The Ever-Changing Legal Landscape Of Boston

The Editor interviews David T. Brewster, M&A Partner in the Boston office of Jones Day.

Editor: Please tell our readers about your background and experience.

Brewster: I grew up in Plymouth, Massachusetts and attended Northeastern University, studying criminal justice and taking advantage of Northeastern’s cooperative education program, which allowed me to have an assignment with the Justice Department. This experience peaked my interest in going to law school, leading to my attendance at Harvard Law School, from which I graduated in 1982. As a summer associate I clerked at a number of firms, Skadden, Arps, Slate, Meagher & Flom LLP in Boston being one. I started my full-time career with Skadden Arps in 1982. Today Skadden is a brand name, but when I entered the firm, it was very much an upstart, the Boston office being its only office outside of New York. I had a terrific experience clearing home e-mail ‘82 to ‘88. Early on I spent much of my time in Skadden’s New York office working on large corporate takeovers, but over time and particularly after I made partner in 1990, I focused more on the Boston market and built a middle-market private and public company M&A practice covering most of the industries in the region. I left Skadden in ‘08 for a combination of professional and personal reasons and I was looking for a firm that was more focused, enjoyed the Midwest and the South. I was working on a prospective client whose intellectual-property-centric business operates in over 30 countries. As part of our presentation material, I showed a snapshot of a map of the world with numbers and locations of where we have intellectual property lawyers. No one in Boston has this kind of reach in the IP space.

Editor: I gather your compensation practice is a little different from that of other firms; people are not automatically compensated for bringing in new clients.

Brewster: The thing that is clearly different about the compensation structure at Jones Day is that there is no transparencies across the platform; that is, partners don’t know what their peers are making, and that is a wonderful thing in my view. There is a culture here that people feel slighted because of how they’re being treated vis-à-vis their colleagues. This contributes to an environment where the focus is on serving the firm’s clients and supporting the firm overall as opposed to competing with each other on origination credit and billable hours.

Editor: Please talk about the firm’s M&A practice in Boston.

Brewster: We have a terrific foundation. In addition to me, we have Bruce Raphael, who, like me, works across industries but has much more experience in the insurance and banking space than I do. Plus, from Jones Day’s healthcare practice group we have Travis Jackson, who has significant experience with mergers and acquisitions involving hospitals and structuring joint venture relationships among healthcare providers. Jones Day has a vibrant private equity practice both within the U.S. and abroad, and part of our mandate is to bring those resources to bear on this market. Jones Day prices its services to local market conditions, not to ‘main office’ market conditions, as many international firms with offices in Boston do. In addition, we have wonderfully talented lawyers throughout our U.S. offices who are billing at rates consistent with their local markets, whom we can involve in our M&A work here in many cases at significantly less than what our Boston-based competitors are charging.

Editor: As the economic recovery remains slow, are there companies that are still vulnerable to hostile takeovers?

Brewster: When I first started practicing, the conventional wisdom was that you would never see a hostile takeover in the tech space because the principal assets of tech firms – i.e., the employees in general and the engineers in particular – walked out the door every night, and you couldn’t do a deal without assuring that those assets would still be there after the deal closed. Well, that conventional wisdom was shattered time and time again, including in this market in late 1987 when Prime Computer launched a hostile takeover of Computervision, in which I represented Computervision. So I learned long ago to never say never, but as I see it, most folks doing deals these days want to be more deliberate in their diligence – business, financial and legal – than is generally permitted in a hostile deal, and if conventional financing is involved, they have to be more deliberate, whatever their dreams might be, because you cannot borrow money without this sort of diligence. In addition, while they do not preclude hostile deals, poison pills and state anti-takeover statutes do influence acquisition strategy.

Editor: Would you care to comment on the Facebook IPO?

Brewster: I am a little short on social media skills, so I am not the best person to address this. But we know from experience that the Internet space is evolving at a rate exponentially faster than most other, if not all other, spaces, and that staying on top for an extended period of time is very difficult. In the late ‘90s and early 2000s I saw this up close when I represented CMGI and some of its offspring – while all the rage for a while, the initial market valuations for these companies and many others like them had a very short shelf-life. Others are better positioned to comment on how much of what I learned from the last tech bubble applies to the current crop of Internet IPOs.

David T. Brewster

Please email the interviewee at dbrewster@jonesday.com with questions about this interview.