

LEGAL AFFAIRS



INSIDE

16 FIRMS STAY STATESIDE BUT HELP CLIENTS GO GLOBAL

SETTING THE STAGE

Summer programs allow students, law firms to audition each other in order to find the perfect career fit

Story by **CHRISSEY KADLECK** ■ clbfreelancer@crain.com

After interviewing at 20-some Cleveland law firms, Bradley W. Harrison decided to “summer” with his top choice — Jones Day. A transplant to Cleveland from Detroit, Mr. Harrison was only slightly more than one-third of his way through Case Western Reserve University School of Law when he landed on the short list of up-and-coming legal talents that would likely join the firm’s Cleveland office after graduation.

“I really looked to my summer as a guide to the nuts and bolts of what it’s like to work at Jones Day,” said Mr. Harrison, who is now a first-year associate at the firm. “In that 13 weeks, I am trying to decide if this is a place I could spend 13

weeks or 30 years because that is my goal going in.”

Essentially, summer programs are a chance for law firms and students to audition for one another: Law firms looking to land the best and the brightest get to check out the performance of potential associates, while students have the chance to try out their prospective employers.

“The idea is for them to get a chance to look at us, and for us to get a chance to look at them,” said Michelle Fischer, chairwoman of recruiting for the Cleveland office of Jones Day, which will bring in 25 summer associates representing 15 schools this year. “The vast majority of our new associates — across the firm — come out of our summer program.”

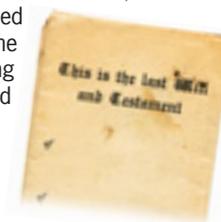
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SHORT TAKES

■ **LORAIN COUNTY LEGAL AID:** Jessica Baggett has joined the Lorain County office of the **Legal Aid Society of Cleveland** as managing attorney, while Philip Althouse is working as a staff attorney in the office. Ms. Baggett has served as a magistrate in the Lorain County court system for the past 12 years. She also was an instructor at **Tiffin University, Lorain County Community College** and **David N. Myers University**. Mr. Althouse, who also is a registered nurse, has maintained a private practice in Cleveland for the past 16 years and recently worked as a contract attorney for Legal Aid’s Lorain County office.

■ **GOING INTERNATIONAL:** Two Northeast Ohio attorneys are among those selected as **American Marshall Memorial Fellows** by the **German Marshall Fund of the United States**. **David A. Ruiz**, a litigation associate with **Calfee, Halter & Griswold LLP**, is among those who will travel to Europe this year in an intensive three-week study program designed to give emerging American leaders a more comprehensive understanding of Europe. Mr. Ruiz litigates and tries cases for public and private companies involved in complex business, commercial and antitrust disputes. He also serves as a pro bono attorney for the Legal Aid Society of Cleveland. **Tracy A. Turoff**, an associate at **Giffen & Kaminski LLC**, also has been selected. Prior to joining Giffen & Kaminski, Ms. Turoff worked as assistant prosecutor for Cuyahoga County and she was previously awarded the Pancoast Research Fellowship, which sent her abroad to study youth participation in politics and government in Western Europe. American Fellows meet formally and informally with a range of policy-makers and prominent members of the business, government, political, nongovernmental organizations and media communities.

■ **NOT WILLING OR READY:** More than half of all adult Americans do not have a will, a percentage that has remained virtually unchanged over the past three years, according to a new survey, conducted for **Martindale-Hubbell lawyers.com**. On the other hand, living wills (also known as medical directives) have jumped in popularity since 2004. Two in five adults now have living wills in place, a full 10% more than those who had one just three years ago.



SNAPSHOT

HELP WANTED

Increased demand for legal services is fueling steady hiring activity in the legal industry, according to a recent survey.

Five in-demand positions are:

1. Licensed attorneys (5+ years of experience)
2. Corporate attorneys
3. First-year associates
4. Paralegals (3+ years of experience)
5. Legal secretaries

Source: 2007 Salary Guide from Robert Half Legal

LEGAL AFFAIRS



JESSE KRAMER

Maria G. Alfaro-Lopez, general counsel for John Carroll University, joined the Jesuit college in December and also serves as its secretary to the board.

ON THE JOB

MARIA G. ALFARO-LOPEZ
General counsel
John Carroll University

By **CHRISTINE GORDILLO**
clbfreelancer@crain.com

It is fortunate that Maria G. Alfaro-Lopez places a premium on learning. As general counsel for John Carroll University, she's constantly learning about areas of law that are new to her, even after nearly 30 years as an attorney.

Being a university general counsel "is always very diverse," Ms. Alfaro-Lopez said, "but if you're open to learning, it's not a problem."

Ms. Alfaro-Lopez, who joined the Jesuit college in December and also serves as its secretary to the board, has spent her first few months on the job learning how things work at John Carroll, making "preventative work" a top priority.

She is reviewing and developing policies to limit the school's exposure to litigation, and devising ways to streamline the contract review and approval process, a big chunk of a college general counsel's workload.

A perfect fit

For Ms. Alfaro-Lopez, leaving Michigan — where she grew up, where her family is and where she spent her entire career — was not easy. But she decided the job at John Carroll provided the perfect environment to satisfy her passions: learning, serving and justice.

"Maria was intrigued by the Catholic Jesuit mission of the university," said the Rev. Robert L. Niehoff, John Carroll's president. "She was taken by the community service we bring to Northeast Ohio ... and her professional background was perfect" for us, he said.

Indeed, public service and higher education have been threads that run through Ms. Alfaro-Lopez's 27-year legal career. A first-generation Mexican-American, Ms. Alfaro-Lopez always dreamed of being a lawyer. Growing up in the Latino community of Pontiac, Mich., she said she "saw the need to have lawyers to help those who don't know the ins and outs of the legal system."

"Being a Latina and female in leadership, it's important I give back and share what I'm learning with others."

— Maria G. Alfaro-Lopez
general counsel,
John Carroll University

She put her service ethic to work quickly. Her undergraduate and law school days included internships with the Mexican American Legal Defense and Educational Fund, and one of Ms. Alfaro-Lopez's first jobs as a lawyer was for a legal aid group in Wayne County, Mich.

She then moved into higher education with positions as a university attorney and assistant general counsel for Wayne State University and then the University of Michigan, where she spent nine years.

She eventually left academia to serve in various municipal government positions, the most recent as city attorney for Highland Park, Mich.

But it was in helping others that Ms. Alfaro-Lopez realized she wanted to return to higher education.

A learning experience

In one of her mentoring roles for young Latinos a few years ago, Ms. Alfaro-Lopez brought adolescent girls to the Michigan campus to give them exposure to a world and its opportunities that their parents may not have known.

That experience, and four weeks spent in the National Hispana Leadership Institute program, crystallized for Ms. Alfaro-Lopez her desire to be back in an environment that extols education. "I discovered how much I value

learning," she said.

As general counsel, she's constantly being educated. She does not handle litigation for the university — outside counsel is used for that — but she must handle everything else that comes through her office.

Typical issues facing a university general counsel include contract and document review and drafting, advising on property leases, employment issues, government regulations, intellectual property issues and student affairs.

"It does create a challenge," Ms. Alfaro-Lopez said. "You can't do it all."

But that's part of the job that she likes, when she can seek advice from peer resources such as the National Association of College and University Attorneys and colleagues from her municipal government days. "You get to know a little bit about a lot of areas, but can't become an expert on any one issue," she said.

Many people do not realize the complexity of issues general counsels must handle.

"Universities have a broad range of legal relationships that most people don't associate with educating students, such as owning real estate, investing endowments, managing federal research dollars, issuing bonds and hiring a very wide variety of employees from ... faculty to physical plant workers to athletic coaches," said Georgia Yuan, president of the National Association of College and University Attorneys and general counsel of Smith College in Massachusetts.

To-do list

Once Ms. Alfaro-Lopez is more settled in her role at John Carroll, she would like to pick up where she left off in Michigan as far as community service goes.

"Being a Latina and female in leadership, it's important I give back and share what I'm learning with others," she said. "I see that happening (in Northeast Ohio), I just don't know what it will look like yet."

Another priority is transitioning her family to the Cleveland area. Her husband, an immigration attorney, is holding down the fort in their Dearborn home with their two teenage sons. The three plan on joining Ms. Alfaro-Lopez in the Cleveland area once the boys finish the school year. The Lopezes also have a 23-year-old daughter.

Right now, though, Ms. Alfaro-Lopez is beginning to feel at home at John Carroll, a place that allows her to follow one of the credos of her life: "Always be in a position of educating others." ■

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Awareness of disability law up among lawyers, families

By HARRIET TRAMER
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When Nessa Siegel entered the Cleveland-Marshall College of Law 23 years ago, she already knew exactly how she wanted to use her degree. She was determined to advocate for students with special needs, making certain they receive services to which they are legally entitled.

However, her professors cautioned her that the specialization was so narrow it would never support a practice, Ms. Siegel said. And for a long time, those cautions held true as she supplemented special education cases with divorces and guardianship work.

Now, however, times have changed and she has a practice — the South Euclid-based Nessa G. Siegel Company LPA — devoted to special education and advocacy work for disabled children.

Christina Peer, a Squire, Sanders & Dempsey LLP attorney who teaches a course on disability law at Case Western Reserve University School of Law, said most students today already have a familiarity with special education legislation prior to taking her class.

"I take that as being an indication the legal community is attuned to this law," she said of the Individuals with Disabilities Education Act, which requires that school districts provide a free, appropriate public education for students whose disabilities preclude them from benefiting from the standard curriculum. "There is definitely an awareness."

Knowledge is power

This awareness of special education legislation not only has spread through the legal community, but parents and other family members are getting involved and reaching out for help.

"They can access so much information (about the educational rights of children) through the Internet that they are not apprehensive about discussing these matters with a lawyer," said Ms. Siegel, who once worked as a learning disabilities tutor. "Many families have already gathered much essential data pertaining to their case before they even take this step."

Ms. Siegel also attributes the growth in the special education field to case law qualifying more students for services under the Individuals with Disabilities Education Act, also referred to as IDEA.

An individualized education program, or IEP, must be devised and implemented for every child covered under the legislation due to physical or mental challenges. Ms. Siegel said lawyers like her often step in when there's an argument that a district is not living up to the law's mandates.

Also helping to educate parents about their rights are organizations such as the Cuyahoga Special Education Service Center, which was established by the Ohio Department of Education. The service center offers educational workshops and links parents with

mentors who help guide them through the special education process, said center director Kathe Shelby.

"The mentors let parents know what their rights are when their children are being evaluated," said Dr. Shelby, who has a doctorate in special education and rehabilitation counseling. "And they make parents aware that their children can qualify for services because they fit into one of 13 different categories. More than 50% of those who do qualify are learning disabled, not physically or intel-

lectually challenged. Parents might not always be aware of this fact until they are educated."

Being proactive

Oftentimes, disputes involving IDEA eligibility are handled through negotiations between the school and parents, with lawyers working out the details, an arrangement that's much less stressful than litigation, Ms. Siegel said.

Disagreements involving punishment or placement are, however, difficult to mediate and

often head to court.

Ms. Peer, for example, has been involved on behalf of the Parma City School District in a case that has made national headlines. In that case, parents Sandee and Jeff Winkelman have argued for the right to represent themselves in federal court in a dispute over their autistic son's education.

Kerry Agins, who teaches with Ms. Peer, said most districts are becoming proactive in utilizing methods that assist students who do not benefit from traditional teaching.

"The issues are much more nuanced than they were when I first began working in the field just seven years ago," said Ms. Agins, who also works as Ms. Siegel's associate.

"The schools bring in consultants who assist them in devising programs (for children with special needs)," she said. "There are, however, always kids who fall through the cracks. And unfortunately, the schools with the least empowered families are often the ones who do not have forward-thinking programs." ■



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LEGAL AFFAIRS

Age discrimination cases could rise as work force grows older

How does a \$7.8 million punch to the bottom-line — because you didn't follow workplace age

discrimination rules following a layoff — sound?

That's the wallop that Philips Medical Systems, a division of Philips

Electronics of Amsterdam, took in 2003 when a Cuyahoga County jury heard engineer Thomas Sadowski's age discrimination case.

Though the amount Philips Medical Systems eventually paid Mr. Sadowski was lowered at the appeals court level, the message the award sent to Northeast Ohio

employers was chilling.

"Juries are saying enough is enough," explained David Young, the employment lawyer who took

the case to trial on Mr. Sadowski's behalf.

And, noted Mr. Young, things are going to get worse.

The work force is aging — every seven seconds a boomer turns 60 — and, due to recent tort reform, lawyers have lost the right to seek huge settlements for malpractice and accident cases.

"More lawyers are going to become interested in age discrimination cases," he said. — Eileen Beal



ON THE WEB For info on avoiding ageism issues log on to www.craainscleveland.com/ageism.

AGE DISCRIMINATION IN EMPLOYMENT ACT CHARGES

This chart reflects the total number of charge receipts filed and resolved under the Age Discrimination and Employment Act, as well as those filed concurrently under Title VII, the Americans with Disabilities Act and the Equal Pay Act. Resolutions can include settlements, withdrawal of charges with benefits, administrative closures, findings of no reasonable cause or reasonable cause, successful or unsuccessful conciliations or merit resolutions.

Fiscal year	Receipts	Resolutions	Monetary benefits (millions) *
2002	19,921	18,673	\$55.7
2003	19,124	17,352	\$48.9
2004	17,837	15,792	\$69.0
2005	16,585	14,076	\$77.7
2006	16,548	14,146	\$51.5

*Does not include benefits obtained through litigation

SOURCE: U.S. Equal Employment Opportunity Commission

Local locale, global growth

Firms staying stateside while still snatching up opportunities to help biz clients work overseas

By SHAWN A. TURNER
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Northeast Ohio's law firms are finding they don't necessarily need a physical international presence to continue serving their U.S. clients who do work in other countries.

With U.S. businesses becoming more active overseas, law firms with only domestic offices have found ways to benefit from opportunities abroad.

"I would say the international practice is probably a growth area for the Cleveland legal market," said Hugh E. McKay, partner-in-charge of the Cleveland office of Porter Wright Morris & Arthur LLP, where both the fees from the firm's international work and the number of clients doing international business have increased by 20%.

"I think a lot of people are unaware the player Cleveland is in the international business scene and the international legal scene," he said.

Building partnerships

Several firms with Cleveland offices said they planned to grab their slice of the growing international business pie without hiring extra bodies to keep up with the work. Instead, some are striking partnerships with firms in the countries where their clients are working.

That has been the case for Hahn Loeser + Parks LLP. Mark Watkins, partner-in-charge of the firm's Akron office, said much of Hahn Loeser's international work is connected to Asia so the firm has been active in seeking out lawyers in that part of the world.

"Opportunities are changing and expanding," he said. "The Far East seems to be en vogue."

Other firms, meantime, have joined forces with organizations that partner with firms internationally.

Walter & Haverfield LLP of Cleveland, for instance, is a member of Lexwork International, a group that helps firms' international clients find legal resources in the country where their work takes them.

Michael McMenamin, head of the litigation and employment group at Walter & Haverfield, said between seven and nine matters a year are sent to Lexwork member firms.

"If midsize firms like us want to stay competitive we have to be able to answer our clients' questions if they say, 'Hey, we want to set up a company in Germany. Can you help us?'"

Cleveland law firm Calfee, Halter & Griswold LLP also belongs to an international consortium of law firms in a group called Lex Mundi, an organization that is not affiliated with Lexwork.

Bob Ross, partner and chairman of the international practice group at Calfee, said one benefit of belonging to such an organization is that the firm is not spending money building offices in a part of the world that is a popular location for business now, but might not be down the line.

"Instead of just trying to figure out where the next hot spot is going to be, we'll just use Lex Mundi," he said. He declined to say specifically how much Calfee's international practice work has

gone up, but said it was a "significant increase."

The partnerships also bring business to the local firms from other countries. The slightly more than \$20,000 Calfee pays to belong to Lex Mundi is worth that extra business, Mr. Ross said.

"What we pay we get back tenfold," he said.

'A big wide world'

Cleveland-based Kahn Kleinman LPA, which itself is a member of the international law firm organization Meritas, has also seen more global business coming its way, said partner Kevin Barnes.

"Smaller and mid-market companies are looking to do more," he said. "They're sourcing products from China or India or trying to establish relationships whether it's in Europe or Asia or South America."

In response, his firm has reorganized internally to handle the work. At one time, Mr. Barnes was the primary attorney for international work, but during the past two years the firm has included more attorneys whose responsibilities include international law.

"We have sharpened the resources that we have here," he said.

That has benefited such companies as Beachwood-based Austin Powder, which does blasting services work for mining and construction businesses. Michael Gleason, president of Austin Powder International, said his company has needed Kahn Kleinman to help it in the acquisition of foreign companies in places such as the Czech Republic.

"What Kahn Kleinman has done, which has helped us out, is to identify local counsel," said Mr. Gleason, "people who know the local laws and customs."

Porter Wright's Mr. McKay said he believes this type of work is going to continue to increase.

"It is a growth area," he said. "The sky's the limit. It's a big wide world out there." ■

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Stage: Firms tout living, working in Northeast Ohio

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Michael Jacobson, a third-year law student finishing his degree at University of Michigan Law School, clerked the past two summers in Cleveland, working at Squire, Sanders & Dempsey LLP and Baker & Hostetler LLP.

"I wanted to work at a firm with the best notoriety, which is why I ended up at two of the bigger firms in town, and I wanted a nice balance of work and play," said Mr. Jacobson, who will join Baker & Hostetler in the fall. "I know a lot of summer programs in some of the bigger cities, specifically Manhattan, are pretty much all play, no work."

He said many of his law school friends summered at larger firms in New York and did very little work, research or writing during their time there.

"But they were wined and dined all summer to sell them on the firm. I think once they start working full time they are going to be in for a rude awakening, and I didn't want that," said Mr. Jacobson, who grew up on the east side of Cleveland. "A summer program is obviously going to be far less successful than a full-time position with any firm would be but I wanted at least a more realistic view of what life would be as an associate there."

At Baker & Hostetler's Cleveland office, which normally has between 12 to 14 summer associates each year, summer associates do work that would otherwise be done by the firm's associates, said Jennifer Pethel, recruiting coordinator.

"Summer associates are very focused on the work and the type of work that they are going to be given when they are considering what firm to choose," she said. "We don't make up assignments for our associates."

For that work, summer associates earn a salary. At Baker & Hostetler, for example, associates earn \$2,100 per week, according to Ms. Pethel.

And if the summer associates shine as recruitment professionals believe they will, many firms plan to extend offers to the students as they enter their third year of law school.

"We make the tough decisions in the fall when we decide who we want to bring in as summer associates," said Eric Mosier, chairman of the summer program at Jones Day who also was a summer associate before joining the firm. "We make sure that if we bring 25 summer associates in — if they all show that they do what we think they are capable of doing — that we'll be able to invite 25 back as full-time associates."

Out to make an impression

Law firms also focus on highlighting the best parts about living and working in Cleveland to summer associates, coordinating social events that feature an activity on Lake Erie such as charter

fishing or going to Put-in-Bay, as well as the mix of arts, entertainment and dining options around Northeast Ohio, said Stephanie Haggerty, director of professional recruitment and development at Calfee, Halter & Griswold LLP.

"We're not only looking for the top people in their class, the top performers, people who are active in their community but we are also looking for people who have a genuine interest in Cleveland, whether it's their hometown or their fiancé is from here," said Ms. Haggerty, whose firm will

employ eight summer associates this year. "We like to support local talent."

While the summer associate program at the Legal Aid Society of Cleveland doesn't function in the same way as private firms in terms of job offers and enticing salaries, it attracted 170 applicants for its 12 unpaid positions, said Melanie Shakarian, director of development at the Legal Aid Society of Cleveland.

"It was a pretty incredible group from 50 law schools across the nation," she said. "For those

students who are looking to have a career in public interest law, they seek out programs like ours, which is one of the better known in the country."

The associates at Legal Aid are given an intense 10-week glimpse into the practice of poverty law, including interacting with clients, shadowing attorneys to court, project work and training on specific areas of substantive poverty law, such as predatory lending, Ms. Shakarian said.

Lauren Gilbride was a summer associate at Legal Aid last summer

as a "One L," or a first-year law student at Case.

"It's very competitive to work for these types of places because it is such good experience and a lot of people want to get involved in public interest, and the experience there is really unparalleled," said Ms. Gilbride, who is currently interning at Legal Aid.

She said she will spend her summer at the Cleveland firm Kohnman Jackson & Krantz PLL, which made offers to both of its 2005 summer associates, according to the firm's website. ■



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LEGAL AFFAIRS

Law firms offer billing alternatives to cater to clients' financial needs

By BRAD DICKEN
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While the billable hour isn't a thing of the past, some law firms around the country and a few in Cleveland are using unconventional arrangements in an effort to appeal to the needs of their business clients.

"One thing that gets in the way of a small or midsize company using a lawyer is the fear of unexpected legal fees," said Leonard Young, a former in-house corporate lawyer and now a partner at Walter & Haverfield LLP in Cleveland.

At Walter & Haverfield, business clients using the firm's general counsel services group are charged a flat retainer fee for basic legal services versus an hourly rate. Mr. Young said the general counsel services group — started last year by Walter & Haverfield — is ideal for companies that aren't large enough to afford in-house attorneys, small legal departments or the money pit that could open if a legal problem suddenly materializes.

Just knowing there's an attorney a phone call away who isn't going to start the clock the moment his phone rings gives peace of mind to Zachary Coleman, managing director of the Cleveland-based consulting firm ZBK Partners LLC, which has employed Walter &

Haverfield on a retainer basis.

Mr. Coleman said worrying about how much a lawyer is going to cost with an hourly fee structure can lead to bad business.

"You end up being more careful about when you pick up the phone," he said.

Win-win situation

Nicholas DiCello, an attorney with Spangenberg, Shibley & Liber LLP in Cleveland, said his firm is working to reverse that way of thinking as well.

"What's synonymous with attorney is billable hours," said Mr. DiCello, whose firm specializes in plaintiff's litigation and recently started to take on more business clients.

"One thing that gets in the way of a small or midsize company using a lawyer is the fear of unexpected legal fees."

— Leonard Young
former in-house corporate lawyer,
partner at Walter & Haverfield LLP

At Spangenberg, Shibley & Liber, the firm instead agrees to shoulder the cost of the lawsuit and take a cut — a contingency fee that typically runs between 25% and 35% — of whatever the client wins in court or in a settlement.

"If you think about it, it's the only arrangement where the client and attorneys' financial goals are joined," he said.

The practice of both attorney and client sharing the risk means lawyers are much more likely to advise a client when their case might not be winnable, Mr. DiCello said.

"If there's no recovery at the end of the day, the client's going to get nothing and neither is the lawyer," he said.

Amy Leopard, a partner at Walter & Haverfield, runs the hospital side of that firm's general counsel service. A hospital administrator before she became an attorney, she said she sees both sides of the billing question.

Clients are increasingly pressuring lawyers to keep costs down, she said, which leads to alternative billing methods, such as retainers and contingency fees. They want attorneys to assume more of the risk, rather than charging ahead on lawsuits that could lead nowhere, Ms. Leopard said.

"Clients don't mind spending the money — if they can see the value," she said.

Dominic DiPuccio, a partner with the Cleveland law firm of Kahn Kleinman LPA, said while his firm doesn't engage in the practice, he understands why clients might like the idea.

"Costs tend to be unpredictable," he said. "You just never know."

Wide range of experience

The practice of putting a firm on retainer to deal with daily legal issues is more of a throwback to how legal work used to be done, when every attorney knew some-

thing about virtually every aspect of the law, Mr. DiPuccio said.

Today's attorneys are more narrowly focused on specific areas of the law than ever before.

"You don't find a lot of lawyers, particularly younger lawyers, who are skilled enough or interested enough in providing services outside their niche," he said.

Susan Hackett, general counsel for the Association of Corporate Counsel, said many companies have disbanded their in-house legal departments to save money. And firms like Walter & Haverfield have increasingly been stepping in to fill the void left behind, she said.

It's not exactly a common practice, but the idea makes sense

to Ms. Hackett, especially for clients looking to have a legal department without actually having one.

"They can see the same person consistently and build a relationship over time," she said.

In the absence of a legal department, a practice like Walter & Haverfield's means that clients have access to attorneys with expertise in different areas.

Don Sweeney, director of finance for the Brooklyn-based industrial lubricant manufacturer Dylan Industries Inc., said that was part of the reason his company decided to give Walter & Haverfield's retainer system a try.

"When we have a question on HR, he brings in his HR guy," he said. "It's nice to have a single point of contact. No one person could have all that knowledge."

It's also good business, Mr. Sweeney said, cutting down on the cost of having an attorney working directly for the company who might not have something to do every day.

"We couldn't afford to have somebody in-house on a permanent basis because our needs are sporadic," Mr. Sweeney said.

Because of Dylan's irregular legal needs, the company is on a monthly retainer contract with Walter & Haverfield for day-to-day needs, but that doesn't mean the law firm deals with everything.

Walter & Haverfield's Mr. Young said clients retain the firm for a certain amount of time and renew their contracts — or not — when that period is up.

Problems could come up with the practice, however, in cases requiring extraordinary legal work — such as litigation — and at that point the company typically falls back to the old standby of an hourly rate.

"When it comes to litigation, we would sit down and put together a budget," Mr. Young said. ■

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LEGAL AFFAIRS

Prevent employee fraud to preserve revenues

In 2006, the Association of Certified Fraud Examiners announced the results of its study of a sample of more than 1,100 cases of employee dishonesty. The study concluded that organizations lose approximately 5% of their annual revenues to fraud. This figure translates to an estimated \$652 billion in losses.

Whether your company is a financial institution susceptible to cash larceny schemes or a manufacturer or health care provider susceptible to fraudulent billing, you can take steps to prevent loss and purchase insurance to protect your company in the event of a loss.

In addition to conducting thorough background checks before offering employment, there are mechanisms you can employ to prevent — or more quickly detect and thereby minimize — a loss caused by a dishonest employee.

■ **Implement a confidential reporting system:** This encourages the anonymous communication of policy or procedural irregularity. The Association of Certified Fraud Examiners found that organizations with such reporting procedures detected fraud nine months sooner than those without a communication mechanism.

■ **Use internal and random audits:** Audits, especially those performed randomly, can ferret out the effectiveness of existing procedures. Companies that use such audits suffer fewer losses and discover losses earlier.

Commercial crime insurance may reimburse businesses for those losses that do occur. Coverage for loss of money, securities and covered property due to

employee dishonesty can be purchased as an endorsement to most companies' business insurance packages. Policies differ, however, in their structure, terms, definitions and exclusions.

■ **Different policy forms:** Each insurance policy is unique and must be read in its entirety to ascertain the extent of coverage. Generally, there are two different types of crime coverage policies — discovery policies and loss-sustained policies.

A discovery policy responds to a covered loss sustained at any time, but discovered during the policy period. The terms of the policy in effect at the time of the discovery govern, regardless of the insurance policy, if any, that may have been in place at the time the loss actually occurred.

A typical loss-sustained policy applies to covered losses that occur during the policy period and are discovered within a specified amount of time after the policy period ends. This type of policy often covers losses that would have been covered by a prior policy but for the expiration of that prior policy's discovery period.

■ **Key clauses, definitions and exclusions:** While some policies broadly cover acts of employee "theft," other policies only will respond if the employee committed the act with the "manifest intent" to obtain a personal financial benefit and to cause your company to sustain a loss. The "manifest intent" clause has been the focus of considerable litigation between carriers and the insured, especially in more sophisticated fraudulent schemes.

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ADVISERS

coverage, you should purchase a policy with a broad definition of "employee." Most policy forms define employee to mean, among other things, a person whom the employer has the right to govern, direct or control. Whether the wrongdoer was under the direction or control of the employer is often central

to a carrier's denial of coverage.

Carriers often cite the inventory-shortage exclusion to deny claims submitted by manufacturing and distribution businesses. This exclusion precludes coverage for claims where the proof of loss is dependent upon an inventory or profit and loss computation. The reason for this exclusion is that inventory losses can occur easily for a variety of reasons other than theft, such as carelessness, misplacement or destruction.

■ **Complying with conditions:** Insurance companies are in the business of writing insurance contracts, selling insurance contracts and looking for ways to deny coverage. Failure to comply with policy conditions is the most common reason carriers deny coverage.

Most policies require that notice be given as soon as possible after discovery of a loss or a situation that may result in a loss. Many policies specifically provide that "discovery of loss" occurs "when you first become aware of facts which would cause a reasonable

person to assume that a loss covered by this policy has been or will be incurred, even though the exact amount or details of loss may not then be known."

Most courts have found that this clause requires the insured to give notice when it has a level of knowledge more certain than mere suspicion of irregular conduct.

Each year, failure to comply with notice requirements results in literally millions of dollars in lost reimbursement to companies. If you are unsure whether a situation rises to the level of "discovery of loss" triggering your notice obligation, contact your insurance coverage counsel or otherwise err on the side of providing notice immediately. ■

Michael Brittain is a partner at Calfee, Halter & Griswold LLP in Cleveland and chairman of the Insurance Recovery Group. He can be reached at mbrittain@calfee.com. Shelly K. Hillyer is a partner at Calfee and vice chairwoman of the Insurance Recovery Group. She can be reached at shillyer@calfee.com.

SELL YOURSELF

Grand openings

■ Have you recently opened a small business in Northeast Ohio? To be included in the Grand Openings listing in the next Small Business section, call sections editor Amy Ann Stoessel at 216-771-5155 or e-mail astoessel@crain.com.

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GOING PLACES

JOB CHANGES

DISTRIBUTION

WORLD CUP COFFEE: **Carole Jones** to brand manager for sales, JavaFlow coffee system.

EDUCATION

KENT STATE UNIVERSITY: **Robert G. Frank** to senior vice president for academic affairs and provost.

NOTRE DAME COLLEGE: **Michael T. Dugan** to director of safety and security.

FINANCIAL SERVICE

CLEAR PERSPECTIVE GROUP LLC: **Donald J. Modica** to vice president of research.

ERNST & YOUNG LLP: **Rich Mitchell** to leader, North Central Strategic Growth Market.

SPERO-SMITH INVESTMENT ADVISERS INC.: **Mary E. Lord** to senior vice president and chief investment officer.

SS&G HEALTHCARE SERVICES LLC: **Gary D. Wengerd** to associate

director.

GOVERNMENT

NASA GLENN RESEARCH CENTER: **Robert Moorehead** to director, Space Flight Systems Directorate.

HEALTH CARE

CLEVELAND CLINIC: **Brian Davis** to director, Medical Device Solutions.

NORTHEAST OHIO EYE SURGEONS: **Dr. William Rudy** to medical staff.

SUMMA HEALTH SYSTEM: **Rebecca Ross** to program director, Wound Care Center, Ostomy and Hyperbaric Services.

UNIVERSITY HOSPITALS GEauga MEDICAL CENTER: **Melody Obery** to manager of human resources.

INSURANCE

THE HOFFMAN GROUP: **Kathy Williams** to personal lines account manager.

LEGAL

BAKER & HOSTETLER LLP:

Joseph Hutchinson to national chair, Bankruptcy and Creditors' Rights Practice.

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP: **Brian D. Kenney** to attorney.

BUCKINGHAM, DOOLITTLE & BURROUGHS LLP: **John P. Slagter** to managing partner.

COWDEN HUMPHREY CO. LPA: **James A. Sennett** to partner.

HAHN LOESER + PARKS LLP: **Timothy M. Bittel** to partner.

MCDONALD HOPKINS LLC: **Scott M. Richardson, William Fisher** and **Stacy Emhoff** to associates.

OGLETTREE, DEAKINS, NASH, SMOAK & STEWART, P.C.: **Sara E. Hutchins** to associate.

ROETZEL & ANDRESS LPA: **Mary Anne Walsh** to director of government relations.

SQUIRE, SANDERS & DEMPSEY LLP: **Cipriano S. Beredo III** and **Terence L. Thomas** to partners.

MANUFACTURING

CLEVELAND-CLIFFS INC.: **Steven M. Raguz** to vice president, corporate planning and strategic analysis.

CUTTING SYSTEMS INC.: **Frank Boulton** to regional sales manager.

EATON CORP.: **Taras G. Szmagala Jr.** to chief counsel, Fluid Power Group.

POLYONE CORP.: **Lisa Kunkle** to assistant general counsel.

MARKETING

BROKAW: **Enrique Espinetti** to account coordinator; **Nici Crislip** to account executive; **Cindy Gabel Niezgoda** to senior art director; **Leah Soeder** to business development manager.

MALONE ADVERTISING: **Stephen Abdo** to vice president and director, CPG strategic planning; **Dean Biscan**

and **Jon Dodge** to graphic designers; **Carmina Duarte** and **Ashley Moehring** to account coordinators; **Bridget Durica** to marketing research analyst; **Bradley Eimer** to copywriter; **Karole Kelly** to senior account executive; **Danielle Rose** to accounts payable clerk; **Steve Shaffer** to media director; **Tracy Washington** to field marketing manager.

NONPROFIT

THE BECK CENTER FOR THE ARTS: **Lucinda B. Einhouse** to president, CEO.

THE CLEVELAND FOUNDATION: **George Delgado** to director of international relations; **Lillian Kuri** to director of special projects; **Kevin McDaniel** to program officer; **Traci Douglas** to donor relations assistant; **Maureen Forrest** to scholarship assistant; **Monica Brown** to human resources manager; **Yvette Burrucker** to human resources generalist.

THE MALTZ MUSEUM OF JEWISH HERITAGE: **Kim Bihler** to manager of tourism and special events; **Adam Teresi** to operations and financial coordinator.

THE MANDEL FOUNDATION: **Joel Fox** to executive vice president.

UNIVERSITY CIRCLE INC.: **Samantha Holmes** to Future Connections program manager.

REAL ESTATE

COLDWELL BANKER HUNTER REALTY: **Sam F. Scaffide, Yvette M. Truman** and **Thomas J. Sech**, Brecksville; **Sandra R. Sprouts**, Bedford; **Michael Madden**, Beachwood; **Nicolette Kuebler**, Fairlawn; **Rita M. Showman** and **Mitzi Kelleher**, Medina; **Jonathan E. Marochino, Holly Jennifer Preble, Jacqueline Jourden** and **Melissa McCracken**, Portage Lakes; and **Thomas D. Burke**, Westlake; to sales associates.

THE NRP GROUP LLC: **Ken Outcalt** to senior vice president of development; **Aaron Pechota** and **Matt Shoemaker** to vice presi-



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dents, development.

REALTY CORPORATION OF AMERICA: **Jim Miller** to sales associate.

SERVICE

HUMAN ARC: **Megan Straub** to EES account representative; **Nikki Bryant** to administrative assistant; **Donna Johnson** to accounts payable specialist; **Georgene Upshaw** and **Quanesha Foley** to customer service representatives; **Margaret Judson** to account representative.

JURINNOV LTD.: **Fred Jones III** to litigation support specialist.

RETIREMENTS

HARDWICK STANDARD DISTRIBUTION CORP.: **John E. Semonin**, as of March 31, 2007.

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