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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Why Some Firms Are Refusing To Raise Associate Pay

By **Aebra Coe**

Law360, New York (June 23, 2016, 6:14 PM ET) -- Despite the fact that a large swath of BigLaw followed suit after Cravath Swaine & Moore LLP raised associate pay earlier this month, at least 17 major firms are bucking the trend, a move experts say brings sanity to an industry caught up in a dangerous domino effect.

Cravath's move to raise starting salaries for its associates to $180,000 on June 6 has set off a chain reaction in the legal industry, as the largest law firms in the country strive to keep up with the Joneses — or, in this case, the Wachtells and Simpson Thachers — despite the fact that many of those firms fail to attain the same profitability as the New York transactional heavyweights, leading experts to decry the injudiciousness of the game of follow-the-leader that appears to have erupted.

"If you think about it, it makes a tremendous amount of sense for all of the firms that Cravath is competing with for work and for associate talent to match the salaries," said Mark Jungers, co-founder of legal global recruiting firm Lippman Jungers LLC. "[But] to me, it makes no sense whatsoever for a firm that has less than $1.5 million in profits per partner to match these salaries, zero sense at all."

The buck seems to have stopped at 17 of the nation's 50 largest law firms by headcount, many of which are based in the Midwest or are labor and employment firms where lower rates are expected and competition with the coasts is not as pressing.

As of Thursday, those firms include Jones Day, Holland & Knight LLP, Lewis Brisbois Bisgaard & Smith LLP, Perkins Coie LLP, McGuireWoods LLP, Dentons, BakerHostetler, Littler Mendelson PC, Bryan Cave LLP, Foley & Lardner LLP, Seyfarth Shaw LLP, Jackson Lewis PC, Wilson Elser Moskowitz Edelman & Dicker LLP, Norton Rose Fulbright, Ogletree Deakins Nash Smoak & Stewart PC, Polsinelli PC and Faegre Baker Daniels.

Of those firms, seven are headquartered in the Midwest, three are labor and employment firms, and two — Jones Day and Dentons — are the largest firms in the U.S. and world, respectively.

Why Matching Is Sometimes Dangerous

Experts say that breakdown makes sense, given the fact that the rates demanded by labor law firms and those in the Midwest are a bit lower than those demanded by the large, general practice law firms with offices located primarily on the coasts, and because the biggest law firms have the most overhead and an array of offices in low-cost hubs.

"Maybe firms in the Midwest are more sensible," Jungers joked in a phone call on Wednesday.

He said that while it does make sense for firms directly competing with Cravath to match the white shoe firm in terms of associate pay, he said the creep downward needs to stop somewhere, and it likely should have stopped sooner than it did this time around.

For instance, a firm like Kirkland & Ellis LLP arguably competes with Cravath in certain markets and has the profits per partner to prove it — $3.6 million in 2015, according to The American

Lawyer — but once Kirkland matches in Chicago, then Skadden Arps Slate Meagher & Flom LLP, which has a big office there, does the same, which leads a firm like Mayer Brown LLP to match there as well.

While Kirkland's profitability clearly supports the raises, Mayer Brown's — at around $1.5 million per partner — is slightly less clear, according to Jungers. And once Mayer Brown matches, then Katten Muchin Rosenman LLP does as well, which is still further down the rung in terms of profits per partner.

"Then, maybe Quarles & Brady goes. And then everybody gets dragged along, and that really ends up harming the firms that aren't playing the same economic game as Cravath is playing," Jungers said. "Their partners are not billing $1,200 an hour; they're not billing 2,200 hours. They're not doing the big mergers."

"They do different work at different rates in different markets and, at some point, someone who represents a tier of firms has to sort of say, 'No, we're not going,'" he added.

He said it makes sense that the buck would stop at the large labor and employment firms because those firms typically don't bill their partners out for more than $500 per hour, while firms like Cravath usually bill $750 or more for their senior associates.

"Let them go off and have their cost-of-labor war and be thankful that your costs didn't just go up by millions and millions of dollars," Jungers said.

Why Not Matching Creates Opportunities

The investment law firms make in first-year associates usually doesn't start paying off until those attorneys are trained and billing hours as third- or fourth-year associates, according to John Remsen, founder of legal consulting firm TheRemsenGroup. That means raising starting associate pay to $180,000 makes turning a profit on that investment a lengthier proposition for law firms that can't absorb the raises by increasing fees.

Additionally, associates are more transient than they've ever been before, which means that there is a high probability that firms will raise pay and then associates will make a lateral move before the firm ever makes a profit off of them, Remsen said.

"It doesn't make sense for law firms to invest that much money in people when they're not going to stay around for that long," he said. "We saw a salary bidding war before the recession and then it all collapsed, and here we go again; it's all repeating itself."

Remsen explained that often, associates aren't lured simply by big salaries, but care deeply about things like mentoring, career development, work-life balance and being part of a bigger vision.

That creates opportunities for the law firms willing to provide those things to their associates, he said. They can lure top talent away from the highest-paying law firms three years into their careers, no need to make the big investment in training a first year, grabbing laterals that have burned out or want to live in an area with a lower cost of living, closer to where they grew up, he explained.

Ken Young, co-founder of Young Mayden Legal Search and Recruiting, said that the big labor and employment firms are smart to take a pass on matching Cravath on associate pay.

Young was a labor and employment partner at Nelson Mullins Riley & Scarborough LLP for many years. He said that when he started practicing law in 1978, labor law was king, demanding high rates due to the strong sway of labor unions and a booming manufacturing sector in the United States. But as the country moved manufacturing jobs overseas and companies began to buy insurance for labor disputes — and insurance companies wielded more power over the rates they paid law firms — rates in the practice area were pressed downward.

Now, labor and employment law firms don't demand the same fees as Cravath, and, as a result, should not spend the same on labor costs paying first year associates $180,000 a year, Young said.

"Those firms that are paying $180,000 are charging their associates out at phenomenal rates, and if you can't do that, you can't pay as much. It's the same thing with regional firms in the Midwest; what you pay your associates depends on how much you can bill them out for," he said.

The difference on rates charged to clients does not have to be a burden for firms, but instead can be an advantage, he said. Charging lower rates often means that law firms can demand fewer hours billed from their associates, allowing them more work-life balance, a factor that is more important to younger generations than it was to Young's contemporaries, he said.

"Truly, when I got out of law school, most lawyers were worried about how much money they could make, and many had one-income families so they needed to make all they could," Young said. "These millennials — usually a young couple will share work responsibilities, share parenting responsibilities, and if both have decent jobs and they have work-life balance, that's fine."

How It's Going Down in Chicago

Beth Woods, managing director of Major Lindsey & Africa LLC's Chicago office, says that law firms in Chicago have taken advantage of the freedom of charging lower fees and providing associates with fewer work hours and more work-life balance, which she says allows them to compete laterally for some of the nation's top talent without matching Cravath.

"In Chicago, over the past several years, a healthy number of BigLaw partners and their work have migrated away from the larger firms like Kirkland and Mayer Brown to [regional firms], for both rate and conflict relief," Woods said.

Companies have come to rely on the regional Chicago firms and the partners who have left the big firms to join them for higher-volume, midlevel work at lower rates, she said.

"In terms of baseball, these firms are happy hitting the singles and doubles. They're not looking for big bet-the-company-type cases — those cases are still going to the Kirklands and Skaddens and Mayer Browns of the world," she said. "It's a different range of work that these firms are handling."

They have found their niche, and found an opportunity to serve a need in the marketplace that may not have been met before.

"Increasing associate salaries would significantly cut into profits for these firms, and that's not something they can pass along to the client," Woods said.

And she says it's not likely the lower salaries will affect those firms' ability to attract top-tier associates.

"What we see in some cases is a migration of talent from big firms to middle-market firms for associates wanting to get hands-on experience or to have more work-life balance. As a result, these firms are still getting top talent on a lateral basis," she said.

Polsinelli, Bryan Cave, Faegre Baker Daniels and Ogletree Deakins declined to comment for this story.

--Editing by Katherine Rautenberg and Philip Shea.