, please contact any of us below.

Again, thank you for either participating in our survey or considering its results – or both.

John S. Smock / jsmock@smocklawfirmconsultants.com / 847.457.6121

Peter A. Giuliani / pgiuliani@smocklawfirmconsultants.com / 847.457.6124

Gary B. Fiebert / gfiebert@smocklawfirmconsultants.com /847.457.6122

Joseph V. Walker / jwalker@smocklawfirmconsultants.com / 847.457.6125