Lateral Slump Shows No Signs Of Letting Up

By Erin Marie Daly

Law360, New York (January 1, 2011) -- Despite an initial boom in the lateral market for partners in 2010, movement was sluggish for most of the year as firms and lawyers remained spooked by the recession's blow to the legal industry, a trend legal experts say will continue in 2011.

"2010 has been an extremely challenging and tumultuous year for lateral movement, and 2011 will doubtless be a reprise," said Jerome Kowalski of Kowalski & Associates, a legal industry consulting firm. "There is a lateral market, but it is a different, more challenging and far more complex market than we have ever seen."

A recession-fueled belt-tightening prompted a slew of firms to let go of partners in late 2009 and early 2010, creating a buyer's market for a few lucky firms.

That initial bounty made for packed holiday parties at firms like DLA Piper, which emerged as the firm with the most net gains overall, adding 31 lateral hires, followed closely by Jackson Lewis LLP, which snagged 28, according to data compiled by Law360, which tallied lateral moves based on law firm press releases issued between Jan. 1 and Dec. 1, 2010.

Tied for third place were Jones Day and Barnes & Thornburg LLP, each of which scooped up 24 laterals, while Ogletree Deakins Nash Smoak & Steward PC snagged fourth place by adding 20 lateral hires to its ranks and K&L Gates LLP and Reed Smith LLP shared the fifth-place title with 19 new laterals.

But while the downturn created attractive hiring opportunities for some firms, others experienced a more sobering reality.

Some firms suffered heavy losses that left a number of barstools empty at year's end, led by Hogan Lovells, which saw the departure of a whopping 34 partners. Thirty partners jumped ship from Howrey LLP.

Five firms — Nixon Peabody LLP, Paul Hastings Janofsky & Walker LLP, Kirkland & Ellis LLP, Dewey & LeBoeuf LLP, and Patton Boggs LLP — tied for third place for number of lawyers lost, waving goodbye to 12 partners apiece.

LeClairRyan and Orrick Herrington & Sutcliffe LLP each lost 11 partners, followed by McDermott Will & Emery LLP, which leaked 9.

Looking at the top net gainers, legal experts said that while these firms made out well, the number of lateral hires as a general trend was much lower than in prior years.

K&L Gates, Kowalski said, has perhaps the most telling story.
“This firm only ten years ago was a middle-market, 450-lawyer Pittsburgh-based law firm with modest profitability,” he said. “Today, it’s a global behemoth of 1,700 lawyers and 300 equity partners and PPP approaching the seven figure mark” — yet it only netted 19 laterals in 2010.

Jon Lindsey, co-founder and managing partner of Major Lindsey & Africa’s New York office, pointed out that firms specializing in labor and employment law — such as Ogletree Deakins and Jackson Lewis — reaped heavy rewards in the lateral hiring market largely because general practice firms have been scaling back on that practice area.

“In an economic downturn, there’s always an uptick in employment litigation, but there has been a tremendous amount of billing rate pressure for larger firms who want to keep their rates high in dealing with these cases,” he said. “Many of the big firms that are not focused primarily on labor and employment are de-emphasizing it.”

Adding to the phenomenon, according to Kowalski, is the simple fact that labor and employment litigation has become largely a commoditized, high-volume, low-margin practice.

“Labor and employment counsel is now largely a commodity procured by corporations and acquired on a request-for-proposal basis, with little difference from a corporation’s acquisition of other routine goods and services,” he said. “It is not mainstream legal work, and it offers virtually no opportunity for outside counsel to segue labor and employment representation to mainstream, high-margin legal work.”

As for the lower number of lateral hires overall, Frank Michael D’Amore, founder of consulting firm Attorney Career Catalysts, said the trend could be due to the fact that once the recession hit full force and the legal industry experienced massive layoffs, many practitioners were inclined to hunker down.

“A recession is typically the worst time to make a move,” he said. “So people who may otherwise have moved, especially among the large international firms, fled to safety. As long as they were in a secure firm and getting good work, they were just happy to have a job.”

D’Amore said that while rates of lateral hires aren’t likely to increase by very much until it’s clear the economy has fully recovered, a small uptick in the market did begin to materialize in the last few months of 2010.

“From a candidate’s standpoint, people are starting to become more bullish as they start to feel more confident, or are at least much more receptive to engaging in discussions,” he said. “And the firms that did their best to keep costs in line in 2010 are starting to turn their focus back to recruiting more vigorously.”

However, noted Kowalski, lawyers don’t like to move unless they are at the “top of their games” — and very few are there right now.

“For those lawyers who are actually thriving in this economy and are now at the top of their games, they will largely be recognized as such by their current firms, which will take all reasonable means to keep them happy where they are,” he predicted.

For those partners who do decide to jump ship because they were either dissatisfied with their compensation packages or otherwise nudged out the door in 2010, Kowalski said they will begin hunting for a new firm in the first quarter and will not land until the third quarter.

"What we will certainly see, as we did last year, is a spate of lateral movements in the first quarter of 2011 after lengthy year-end negotiations, and then a pause as these laterals are integrated and then somewhat of a lull in the second quarter,” he said.

Indeed, said Lindsey, while firms are becoming more adventurous, they're still not as willing to make investments in lateral hires as they were before the recession.

Candidates, too, are cautious in the aftermath of the downfall of firms like Heller Ehrman LLP and Thelen LLP, he said — a trend he described as positive.

"In the past, people would assume that a firm was healthy because it published certain numbers, but that's not the case now," he said. "Lawyers are looking carefully and thoughtfully at their options and assessing the risks. They want to make sure they get into a good situation, one they won't regret."

Kowalski said one thing was clear: the law firm of the 21st century is an entirely new business model, and lawyers and law firms have barely begun to get their arms around the new norms.

"The concept of 'downsourcing' work to temp staff lawyers will certainly lead a significant number of Big Law partners to move to smaller firms this year, as many did in 2010, and this becomes a challenging process, as smaller firms are even more risk-averse," he said. "While there has been an enormous amount of success for both law firm and lateral partner in moving downstream, there have been Big Law refugees that have floundered and not delivered as promised."

As long as firms engage in thoughtful hiring processes, however, 2011 poses a time of tremendous opportunity, Lindsey said.

"In boom times, firms are never able to get people from the top places," he said. "Right now, they have a chance now to get the best and the brightest."