



# dear Readers,

As part of BCG Attorney Search's ongoing commitment to bringing you the best legal intelligence possible, we offer you BCG Attorney Search's Quick Reference Guide to practice areas.

Whether you are a recruiter, recruiting coordinator, or an attorney candidate, deciphering the myriad ways law firms characterize their practice areas and their calls for attorneys or categorizing candidates' backgrounds can pose a challenge. Based on our recruiters' years of experience, this guide is designed to be an easy tool to aid you in solving those riddles.

We know that each firm will have its own wrinkle on practice area descriptions. But by providing 10 top-level practice area descriptions, each with relevant subset practice area details, the guide aims to help everyone see the overall lay of the land and, as such, be better able to determine exactly what skills a firm desires for a specific position or which candidate has the experience that the client seeks.

We hope you enjoy our material and find it useful. As always, we welcome any comments or questions you may have about the guide or other aspects of our industry and look forward to our continued partnership with you.

Best regards,

A handwritten signature in black ink, appearing to read 'A. Harrison Barnes', written in a cursive style.

A. Harrison Barnes





---

# Bankruptcy

---

Bankruptcy encompasses a practice that spans the rights of debtors and creditors in Chapter 7 liquidations, Chapter 11 reorganizations or liquidations, out-of-court workouts, and receiverships in the United States, as well as cross-border insolvency issues with respect to companies with assets in one or more jurisdiction.

Law firms tend to specialize in either the debtor or creditor side of the representation. Debtor law firms represent the financially troubled company, advising it on all aspects of the restructuring process, becoming deeply involved in the business operations of the company. This micro-level involvement is necessary in order to understand fully the scope of the company's assets and liabilities. Creditor law firms represent either an individual secured or unsecured creditor or a group of creditors, either in the form of an ad hoc committee or the official committee of unsecured creditors appointed by the U.S. Trustee in a Chapter 11. Creditor attorneys seek to maximize recoveries for creditors in the shortest possible timeframe and, therefore, are looking at the company's assets and liabilities for opportunities to liquidate or sell assets.

Some law firms divide their bankruptcy practice into bankruptcy litigation and corporate restructuring, while others expect their bankruptcy attorneys to have both litigation and corporate skills.

## **BANKRUPTCY LITIGATION**

Relevant experience for a bankruptcy litigation attorney will be more heavily weighted toward litigation skills such as:

- Conducting all aspects of discovery, including interrogatories, depositions, document production, and review with respect to adversary proceedings;
- Drafting pleadings both seeking and opposing relief before the bankruptcy court;
- Drafting appellate briefs for the Court of Appeals or Bankruptcy Appellate Panel;

- Negotiating and prosecuting all aspects of claims resolution;
- Presentation of evidence and witnesses at any trials related to contested proceedings such as hearings to approve the disclosure statement and to confirm a plan of reorganization.

### **CORPORATE RESTRUCTURING**

Relevant skills and experience of corporate restructuring attorneys typically involve more traditionally corporate skills such as:

- Advising clients on reorganization options, both in and out of court;
- Negotiating with creditors and debtors to structure financial work-outs and a consensual distribution of assets;
- Negotiating and drafting confidentiality and restructuring agreements;
- Negotiating and drafting plans of reorganization and disclosure statements;
- Negotiating and drafting all documents necessary to memorialize workout agreements.

Corporate restructuring attorneys are also well versed in the Uniform Commercial Code, particularly Article 9, and are often consulted in connection with secured lending to advise on issues that may arise with respect to the loan and collateral during any subsequent insolvency or bankruptcy proceeding.

---

# Banking & Finance

---

The banking & finance practice refers generally to a practice that serves a wide variety of needs of financiers (the banking and financial institutions industry) and/or borrowers. Attorneys in this area generally service investment arrangers and/or corporate originators.

While banking & finance lawyers, of course, retain their own practice priorities, the duties of such practitioners do not exist in a vacuum. Frequently, banking & finance practitioners are retained to lead, or be part of, a team of practitioners from many different disciplines.

For example, a banking & finance practitioner may be called upon to advise on matters attendant to the following specialty areas:

- Project Finance
- Real Estate Finance
- Acquisition Finance
- Insolvency, Corporate Rescue & Refinancing
- Tax Concerns

To that end, and due to the provision of support they provide relative to corporate matters, such practitioners usually also have a conceptual understanding of transactions being financed--whether a corporate acquisition, complex asset finance, an energy project, or a real estate development.

As such, when seeking to place a banking & finance candidate, one must determine how your client firm defines "banking & finance" in its world. One way to achieve this goal is by using the list of Practice Area Subsets set forth below to inform your investigation of the firm's website, your understanding of your client's needs, and your discussions with candidates.

## PRACTICE AREA SUBSETS

As relevant experience for a banking & finance practitioner may consist of a combination of a variety of experiences, one should consider whether a firm is seeking or a candidate is offering experience in one or more of the following areas:

**COMMERCIAL FINANCING.** A practice in this area entails representing lenders/borrowers in all types of secured/unsecured financing transactions, including senior, mezzanine, and subordinated debt financings and complex intercreditor and collateral arrangements involving both Uniform Commercial Code security and non-UCC collateral governed by federal and other state law.

**SYNDICATED LENDING TRANSACTIONS.** Attorneys representing arrangers and banks (agent or syndicate) in multiple-lender credit facilities in each of the leveraged, middle market, and investment-grade marketplaces and in connection with structuring revolving, term, swingline, letter of credit, and acceptance facilities fall into this category.

**MULTICURRENCY AND CROSS-BORDER FINANCINGS.** This highly specialized practice area involves representing lenders providing credit facilities with commitments in foreign currencies and structuring cross-border transactions for lenders and for borrowers, including advising with respect to withholding and foreign tax credit issues.

**INVESTMENT BANKING.** Working in this area means representing financial institutions, private equity investors, and other financial entities with respect to the financing of corporate mergers and acquisitions and the public and private placement of securities.

**FINANCIAL INSTITUTION REGULATION.** Attorneys with a practice in this area advise financial institutions on regulatory matters under both federal and state law, including the Gramm-Leach-Bliley Act of 1999, the regulation of SBIC affiliates, permitted securities activities, permitted banking activities, and trust and fiduciary activities.



**BANKRUPTCY.** Though often its own practice group, many banking and finance attorneys have a background in bankruptcy, which may include representing clients in collateral dispositions, restructuring, and workout and recovery of assets (whether through negotiated settlements or the bankruptcy process).

**DERIVATIVES.** As the name implies, attorneys with a derivatives practice represent lenders/market dealers regarding the documentation of transactions involving a wide range of derivative products, including interest rate swaps, foreign exchange hedges, option transactions, and commodities derivatives.

**STRUCTURED FINANCE.** This practice area involves representing trustees, issuers, and underwriters in connection with the securitizations of various asset types, including extensive experience with commercial mortgage and residential mortgage backed securities.

---

# Corporate Practice

---

Corporate practice generally refers to the representation of companies in the following broad areas: corporate governance and compliance; mergers and acquisitions; and securities. It is very common for a corporate attorney to have a specialty (and, many times, a sub-specialty) in one of these areas. Moreover, many corporate attorneys specialize in representing either “public” companies (generally, larger companies with many shareholders whose stock trades on a public exchange like the New York Stock Exchange) or “private companies” (generally, smaller companies with a small number of owners whose stock does not trade on a public exchange), given the significant differences in the legal regimes and business needs that govern each type of company.

Corporate Governance and Compliance. An attorney practicing in this area will generally represent public companies because the relevant laws typically only apply to public companies. Representative matters in this practice area include:

- Counseling companies regarding their reporting, disclosure, and shareholder-related requirements under the Securities and Exchange Act of 1934 ('34 Act);
- Preparing disclosure documents required by the '34 Act, including all periodic disclosure filings and proxy statements;
- Counseling companies regarding compliance with the Sarbanes-Oxley Act, including implementing codes of ethics and insider trading programs; and
- Representing company boards of directors regarding fiduciary duty issues.

Mergers and Acquisitions. Mergers and acquisitions attorneys advise both public and private companies regarding the following types of transactions:

- Mergers of public and private companies;
- Purchases of stock and/or assets;
- Divestitures and “spin-offs” of assets;
- Tender offers;
- Leveraged buyouts; and
- Joint ventures.

Securities. Attorneys in this practice area advise both public and private companies on capital-raising transactions. Representative transactions in this practice area include:

- Initial public offerings of equity securities;
- Secondary public offerings of equity securities;
- Public offerings of debt securities; and
- Private placements of equity and debt securities.

---

# Intellectual Property Law

---

Intellectual property (“IP”) lawyers deal with inventions, creations, and other “intellectual” and intangible types of property. The term “intellectual property” is used in its general sense to describe: “A product of the intellect that has commercial value, including copyrighted property such as literary or artistic works, and ideational property, such as patents, appellations of origin, business methods, and industrial processes.”

Examples of intellectual property are music, books, movies, artwork, product names, logos, slogans and packaging, inventions that qualify for patent protection, and information that is kept secret and not commonly known.

When people think of IP lawyers, they usually think of patent attorneys, which is no surprise given that a good majority of IP lawyers are patent attorneys. Patent attorneys, however, are not the only types of IP attorneys. Under the umbrella of IP lawyers also fall trademark, copyright, trade secret, and Internet/e-commerce attorneys.

## DIFFERENT TYPES OF IP LAW AND IP ATTORNEYS

Significantly, where property such as machines may have once been the primary source of a company’s worth, in today’s economy much of a company’s worth comes from the ownership of intellectual property. In general, there are five basic types of intellectual property work that attorneys do. These areas are: a) Patent, b) Trademark, c) Copyright, d) Trade Secret, and e) Licensing.

- a) **PATENT LAW.** Patent law protects inventions. By filing and obtaining a patent from the United States Patent and Trademark Office, the inventor of a product receives a monopoly on the commercial exploitation and use of a product for up to 20 years. Patents can protect the functional features of a process, machine, manufactured item, asexually reproduced plant, or composition of matter, for example.

- b) **TRADEMARK LAW.** Trademark law protects words, phrases, logos or symbols used to distinguish one product from another. In circumstances where a competitor uses a protected trademark, the holder of the trademark can go to court and obtain an injunction to stop the use.
  
- c) **COPYRIGHT LAW.** Copyright law protects the creators of expressive works, such as artists, photographers, writers, and musicians, and gives them the exclusive right to protect how their works are used. It is important to note that, unlike trademark law, copyright law does not protect names or titles. One way that copyright law can be distinguished from trademark law is in the advertising context. Trademark law would commonly protect the name of the product being advertised, while copyright law would protect the expression. For example, the statement in an advertisement: "If you drive this X car, you will undoubtedly realize it is among the best in the market for what it does," is an example of something that would have elements of copyright and trademark within it.
  
- d) **TRADE SECRET LAW.** A trade secret is "A secret formula, method, or device that gives one an advantage over competitors." If the owner of the trade secret takes reasonable steps to keep the trade secret "secret," courts will protect the trade secret owner from unauthorized disclosure by (1) industrial spies, (2) competitors who wrongfully acquire the trade secret, (3) employees of the owner of the trade secret, and (4) anyone with any type of duty not to disclose the information.
  
- e) **LICENSING LAW.** While licensing law may make use of all the areas of law above, it is a popular-enough type of work that it merits some discussion. A license is a grant of permission to do something with an otherwise protected work or product. Copyright holders, for example, can give permission to other individuals to copy their work, or a trademark owner can grant a license to another to use the trademark.

#### **PATENT ATTORNEYS—WHY ARE THEY IN SUCH DEMAND?**

Without a doubt, the largest demand for intellectual property attorneys is for those who can do patent work. Approximately 85% of the intellectual property placements we make are for patent attorneys. Reviewing the listings on our website, one finds there are more openings for patent attorneys than for many other practice areas combined. So the question is, why is the demand so high?

First, patent attorneys are rare. Over the past five years, the percentage of practicing patent attorneys simply has not increased as a percentage of all the attorneys practicing in the United States. The percentage of practicing patent attorneys compared with the total attorney population has consistently remained at approximately 1½ percent. There are only approximately 20,000 patent attorneys in the United States, while there are approximately 1,000,000 other attorneys.

Second, to become a patent attorney, it is not enough to take the bar exam of a given state. In addition, an attorney must also take the United States Patent and Trademark Office's Patent Bar Exam.

Third, to even sit for the Patent Bar, an applicant needs prior scientific or technical-level training at the bachelor's-degree level in a science or engineering field (or significant college credits in one of these fields). While there are certainly many people who graduate each year with technical and science degrees, very few of these people may have any interest in attending law school (and accumulating high levels of debt) because the market for these individuals is extremely good even without a law degree. Over the past several years, the demand for people to do research and development has grown rapidly, and many of these people can easily get super jobs without ever attending law school. Virtually every person who operates a computer-dependent business knows how difficult it is to find computer programmers, for example. In the biotechnology arena, there is also a high number of positions that consistently go unfilled.

Fourth, assuming the potential patent attorney even has the requisite training to qualify to take the Patent Bar, he/she must also pass it, and the pass rate for the patent bar exam is much lower than for most bar exams; it typically ranges from 28% to 40%.

Fifth, the demand for patent attorneys is compounded by the fact that the need for patents has continually increased dramatically. For example, a recent article in the Legal Times stated that the number of patents issued each year has increased 30-40 percent since 1990. During the same period of time, the number of software patents increased by approximately 200 percent.

Sixth, it is also important to note that attorneys with technical expertise in certain fields are far more likely to obtain employment as patent attorneys than other types of patent attorneys. This fact, in turn, makes the pool of potential candidates for patent positions even smaller. While there are certainly differences that could be pointed out, for the most part the expertise of patent attorneys falls into the following categories: (1) the life sciences, (2) chemistry

& pharmaceutical, (3) material science, (4) electrical engineering, (5) physics, (6) mechanical engineering, (7) medical devices, and (8) computer science. In terms of demand, the greatest demand is for attorneys with backgrounds in electrical engineering or computer science (more than 90% of our clients seeking patent attorneys are looking for those with an electrical engineering or computer science background). There is also a strong demand for attorneys with biotechnology, biochemistry, or organic chemistry backgrounds. The lesser demand is for those with mechanical or chemical backgrounds.

### **WHY ARE PATENT ATTORNEYS SO DIFFICULT TO RECRUIT?**

Recruiting patent attorneys is unique. Patent attorneys, in general, are a bit more risk averse than most other attorneys. Also, patent attorneys are aware that they are very in-demand and that they are in a “buyer’s market.” Thus, they can afford to be very choosy about opportunities. Furthermore, because patent attorneys are scientists and very used to analytical and detailed thinking, they will rarely make a move unless they have thoroughly investigated and weighed all the variables of their various options in what could seem to be excruciating detail.

### **PATENT AGENTS—WHAT ARE THEY?**

Patent agents are not attorneys, but they can perform limited functions before the USPTO without a law degree (assuming that the person has the proper science/technological degree and passes the Patent Bar). Many firms like to hire patent agents because they can perform patent prosecution at a much cheaper billing rate than a regular patent attorney, which some clients appreciate.

### **WHAT IS THE DIFFERENCE BETWEEN PATENT PROSECUTION AND PATENT LITIGATION?**

Simply stated, patent prosecutors deal with filing and registering patents with the USPTO. The term “patent prosecution” also typically encompasses patent counseling (e.g., writing opinions regarding whether a certain invention is patentable).

Patent litigation is more akin to general litigation, but the parties are litigating issues relating to certain patents. Unlike patent prosecutors, patent litigators do not need to have a science background. However, having the science background is very helpful in terms of understanding the technology, which is often highly complex.

Typically, patent litigation is more lucrative than patent prosecution because patents are so valuable and the stakes are so high. For example, if a company loses a patent, it can lose millions upon millions of dollars. Thus, the big picture is important in patent litigation, and clients are much more willing to spend \$1-to-10 million on legal fees if it means saving \$10-to-100 million in the long run.

#### **WHAT ABOUT TRADEMARK, COPYRIGHT, LICENSING, TRADE DRESS (“SOFT IP”) ATTORNEYS?**

The opportunities for trademark/copyright and other “soft IP” attorneys are fewer and far between. There are several reasons why.

First, the trademark, copyright, and licensing fields are not nearly as complex as the patent field, and they do not require a specialized scientific or technical background. In fact, many corporate attorneys are comfortable doing trademark work at a basic level.

Second, as the dot-com frenzy has slowed and many domain name disputes (where unscrupulous people were registering as domain names the trademarks of many companies) are more under control, there has been a slowdown in trademark work as compared to 1998 through 2000.

Third, while there are some high-profile exceptions to this rule and some firms have extremely sophisticated trademark/copyright practices, very few firms in the United States have separate trademark and copyright licensing departments. Many patent attorneys may be called upon to do both trademark and copyright work in addition to whatever their field of specialization is in the patent field. In addition, some people perceive that trademark and copyright licensing work is less intellectually taxing than doing patent prosecution. Many patent attorneys like doing copyright and trademark work because it is a break of sorts from doing straight patent prosecution. Accordingly, many firms and corporations like to offer patent attorneys a wider variety of work to keep them happy.



---

# Litigation

---

Litigation attorneys must develop both general skills and specific substantive areas of expertise. General skills include:

- Legal research;
- Conducting discovery;
- Taking and defending depositions;
- Preparation of witnesses;
- Persuasive writing skills;
- Motion practice;
- Trial experience; and
- Appellate experience.

A more junior litigation attorney's resume will usually reflect skills primarily in legal research or discovery matters, particularly in document review, which is a particular subset of discovery. As lawyers advance in their careers, they will gain responsibility for more sophisticated writing projects and more complex litigation tasks.

For example, as an attorney develops, he or she will likely have skill sets that reflect drafting summary judgment motions and other significant motion work before the court. Likewise, taking and defending depositions and appearing in court at hearings mark a more accomplished litigator.

Finally, a litigation attorney will graduate to trial experience, sometimes first or second chairs, which may include taking or cross-examining witnesses, picking a jury, and opening and closing arguments to the court. Though there are firms who do not handle appeals at all (and some firms that only handle appellate work), often a litigation attorney at a large firm may have had the opportunity to draft or argue an appeal before appellate courts or higher courts. Obviously, the pinnacle of this work is appearance before the United States Supreme Court.

In addition to escalating litigation skills, firms prize attorneys with clerkship experience. Law school graduates thinking of pursuing careers in litigation may apply to clerk for federal or state judges. A federal district court or appellate court clerkship is considered more prestigious than a state court clerkship. Moreover, a federal court of appeals clerkship is considered more prestigious than a district court clerkship. Depending on the firm, clerkship experience may be more valuable, depending on the judge for whom a lawyer clerked or the district in which he or she clerked.

Almost any area of law can generate litigation, and as such, one could find a call for litigators in a large range of disciplines. Nonetheless, it may help to consider some major subsets of specific substantive areas when trying to place a litigation candidate, such as:

- General commercial litigation;
- White collar criminal defense;
- Insurance; and
- Products liability.

**GENERAL COMMERCIAL LITIGATION.** The most significant category of litigation attorneys is the commercial litigator. Generally speaking, commercial litigation is civil litigation, the center of which is a dispute over a business or financial matter. The dispute may be a breach of contract, allegations of business fraud, or other pecuniary disputes. Commercial litigation will generally involve a corporate entity (corporation, partnership, limited liability company) as at least one of the parties, if not both.

Whether a law firm's litigation practice is driven by the firm's corporate clients or principally litigation clients, certain firms may have specialties within general commercial litigation. Depending on the client a firm represents, the litigation practice will be a reflection of the types of lawsuits those clients are most likely to encounter. For example, the firm that represents financial institutions may develop a specialty in lender liability matters. Some commercial litigation specialty areas may include securities litigation, financial services litigation, RICO disputes, or antitrust litigation. This litigation may take place either in state or federal court, depending on the underlying body of law. Some types of cases may only be heard in federal court. Moreover, large scale "bet the business" litigation will more likely be heard by a federal judge because of the amount in controversy.

While larger firms are more likely to have a broad general commercial practice, boutique law firms tend to specialize in one or related areas of litigation. Moreover, these smaller litigation departments are generally representing the same client or type of client each time. For example, a firm may specialize in representing stockholders in class-action suits against companies or in defending manufacturers in product liability cases.

**White Collar Criminal Defense.** A law firm with a vibrant commercial litigation practice may also have a white collar crime practice representing defendants in criminal matters. White collar criminal defense relates to criminal matters that are closely tied to corporate or financial matters, which might include defending against allegations of securities fraud, tax evasion, or antitrust violations. Generally such practices are being developed or staffed by former federal prosecutors from the Department of Justice or other federal criminal enforcement body.

**INSURANCE.** Many law firms have insurance companies as clients. Some litigation departments represent insurance companies almost exclusively. Still the type of litigation that a firm may handle on behalf of insurance clients may vary quite dramatically. One may see an attorney with insurance coverage experience. Generally, this means that the litigation attorney is advising the client with respect to whether a given policy will cover any particular incident. For litigation departments representing insurance companies, this generally means that the lawyers are defending the insurer against claims. Again, this may be a relatively minor personal injury matter or may concerns billions of dollars in assets. Generally, a coverage lawyer will have some facility with policy exclusion language and understand the issues with respect to primary, excess, and umbrella insurance policies. This litigation may be in state or in federal court, depending on the parties and amount in controversy.

Insurance litigators may also have bad-faith litigation claims. Generally state court claims of bad-faith litigation usually arise when an insurance company refuses to cover a particular incident. Here, the insured may allege that the denial was in bad faith or violated another similar state law prohibiting unfair claims.

Finally, an insurance litigator may be an insurance defense lawyer. In this type of litigation, a law firm's attorneys will take over the defense of an insured, while being retained by the insurance company client. This litigation can vary widely. One popular specialty within insurance defense is professional

malpractice. In these cases, where the amount in controversy can be quite substantial, a lawyer may represent a hospital, law firm, or individual professional against claims of malfeasance or malpractice.

**PRODUCTS LIABILITY.** Products liability is a growing area of litigation practice. In essence, a products liability lawyer represents a company against allegations that something they manufacture for sale is defective in some way. These cases may be brought by individuals or oftentimes by a “class” of plaintiffs. Products liability cases may range from allegations over the failure of a mechanical device or allegations of dangerous effects of a drug. Notable products liability cases include asbestos litigation, breast implant litigation, or pharmaceutical litigation. Because there may be technical issues underlying the litigation, some firms may want their lawyers to have undergraduate or graduate degrees in the science or technical art that corresponds to the disputes. Additionally, products liability lawyers are generally more likely to be taking and defending depositions and going to trial than their commercial litigation counterparts, so strong courtroom litigation skills are particularly important.

---

# Real Estate

---

Real Estate attorneys represent real estate investment trusts (REITs), lenders, developers, landlords, tenants, and buyers and sellers in all aspects of commercial real estate. As with any multifaceted practice area, real-estate attorneys can be generalists, but often have specialized experience in a number of related areas.

When handling a request for a real estate attorney, the recruiter should focus on the exact nature of the request and see whether the candidate matches the skill set. But, given that candidates often are not perfect matches, the practice area descriptions below should help inform and guide the recruiter in determining what the client wants and which candidate may fit that need. The major subsets within real estate are acquisitions, dispositions, and development; finance; commercial leasing; construction/development; condominium/residential; land use; environmental; and real estate workouts. These areas are discussed below.

**ACQUISITIONS, DISPOSITIONS, AND DEVELOPMENT.** Attorneys in this area often have experience with the purchase and sale of office buildings, shopping centers, multifamily residential properties, hotels, industrial sites and other commercial properties, and sales of equity interests. Their clients include developers, hotel operators, corporations, financial institutions, investors and hedge funds, real estate investment trusts, foreign governments, and joint ventures among the foregoing. They also negotiate property management agreements, brokerage and leasing agreements, and asset management agreements.

**FINANCE.** Real estate finance attorneys represent lenders, originators, loan sellers, participants, agents, master and special servicers, issuers, underwriters, and borrowers in real estate mortgage, mezzanine and preferred equity financings, and commercial and multifamily mortgagors. Traditional real estate lending transactions generally include acquisition and construction lending, permanent loans and refinancings, letter of credit arrangements and other credit enhancements, sale-leasebacks, and project finance from both the lender's and borrower's perspectives.

**COMMERCIAL LEASING.** Transactions in this area cover all phases of the leasing process, from negotiating terms to drafting and revising leasing agreements, subleasing agreements, and amendments. Commercial leasing attorneys usually represent owners, renters, private investors, and publicly traded real estate companies as they manage and negotiate office leases; leases of industrial facilities; ground leases; financing leases; and department store, shopping center, and other retail leases.

**CONSTRUCTION/DEVELOPMENT.** Construction/development attorneys help owners and developers of hotel, retail, office, and residential properties manage their contractual relationships with architects, contractors, and builders. They review and revise architect contracts and assist with issues pertaining to building code violations, delays, environmental hazards, damages, or other matters to help keep projects on schedule.

**CONDOMINIUM/RESIDENTIAL.** Most of this work entails aiding residential developers and builders on projects ranging from small subdivisions to major planned residential communities. Attorneys' involvement can span the entire development process, from land acquisition and planning to construction, build-out, and marketing.

**ENVIRONMENTAL.** Environmental law is generally considered a practice area of its own, but real estate attorneys often acquire experience in this area. These specialists deal with a variety of issues, ranging from drafting contract provisions, indemnities, representations and warranties, covenants, permit applications, technical reports, and other related documents to providing advice on regulatory compliance matters to negotiating with the relevant federal, state, and/or local agencies to performing on-site reviews.

**LAND USE.** Few real estate attorneys have significant experience in this highly specialized domain. Those who do appear before local, regional, state, and federal agencies to obtain permits and approvals, including general plan and specific plan amendments, zone changes, development permits, subdivision approvals, and related entitlements.

REAL ESTATE WORKOUTS. Troubled real estate loans can pose an array of economic and legal questions. Real estate workout attorneys represent developers, lenders, borrowers, title companies, and local governments at all stages of both successful and troubled real estate development projects by creating workouts. They review the loan documentation, including an evaluation of lien perfection and priority and of the prospects for recourse to other assets or guarantors. They assess project completion, such as obtaining governmental permits, assuring compliance with environmental regulations, operating under or modifying CC&Rs, working with contractors, curing construction defects, documenting and closing wholesale and retail sales of partially or fully built-out units, and minimizing product liability exposure.

---

# IT Litigation

---

IT litigation refers generally to a practice covering a range of matters. In addition to litigating contracts regarding technology licensing, outsourcing, and purchase contracts, IT litigators often handle matters concerning online privacy, defamation and trade libel, trademark, domain names, database rights, and patent rights. Law firms tend to represent corporate clients on these matters, though they may occasionally represent individuals who are defending defamation suits or bringing privacy suits.

As described above, an IT attorney can handle a variety of matters from pure intellectual property concerns to commercial contracts to constitutional matters. Indeed, many IT litigators began in one of those areas, but their practices expanded into the others. As such, when defining what skills are desired in an IT litigator, one should examine what area is the specific practice focused upon. In addition, taking this tack will provide greater security for the candidate in that the more general his/her practice base, the easier it will be for the candidate to work within other areas of the firm's overall practice.

Commercial IT Litigation. If firms tend to handle commercial litigation and/or their clients are pure IT companies (e.g., Cisco, IBM) or large IT consumers (e.g., almost any Fortune 1000 company), candidates will likely need experience litigating in the following areas:

- Complex commercial transactions
- Outsourcing contracts
- Financing of major equipment
- Software and hardware disputes

Intellectual Property IT Litigation. Alternatively, many firms offering IT litigation services entered the field via their intellectual property practices. Those firms are most likely to be interested in attorneys with experience in the following areas:

- Patent litigation
- Trademark and/or copyright litigation
- Database rights
- Domain names



Regulatory IT Litigation. For those firms focused on the social impact and policy side of IT litigation, candidates are more likely to be considered if they have handled matters regarding:

- Privacy
- Defamation
- Government compliance

Indeed, as more regulations regarding financial (e.g., Fair Credit Reporting Act, Gramm-Leach-Bliley Act) and medical (e.g., HIPAA) services are passed, attorneys understanding those issues in the offline world will be in higher demand in the IT arena.

Specifically, attorneys demonstrating knowledge of and experience in navigating government agency proceedings will be desired in IT litigation groups because those attorneys will be able not only to represent clients in agency and court proceedings, but also to provide counsel on how best to avoid such proceedings in the first place. One example can be seen in the Americans with Disabilities Act (ADA), which is now being used to advocate for increased access to IT services as provided by agencies and companies.

In addition, given the global nature of the Internet and business in general, candidates with knowledge of European and other regional regulations and/or foreign language skills are likely to be attractive IT litigation candidates for firms.

---

# Labor and Employment

---

Labor and employment refers generally to a practice that involves companies, corporations, government agencies, or other employers as it concerns the relationship with one particular employee or potential employee, or a group of employees, organized or otherwise. Law firms tend to represent either management-side labor and employment issues (representing the employers) or the employee side. This practice may be either a consulting-based practice (advising clients on relevant employment practices and issues) or controversial (representing clients in a specific dispute).

Relevant experience for a labor and employment lawyer may consist of a combination of a variety of experiences from counseling regarding general guidance about labor and employment to traditional labor law to employment litigation. Sometimes, however, a lawyer hones just one specialty. A recruiter should define the desired skill set for a labor and employment candidate so that he or she can be sure to meet the client's needs. To help, we have provided an overview of the three major areas below.

General Labor and Employment Counsel. Attorneys fitting this bill provide general advice on labor and employment issues and often have experience in one or more of the following areas:

- Counseling a company on developing employment standards and policies, including employee handbooks and other policies that comply with relevant local, state, and federal laws.
- Counseling a company with respect to Occupational Safety and Health Administration (OSHA) codes and standards.
- Providing advice to a company with respect to affirmative action programs.
- Establishing programs within an organization to define appropriate conduct to prevent discrimination against employees on the basis of gender, race, age, or other basis proscribed by a company or law.

TRADITIONAL LABOR LAW. Not all labor and employment lawyers have what is considered traditional labor experience. If this specific type of experience is relevant, the benchmarks will likely include the following:

- Representing parties before the relevant administrative agencies that handle labor issues. In particular, a labor attorney will have experience before the National Labor Relations Board and its state-specific counterparts.
- Traditional labor disputes will often include unfair labor practice issues, union certification proceedings, or collective bargaining agreement negotiations.

EMPLOYMENT LITIGATION. Finally, a labor and employment lawyer may have employment litigation experience. There are certainly law firms or departments of law firms that do this work almost exclusively. An employment litigation practice is generally litigation involving an employer regarding its employment/hiring practices in general. This is usually an action brought on behalf of a group of people, or a class. It may also be litigation over a specific event or events involving one particular employee's experience within a company or other employer.

- This litigation will occur both before federal administrative agencies, such as the Equal Employment Opportunity Commission (EEOC) and state and federal courts.
- The disputes may include allegations of discrimination on the basis of gender, race, religion, sexual orientation, disability, or age. Relevant federal laws prohibiting such discrimination include the Civil Rights Act of 1991, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, among others.
- Disputes among parties may also include violations of employment contracts, including non-competition and confidentiality issues.

---

# Reinsurance

---

Reinsurance is a form of insurance in which insurers pass on a portion of their risk to other insurers, thereby spreading losses among more than one company. In a reinsurance transaction, one insurance company purchases coverage from a second insurance company for a risk that the first insurance company is insuring. In such a transaction, the first insurance company would be called the “ceding company” or “cedant,” and the second insurance company would be called the “reinsurer.” This reinsurance relationship does not affect the insurance policies that the cedant issues to its policyholders; the cedant remains liable to pay its policyholders for insured losses regardless of the reinsurance coverage, and in most situations, the insured is not even aware that its insurer has reinsured a portion of its coverage.

There are two types of reinsurance: treaty and facultative. Treaty reinsurance is a general reinsurance agreement which applies to some class or classes of business. Facultative reinsurance, in contrast, is an agreement that covers an individual risk; the reinsurer retains the “faculty” to accept or reject each risk offered.

Phrases that often arise in the reinsurance context include “utmost good faith” and “follow the fortunes.” The reinsurance relationship is based on the premise that the cedant must fully and honestly disclose the circumstances relating to the risk transferred. This is because generally the reinsurer must “follow the fortunes” of the cedant. This means that when a loss occurs, the reinsurer will be bound by the same fate as the cedant; the reinsurer cannot contest coverage on grounds not available to the cedant.

In searching for reinsurance attorneys, it will be helpful to keep a few things in mind.

First, most reinsurance agreements contain arbitration provisions, and many are governed by New York law. As a result, case law in this area is relatively sparse, and much of the reported case law that does exist regarding reinsurance comes from New York courts. Thus, attorneys with an expertise in reinsurance are likely to work in New York firms, although there are several national firms with strong reinsurance practices that have attorneys resident in other states, such as California and Illinois.

Another important inquiry is what type of practice you envision the reinsurance attorney joining: transactional, regulatory, or litigation. Most reinsurance attorneys are highly specialized and are not likely to have experience in all three types of practices. So if your hiring partner asks you to locate a reinsurance attorney, delve a little deeper to learn the specific area of practice that is relevant.

Finally, some insurance coverage attorneys specialize exclusively in reinsurance, while others handle a variety of coverage work, including reinsurance. Ask the hiring partner whether a specialist is required or whether a generalist with some reinsurance experience may fit the firm's needs.

---

# Tax

---

Although most general practice law firms have a tax department, what those tax lawyers do may vary quite dramatically from firm to firm, especially depending on the firm's clients. In addition to reviewing the substance of a tax lawyer's background, tax is the principal practice where a master of laws (LL.M.) is highly desirable. At some firms, it is a mandatory credential. Several law schools have a master's program in taxation. New York University School of Law is widely considered the best among these programs. In addition, many lawyers who have or are taking tax courses to get their LL.M. do so in the evening while employed full time.

A tax lawyer may be a generalist, or his or her experience may be very specific. At a high level, tax experience falls into the following areas:

- Corporate Tax
- International Tax
- Partnership Tax
- State and Local Tax
- Trusts and Estates

**CORPORATE TAX.** Corporate tax lawyers are transactional attorneys who are most likely working closely with the corporate transactional group of their firm. In this capacity, tax lawyers may find themselves advising the corporate department about the tax implications of various business transactions, including mergers and acquisitions. Because the tax implications of a business deal can dramatically change the financial gain or loss from a transaction, the proactive corporate tax lawyer will offer suggestions on how to structure a deal to minimize tax obligations. In this respect, a corporate tax lawyer should be fairly knowledgeable about corporate transactions themselves.

**INTERNATIONAL TAX.** International tax law certainly has overlaps with corporate law in some respects. However, international tax has a few distinct elements. One substantial element of the international tax practice is advising clients who are doing business outside of the United States (or foreign clients coming into the United States to do business) with respect to the applicable tax implications of their cross-border corporate transactions. Whether it's a

joint venture between a foreign and a domestic corporation, an investment outside of the United States, or a domestic company doing business overseas, the international tax lawyer will evaluate the tax implication for the business. One particular niche, transfer pricing, involves the taxation issues for domestic companies with foreign affiliates involved in the sale of goods or services. An international tax lawyer must be able to understand relevant international tax treaties and have a sophisticated sense of international corporate structures.

**PARTNERSHIP TAX.** Generally speaking, partnership tax refers to a more discrete practice than corporate or international tax. Partnership tax covers the taxation implications when choosing a business entity's structure and the ongoing tax issues of that business. Initially, a lawyer with partnership tax experience will be offering advice with respect to what entity to choose in forming a business, whether it is a partnership, sole proprietorship, limited liability company, or subchapter-S corporation. You will often see "check-the-box" election issues as one of the partnership tax lawyers' specialties. In addition to offering advice with respect to the formation of a business partnership tax, lawyers will offer advice over the life of the business with respect to the tax implications of its day-to-day activities as well as any notable transactions, including acquisitions and raising capital.

**STATE AND LOCAL TAX.** State and local tax practices are slightly fewer and farther between. Although larger, full-service law firms are less likely to have tax lawyers with this specific expertise, some firms (some of them quite large) do still have well-known practices. A state and local tax lawyer may be representing either businesses or individuals regarding their obligations to the various states or localities in which they reside or do business.

A state and local tax lawyer may have experience representing an individual before the taxation entity in its home state regarding its tax status. This representation may involve litigation, including defense of criminal prosecution. State and local tax lawyers more recently have been busy advising clients on the tax implications of doing business in multiple states, including doing business using the Internet. Obviously, tax lawyers are always looking for ways to diminish a client's tax responsibilities in the various jurisdictions where tax may become due.

TRUSTS AND ESTATES. Although some wouldn't classify the trusts and estates practice as a subgroup of tax (some would call it a stand-alone practice), the heart of the trusts and estates practice is tax.

A trusts and estates practice involves providing advice to individuals (typically high-net worth individuals) on how to best structure their estates. Usually, this involves creating whatever structure for an estate that will best preserve and pass on assets with a minimum of tax liability. A trusts and estates lawyer should generally be familiar with wills, trusts, powers of attorney, and life insurance instruments. Trusts and estates lawyers both create and administer such instruments. On occasion, a trusts and estates lawyer will also handle litigation over the disposition of an individual's assets and the interpretation or the validity of the decedent's will.