

THE TEXANS ARE COMING

The logic of a Texas-based Latin America practice go far beyond energy and Mexico, we found at a roundtable with the heads of practice there



LL: What are the prospects for the region through 2008?

Pascal: We're very optimistic about what we see in the region in 2008, especially with the variety of our Mexican work in securities and in real estate, while outside of Mexico we've seen a good level of activity in Central America, Peru, Colombia and Brazil.

Treistman: I feel the same way – clearly the surge of commodity prices and the decline in the dollar have set the stage for significant investment in the region. Mexico, Colombia, Peru, Brazil and Chile have experienced a surge in investment, particularly in the mining area, real estate and energy sectors.

Wood: If you look at the money going into Latin American funds and the returns that have been achieved, they have been phenomenal, and that reflects the fact that money has been pouring into the region,

with a lot of activity in the M&A area. Brazil is certainly a key focus, while Bolivia, Ecuador and Venezuela have kept us busy in terms of dispute resolution in the energy business in particular. Mexico continues to be a strong market for us in M&A and cross-border disputes. As a result, we're very optimistic about what's going on in the region, both in terms of new investment and as prior investments come around to the dispute resolution cycle.

Valencia: I would even go as far as to say that through 2010 Latin America will continue to be a very powerful magnet in attracting investment, particularly in Brazil and Mexico, as well as perhaps Colombia among other countries. We see the hospitality industry growing strongly, as well as energy, mining and infrastructure sectors. The administration in Mexico is committed to foster and support the development of infrastructure projects in general, so we're very optimistic about those developments.

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Treistman: I'd like to add that inbound investment from Latin America to the US has soared, with more prospects in the United States than ever before – that's been an interesting factor in 2008.

Wood: It's interesting that US assets are considered cheap these days as a result of currency fluctuations – we're certainly getting lots of calls as well.

Valencia: It used to be very much the exception, but now it's commonplace, with Mexican companies, Central American companies, South American companies moving in – and Houston is an important hub for that.

LL: Of course this isn't just a function of exchange rates – it's also because the leading Latin American companies have changed beyond recognition...

Wood: Clearly the paradigm has changed in terms of what these companies are doing, with Petrobras perhaps a prime example of a company stepping outside its national borders in its search for opportunities.

Pascal: And you see Ecopetrol in Colombia also following the Petrobras model as well – and it's certainly interesting to note that while until recently you couldn't get a US investor to touch Colombia, now we get calls about opportunities there on a fairly frequent basis.

LL: There's a lot of talk about the "disaggregation" of Latin America – there used to be a tendency among many to think of anywhere south of here as a monolithic whole, but now both reality and perceptions are changing in that regard.

Pascal: What I'm seeing is that our clients do now have a more nuanced view of the region, but having said that, I think there's still a common heritage and common culture, as well as a common legal system that does tend to bring the region together.

Wood: About a year ago, when we were trying to figure out internally how to serve clients within the different countries in the region, we were starting to find a way in which everyone in the group would be in charge of specific countries in the region, partly in recognition of the differences between them, and I think that internally we're definitely trying to grapple with that.

Valencia: I would add that there's also an element of maturity in investors. American investors certainly are now understanding cultural and regulatory nuances between the countries, but I would also say that host countries are becoming more sensitive to what makes foreign investors tick. Countries like Mexico, Brazil and Colombia, for instance, have made great steps in terms of legal certainty, and the combination of those two elements of maturity has produced results.

Wood: I certainly feel that advances in the rule of law are a strong focus nowadays.

Goldberg: Although there have been substantial advances, there have also been some considerable steps back. This is one of the subjects that is affecting many of our clients – their first question when they talk about Bolivia, Ecuador and Venezuela is the wave of nationalisation and expropriation. It is giving all of our firms much more work in dispute resolution rather than just transactional matters.

In almost every transaction for clients going inbound into Latin America, the question that is being asked is how do we structure the deal so as to maximise our

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protection. Considerations such as the application of a bilateral investment treaty are routinely discussed now. Our dispute resolution team is getting much more involved in Latin America, while on the transactional side we're having to structure the transactions to take account of the potential nationalisation issues.

Treistman: That's a particularly important issue for us in an energy city like Houston.

Valencia: I think it's a lingering topic, particularly in the energy sector. It's a very sensitive issue in most Latin American countries. Some have dealt with it in a very

stable manner, such as Mexico and Brazil, while others are continuing to struggle with it.

Wood: When you talk about disaggregation, clearly in the energy field you have some countries that are participating in creeping expropriation, renegotiations and so forth, while you also have, for instance, Mexico discussing – perhaps those discussions have not got very far as yet – some form of privatisation of its energy industry, so it's a wide spectrum.

Goldberg: The press has been focusing on the energy area, but I think in practice it is expanding everywhere. The issues are the same, whether governments want to look at mining, petrochemicals, construction – everyone now is getting nervous. It started with the energy area, but it's now across all areas – we shouldn't concentrate this just on energy because our clients face the same issues in many diverse areas.

Pascal: I would say that there's also another side to the story, which is the improvement in the rule of law in Chile, Mexico, Brazil, and Peru – four countries in the region which have an investment grade rating, with some improvements as well in Colombia and Central America, so the movement is both ways.

Wood: I think there's an impediment to that – it used to be that when investment dollars essentially came from the industrialised nations that was a way to get the message across on rule of law, human rights and so forth, but now that there's so much competition for those assets from a whole variety of sources, that gets more difficult.

LL: We mentioned before this change in the mix of the work you do and the significant growth of outbound work from the region – is that creating significant new opportunities for all of you?

Goldberg: Absolutely, and another aspect of that is that we are finding that our Latin American practice has spread to our offices in other countries around the world. London, in particular, but we see this happening with our offices in the Middle East, the Far East and Moscow. And that's not something we would have seen 10 years ago. Also, in the past, our Latin American clients have been using us

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mainly for investments in the US; now they come to us in all of the regions where we have offices.

Wood: The same is true for us with respect to London, as well as Washington, New York, Hong Kong and Beijing.

LL: Which makes it fairly essential for you all to have a solid international footprint with offices in a variety of markets if you want to make sure these opportunities don't pass you by...

Goldberg: Most of us here have the benefit of current relations that began with the Houston office but now extends to other offices.

Valencia: You can provide a combination which I think is very important: comfort to the client through established relationships, plus the added expertise of your foreign offices doing the fieldwork as they expand abroad – if you can offer that seamlessly, it's a unique combination.

Treistman: The experience our lawyers have accumulated for years in the region, especially in energy work, really does make Houston an important hub and bridge for work involving other offices.

Pascal: Along those lines, I think that like the Miami firms, we're acquiring a lot more Latin American talent, both working here long-term and coming for short-term foreign associate programmes, and I think that continues to develop the regional relationships and the sophistication of this market. At the policy level, about two years ago the Texas Supreme Court updated its foreign legal consultant rule to make it more possible for foreign lawyers and law firms to come and work here, and the state Bar is working to update the rules for foreign lawyers to sit for the Texas Bar, so I think there's a big body of Latin American talent based in the state, and the firms and the clients draw on that.

Wood: We get resumes all the time – as I'm sure you all do – from very qualified, very talented folks who are getting LLMs at many of the top schools in the US who are very

keen to come and work here, to the extent that it is difficult to place people, but we certainly benefit from that.

LL: Would Houston stand to benefit a lot as a hub for Latin American work if these policy initiatives bear fruit?

Pascal: Yes – on the regulatory side, I would like to see Texas get more up to speed with New York in terms of making the environment more attractive for foreign lawyers to sit for the Bar. New York has had 30 years of Latin American lawyers coming to do their LLMs in the US and taking the New York Bar, then working for a year with their practical training visa. That's something that Texas and the vast majority of other states haven't yet got around to adopting – when they do, I think that will draw more foreign lawyers to come and study here and work here, and that will result in a larger pool of law firms having the international experience that is currently the preserve of the larger firms.

Wood: I think there are very valid historical reasons for the fact that New York took a



head start in liberalising its rules; New York was for many years the first direction that people from Latin America looked when they came to the US. As they needed to attract the talent, they needed to liberalise the barriers to entry. If you want to attract people to your region, you need to liberalise.

Treistman: The other thing to realise is that the Houston economy is booming, so we're getting an influx of lawyers from Latin America wanting to make a career here and do what it takes to sit for the Bar, however difficult the process for foreign graduate lawyers.

Pascal: Texas has recently become the state with the highest number of Fortune 500 companies headquartered here; and you should also bear in mind that in the same way as California, Texas has two big legal markets in Dallas and Houston. I think this proliferation of large and multinational companies based here clearly works to keep these legal markets very busy, including from a Latin American perspective.

Goldberg: Another aspect that we're beginning to see is that given Houston's reputation as a centre for Latin American work, we're getting a lot of work coming to us from clients in countries outside of the Americas, like Korea, Japan and Russia that are relatively new to investing in Latin America, especially in the energy field.

Wood: I agree that if we look specifically at the energy area, you get matters from all over the world, and they're looking for a Houston energy lawyer because Houston is the global centre for energy work. My sense is that if we do our jobs right, Houston can really be seen as the centre for Latin American work.

Goldberg: For all of us, since the reputation that we have as specialists in the energy area brings those clients through the door – and from there it expands into non-energy areas. The energy practices to and from Latin America are really a basis of the growth of all of our practices.

Treistman: And I think that's what distinguishes Houston from other US legal markets like Miami and New York.

LL: So none of you feel at all like you're missing out by not focusing on Latin America out of New York or Miami?

Pascal: There are no Texas firms that have seen the need to open in Miami – but the converse isn't true.

Wood: Miami is a different market, and every firm has to decide what they want to be in a given part of the world. They have what they're good at; we have what we're good at.

Treistman: We have people on our team in 10 cities, including LA, Houston, Miami and New York. Since Houston really is a major centre for large, sophisticated transactions in the region, this office is vital to the practice.

Wood: And I would repeat what has been said before – it's not just energy. M&A has been traditionally strong for the Houston firms in Mexico. Now we see deals pertaining to any number of other sectors.

LL: One issue that we've touched on tangentially is the matter of opening offices in the region – you all have your own strategies, but for those of you that do have offices on the ground, the question is whether you feel you made the right decision, and for those that don't the question is do you wish you did?

Goldberg: We all have different philosophies as to that issue. Speaking for Baker Botts, we don't currently have offices in Latin America, and it has been a conscious decision on our part, because our relationships have always been so strong that we haven't seen a need for an office on the ground. In fact, we've looked at it as a possible downside, because we have such strong relationships with local firms in many countries in the region, and opening an office might be perceived as jeopardising those relationships.

Pascal: At Haynes & Boone we have a different perspective, in part perhaps because we're based in Dallas. We tend to see Mexico as part of the same region in one integrated market, so I think that is what really drove us to open in Mexico City right after NAFTA was ratified; both this and the sense that we could use our Mexican resources in transactions elsewhere in Latin America. We have approximately 50 lawyers in our Latin American practice, and that's a lot of civil law bandwidth that we can bring to transactions throughout the region.

Valencia: Our experience has been very similar – we're very proud and happy about the success of our Monterrey office over the past 20 years, and now with our office in Mexico City and our presence in Brazil. I agree with Michael – sometimes it has a lot to do with timing. For Thompson & Knight to have the ability to offer a full array of seamless services to Mexican clients investing abroad and international clients investing in Mexico is something that we value very highly.

Treisman: We do not have offices in Latin America, nor a plan to open one. Expansion into new markets is an issue that we constantly evaluate. It's all about timing and opportunities.

Wood: You took the words right out of my mouth – this is something that is constantly being studied, more intensely at some times than at others. We had an office in Mexico

City many years ago, similarly to Baker Botts, and I have to say that we have been in a fairly aggressive period, for our firm at any rate, in developing our international capabilities in London, the Middle East and Beijing, so the question is whether it's now time to take a strong look at Latin America. Certainly Mexico is one of those areas where we have notably strong relationships – we belong to no formal alliances, but the relationships are strong. Again, you have to look at what your

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law firm is good at, but when you look at what is going on in Brazil you have to be tempted, especially with more and more fine firms opening there. If you look at Mexico, for Houston they're our neighbours and our strongest trade partner – that's certainly the way our firm looks at it. The other key issue is once you decide on establishing a physical presence; do you want to be practising local law? – which gets into what Michael was saying – do you want to be competing with your key relationships? But at the end of the day you're looking at your client lists and where your clients have operations, and that's really what drives you to make a decision here.

Pascal: Local law is a very interesting question, and that's a question that all of our firms struggle with. But on the other side of the coin, I think, is the fact that clients are now expecting more of a comprehensive solution. The days when you could just say

“I'm a US lawyer” and feel that all civil law issues were a matter for your local counsel are long gone – clients now expect you to have that understanding, and for us having those civil law resources built into our firm has been a big plus. Another thing to bear in mind is that Latin America is a very cyclical region, and I think we've benefited in terms of market credibility from staying in Mexico in good times and bad – the year after we opened, the Mexican peso crisis hit, and we all remember that. And if you look at the top multinational companies in Latin America, you'll see that they are companies that are willing to ride out the good times and the bad times, so I think that ultimately law firms that are willing to make that similar kind of commitment will prosper.

Valencia: Comprehensive solutions require integration, and if you don't integrate your offices very well, you have chaos. You have to make sure you work hard at integrating your services.

Goldberg: My perspective is that we are no longer just a US law firm. For many years Baker Botts had the reputation of being a Houston firm, then a Texas firm, then a US firm, but at this point, we are an international law firm. For example, if a major international arbitration project comes in to me, I'm much more likely to staff it from our foreign offices than I am from Houston.

Wood: That much is very clear from our firm's perspective as well – certainly 10 years ago we were trying to convince people that we were a US national firm and not a Texas or Houston firm, and now we clearly see ourselves as an international firm. I don't disagree with what Larry was saying about integrated services – it depends on what you're trying to accomplish in the region with a physical location, and that's a debate we have all the time.

LL: I suppose the other side of the globalisation coin is having a Mexican lawyer sitting here in representation of a Texas firm – Carlos, is the fact that you and other recognised lawyers in Mexico have chosen to join the Texas-origin firms represented at this table in some way indicative of particularly close links between Mexico and Texas?

Valencia: I think absolutely Texas is a very important part of the equation. The long-standing importance of Houston as an energy centre, Dallas as a banking centre, the investments made by Texan companies – all of that contributes to the appeal. I would say that the Texas firms have had good success in Mexico, and that is in part because culturally and historically we have a lot in common, which makes this one of the most natural ways of associating US and Mexican lawyers.

Goldberg: I totally agree – we're cousins. They all know our firms. We've all been down there for many years. They're here all the time, whether to do business or to do shopping or meet with friends. That is a huge advantage for our firms over the eastern-based law firms.

LL: That's certainly the case for Mexico, but for the rest of Latin America they're probably more likely to do their shopping at the Aventura Mall than at the Galleria here...

Goldberg: Yes, I think that's right. I think that for the rest of Latin America Miami is much more of a play than it is for Mexico. But you still have the energy play emanating from Houston, whether it's for Brazil, Colombia or anywhere else – culturally Miami may be closer for many, but in business terms we have the most clout.

LL: On the risks of opening offices in the region – many of you pointed out the danger of antagonising all the relationships you have in the region. But while I understand that in this regard Latin America may be very different from the Middle East or Kazakhstan, why is it any different from Asia or Europe, where presumably you had very similar relationships?

Goldberg: There's one big difference. Unlike some of the places that you mentioned, our firms have had great relationships and substantial business for many years in Latin America, so the need for an office is much less.

Pascal: And you can't discount the importance of being in the same time zone.

Treistman: We have found no compelling reasons to compete directly with local law firms that are instrumental to our success. While all of us have a lot of experience in the region, we need the best local lawyers to help us. There are excellent law firms throughout the region which have supported our lawyers and clients for many years.

Pascal: Looking into the future, there are two markets that we haven't talked a lot about – one is the Mexican energy market, where we're still waiting for the promised liberalisation, while the other interesting play is Cuba – when is that liberalisation going to occur? Interestingly, I would say that Texas firms are in a good position there, partly because Cuba has resources on the energy side and has signed deals with multinationals, and partly because Texas firms may initially face less resistance than their Miami cousins.

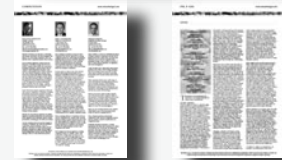
LL: You're all clearly very experienced in the region, but a lot of firms seem to believe that specialisations should be functional rather than regional, discounting the need for specific Latin American expertise in running an effective Latin American practice.

Goldberg: I feel comfortable answering this for everyone – and I'm sure that the answer is yes, Latin American expertise is essential, but maybe more than anything else is the cultural aspect. All of our firms have that cultural sensitivity, have the people who have lived down there, speak the language and understand the culture, and I think that's one of the advantages of the Houston-based firms.

Valencia: Cultural sensitivity is half the battle, if not more. The best recipe for disaster is to just send someone who has done some deals in, say, Korea and feels that's enough. No doubt he'll eventually get it done, but he'll pick up some scars in the process and maybe won't help his client much.

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