John Coates on Drafting M&A Agreements, Running a Law Firm

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Academics don't generally immerse themselves in the details of legal practice and often have no firsthand experience of it, but John Coates IV is an exception. After graduating from New York University School of Law in 1989, Coates joined Wachtell, Lipton, Rosen & Katz, where he made partner in 1996. While he worked toward that goal, Coates helped teach an M&A course at NYU, first assisting Wachtell partners James Fogelson and Lawrence Lederman and then co-teaching with David Katz, who also became a Wachtell partner in 1996. Katz is now a prominent M&A lawyer, but Coates left Wachtell in 1997 for Harvard Law School, where he is now the John F. Cogan Jr. professor of law and economics.

Perhaps because of the time he spent at Wachtell, Coates has occasionally written about the drafting of M&A agreements and the challenges of running a law firm, both topics that corporate law scholars tend to avoid in favor of more theoretical subjects. He recently came out with papers on both issues.

In "Managing Disputes Through Contract: Evidence from M&A," which is available on www.ssrn.com, the professor combed through 120 mergers and acquisitions agreements to analyze terms that provide for the resolution of disagreements arising from a deal.

And in "Hiring Teams, Firms and Lawyers: Evidence of the Evolving Relationships in the Corporate Legal Market," which is also available on www.ssrn.com and appears in the journal Law & Social Inquiry, Coates and Harvard Law co-authors Michele DeStefano Beardslee, Ashish Nanda and David Wilkins discuss how Fortune 500 companies choose their outside counsels.

Delaware's dominance in corporate law is a frequent subject of study, but Coates suggests that its courts' approach has weaknesses as well as strengths. In "Managing Disputes Through Contract," he finds that while Delaware is by far the preferred forum for deals involving publicly held targets incorporated in the state, its courts are never chosen for disputes over asset deals or deals for private targets incorporated in other states.

"In corporate law cases," he writes, "Delaware courts have the virtue of paying close attention to factual detail, having a willingness to look beyond forms and surfaces, and keeping a strong moral compass to serve as honest guides to corporate fiduciaries and defenders of dispersed and rationally ignorant and apathetic shareholders."

But in those disputes involving only the interpretation of a contract, Coates posits, the parties "often want forms to dominate, and an aggressive judicial moralism may have unintended and unfortunate consequences for reaching sound decisions."
Based on interviews and surveys Coates and his co-authors conducted in 2006 and 2007 with general counsel at 166 of the Fortune 500, "Hiring Teams, Firms and Lawyers" tries to debunk the notion that companies have come to place less importance on relationships with firms and focus more on individual lawyers in deciding whom to hire.

Instead, as the title of the paper suggests, companies consider the reputation of entire firms, groups within those firms and individual lawyers. Companies do follow lawyers when they move from one firm to another, but the perceived quality of the lawyer's new firm is an important part of the company's decision to retain him or her.

The authors also found a tension between companies' desire to control legal costs and the reasons they gave for firing law firms or giving them less work. Companies pruned the number of firms they used in the late 1990s and early 2000s and were more apt to demand that those firms give them discounts and closely watch their expenses. But many GCs said that they weren't much concerned with price when choosing lawyers for important assignments. They tended to fire firms or give them less work for producing substandard work, being unresponsive or taking on assignments that the company perceived as creating a conflict of interest. Cost by itself was rarely a reason to fire a law firm.

That's mixed news for law firms. Despite increasing fee pressure, large companies rarely fire firms that do good work and communicate well with clients. The key question for the most profitable firms is the number of matters on which clients are insensitive to price. As clients become more cost-conscious, that number will likely fall.