

contingency litigation hasn't been as prevalent until relatively recently. And some think the plaintiffs' bar will push this trend further as even some traditional personal-injury practices are dipping into this litigation pool.

"An interesting development we've seen in Florida," says Darryl Bloodworth, a founding partner of Orlando's 50-attorney Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, "is that some of the partnerships that have been strictly personal-injury plaintiffs firms are now doing more commercial litigation. What's different about that is that

many of them are taking an increasing number of cases on a contingency-fee basis."

Bloodworth thinks that, with more businesses having the capability to hire a lawyer to tackle a commercial dispute on contingency, more suits will be filed, or at least more claims will be asserted. "I expect it will increase the amount of business litigation," he says.

Of course, the emergence of commercial contingency cases isn't limited to Florida or to regional firms. The international megafirm Morgan Lewis & Bockius has delved into this area. "We're seeing a rise in these both in the United States and internationally, and there are different sets of rules that apply and are emerging outside the United States," says Gordon Cooney, Jr., the managing partner of the firm's Philadelphia office and its chair of the litigation department.

"We've had some considerable success," Cooney adds, "in handling commercial plaintiff cases where we, first, vet the merits of the case very carefully. Second, we make sure there's no issue conflict between the case we're taking on commercially on the plaintiff side and the rest of our practices, and three, where we can staff the cases with people who know how to work up a plaintiff-side case."

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Patent Lit Just Keeps on Rolling

Another classification of cases that's buzzing is patent litigation, which for the last decade seems to increase or at least stay steady year after year, according to Mark Klapow, a partner at Washington-based Crowell & Moring. Klapow is also the creator and editor of firm's *Litigation Forecast 2014*, the second such edition of what is now an annual publication that tracks litigation trends.

Klapow says two factors are driving the upsurge in patent litigation. "One is a greater

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appreciation among Corporate America that often a company's future is dependent on its ability to develop and protect their intellectual property," he says. "The second, of course, is the patent troll phenomenon. And it now appears clear that Congress is not going to act this year to take any steps to change the incentive structure for that activity."

While Congress may be lying dormant, in many regards, the White House has been pushing the executive branch agencies to work hard. It's no secret that the Obama administration has stepped up regulatory enforcement across a wide range of areas and that has bumped up demand from clients who need their law firms both to help them with prophylactic measures to avoid problems and to get out of trouble when it arises.

Klapow says this "intersection of the regulatory state and litigation" constitutes a "macro litigation trend" in the legal profession in 2014. "So a law firm like ours that is steeped in the DC culture and regulatory state and that has the litigation capabilities to match is well-positioned to capture more and more that work," he adds.

Bustling Employment Law

While commercial contingency cases, patent litigation, and regulatory-related work have all been escalating, no litigation sector attorneys have been as engaged as employment lawyers. "The vast majority of litigation, generally speaking, is in the employment arena, especially with breach of fiduciary duty cases and noncompetes," says Patrick Michael, a partner with Louisville's 500-lawyer Dinsmore & Shohl. "They are interrelated because often the breach case becomes a sort

of a noncompetition case without a noncompetition provision in an employment agreement." That is, for example, when a former employee takes a customer list or proprietary information to a new employer.

At Dean Mead, Bloodworth says his firm also has seen a significant uptick in employment law-related activity. "Wage and hour claims have been on the increase," he says. "There are issues over background checks, and the use of social media in an employment context has been a hot issue. And, we've seen more noncompete litigation as well."

Given the boost in employment law work, you'd think that firms would need to ramp up their hiring to meet demand. Some have been hiring and plan to do more while others have held back.

"The employment group is hiring more lawyers and so is the litigation department," Michael says, adding that, at Dinsmore, employment and litigation are two separate groups. "If we find a lateral who is interested in moving and it's a good fit for both our firm and the lateral, we'll bring them in and that's both in employment and litigation. Typically, we'll hire lawyers for the summer associate program and bring them through the ranks in a more traditional fashion. We're hiring and matching the demand that's out there. We're competitive in the marketplace and attract a lot of top-quality laterals and young lawyers."

But at Dean Mead the partners have gone a different route. "There's been a re-allocation of resources the last couple of years to handle the uptick in employment law claims," Bloodworth says. "We have not gone on a major hiring spree."

The strategy at Crowell & Moring has been somewhat measured in the way they boost their ranks in the litigation department. "I'd say we're doing some robust targeted hiring," Klapow says. "Not all areas are up but in the areas where we have growth, we're looking for established talent."

And of course, at C&M, like at firms nationwide, the litigation team is meeting demand by streamlining its operations. “Clients are demanding efficiency, as they rightfully should be doing, and we’re insisting upon it internally,” Klapow says, adding that one way to become more efficient is with across-the-board legal project management. “Any client who walks in our door knows that, from top to bottom, from partner to associate to paralegal, our team has been trained in legal project management. We can do budgets efficiently and effectively. We have internal planning tools that are proprietary, and we think we’re really out ahead of the curve on those things.”

Beyond the Borders

Two more related litigation sectors are also filling up lawyers’ workloads, particularly at Morgan Lewis. “We’re finding that the government contracts and international trade space are both very active areas,” Cooney says. “As the government increasingly becomes a purchaser of a growing variety of goods and services, the whole government contracts base heats up, and it’s somewhat related to the issue of international trade.” [Another area in which the firm has seen growth globally is in international arbitration, a trend that other large firms have latched onto as well. Look for coverage on this development in an upcoming issue of *Of Counsel*.]

While some litigation groups don’t have the geographic reach within its firm like Morgan Lewis does—nor do they have the 1,400-plus lawyer fire power—they can still serve clients’ global litigation needs.

Both Dean Mead and Dinsmore are members of ALFA International, a global

network of 145 law firms with 80 in the United States and 65 in other countries. “The ALFA network is a valuable tool for us because it’s a built-in referral network, where we know the lawyers individually and have a level of confidence that they can do the work,” Michael says. “There’s not a week that goes by where we’re not sending stuff out to an ALFA firm.”

And, you can bet that Michael and his partners at Dinsmore market their membership and let clients know that they have this outside expertise. “It’s clearly a selling point for us,” he says. “One of my clients who does business throughout the United States and is now beginning to do business internationally looked at our affiliation with the network when they engaged our firm several years ago. They liked our ability to handle work anywhere in the United States in the event something came up. They want to make sure we have the intellectual knowledge necessary to handle something in virtually any jurisdiction.”

In Orlando, Bloodworth and his colleagues sing the praises of ALFA as well, especially as their clients increasingly go global. “We’ve had clients who’ve had needs in South Africa, throughout Europe, Asia, and Australia,” he says. “We’ve always gotten good feedback because we’re putting them in touch with fellow ALFA firms that have been vetted well. We maintain relationships with these firms and that has been very helpful for us because we have to compete against national firms. With this affiliation, we’re able to say [to potential clients] that we have very good relationships with firms not only throughout the United States but internationally as well.” ■

– Steven T. Taylor