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America's legal industry

The case against clones

A lawsuit could lead to more competition and more choice

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JACOBY & MYERS embodies what many people dislike about American lawyers. The firm solicits new clients with advertisements which tantalise people with dreams of huge payouts. "Remember that guy? Who came in second at the last New York Marathon? Neither do we. Winning is everything," boasted one of its commercials in 2011 (though the firm settled the vast majority of cases before a verdict).

Jacoby & Myers was a pioneer in fighting in the 1970s for lawyers' right to advertise. Today, the firm is trying to win another suit to change the rules of America's legal industry, which generated revenues of $261 billion in the 12 months to September. If successful, the suit would allow non-lawyer investors to put money in a law firm—first in New York, New Jersey and Connecticut, which Jacoby & Myers has picked as a target, and then probably elsewhere. Currently law firms, whether a "single shingle" or one like Jones Day (the biggest American firm by headcount with more than 2,400 lawyers and 800 partners) may have only one corporate form anywhere except the District of Columbia: a partnership owned only by lawyers.

The arguments in the case are well-rehearsed—and self-interested. Jacoby & Myers says that the existing rules violate its freedoms of speech and assembly. It has lined up non-lawyer investors who would buy a chunk of the firm and share its profits, if allowed to do so. Andrew Finkelstein, the firm's managing partner, says that outside capital would allow the firm to upgrade technology and take advantage of scale. His aim is simply to give more clients with low incomes access to justice, he says with the tone of a man indignant that anyone could oppose such a thing.

Equally predictably, the American Bar Association (ABA), which indirectly sets the rules that regulate lawyers (states delegate these to their courts, which usually follow the ABA's "model rules"), opposes the change. Lawyers, it argues, are not businesspeople with a duty to the bottom line, but professionals with an ethical duty to their clients' best interests. Outside investors could push lawyers to file junk suits or take quick settlements to maximise profits.

Yet the reality on the ground in America suggests that change is badly needed. Many law firms are less than the sum of their parts. Partners are semi-independent barons, complete with associate lawyers as serfs. Nearly all work is billed by the hour, meaning efficiency destroys revenue. By contrast, an integrated firm with professional managers and modern computer systems could develop processes that are repeatable. A few small American firms are already trying to run themselves more like modern businesses, and are delighting clients with quick, high-quality work and predictable fees. Allowing outside investment would boost the number and size of such firms.

Theodore Schneyer, a professor at the University of Arizona, was co-chairman of a working group for the ABA investigating the question of ownership. It came down in favour of outsiders investing in law firms and working alongside lawyers; this would allow, for instance, engineers to help lawyers with patents. But the ABA's Commission on Ethics 20/20, charged with modernising the profession, declined to take up this proposal. Mr Schneyer, who personally favours even broader reform, thinks that only lawsuits like Jacoby & Myers's will bring progress.

Even if Jacoby & Myers loses this round, experiences abroad may change the debate in America. Several years ago, Australia allowed “alternative business structures”, including non-lawyer ownership of firms, and even public flotation. Slater & Gordon got a listing in 2007, making it the world’s first publicly traded law firm. Last year the Legal Services Act brought similar rules to Britain. The Co-op, best known for its supermarkets, has announced plans to offer cheap legal services. Duke Street, a private-equity firm, has bought over half of Parabis, itself a group including two law firms. And Slater & Gordon has bought Britain’s Russell, Jones & Walker. More than 300 British law firms are waiting to become alternative business structures under the new law, according to Jomati, a legal consultancy. (Special rules for Scotland limit outside ownership to 49%.)

Tony Williams, Jomati’s boss and a former head of Clifford Chance, one of London’s “Magic Circle” of top firms, points out that Britain’s reform was launched by the government, not law firms. Ordinary clients were complaining about the quality and expense of their legal help, so Tony Blair’s Labour government sought to break up the “guild-based” system. Today, most of the firms applying for “alternative business structure” status are small and serve individual clients. But Mr Williams predicts this will change: “Less happens in two years than you anticipated, but what happens in ten years is beyond your wildest dreams.” Corporate law firms could start taking outside capital, he thinks, though Magic Circle ones will probably feel little need for quite a few years.

Back in America, people like Jacoby & Myers’s Mr Finkelstein are watching Britain closely. When the firm reappears before the New York court, perhaps late in 2013, it may be able to point to British clients happy with the new range of options and lower fees. Provided that few serious ethical complaints surface, it will be harder for the ABA and the courts to claim that outside investment necessarily corrupts lawyers. Mr Williams gently mocks the lawyers’ hand-wringing about the death of the “profession”. “The question ‘are you a business or a profession?’ is nonsense. You’re both.”