T
he 140 year history of Barlow Lyde & Gilbert came to an end when it merged with Clyde & Co last year. ‘I was at Barlows for 27 years, which is quite a long time,’ remarks O’Connell. The merger, as he diplomatically puts it, suited some people but not others: ‘Partnerships are business enterprises that require common purpose and cohesion; as soon as people want to go in different directions, the firm has no further purpose.’

The merger was, he explains, a good fit on the insurance side but less so for the reinsurance practice. Already at Barlows, he says, ‘there were a number of insurance clients against whom we could not act on the reinsurance side. Although we managed a successful practice we were still turning away an increasing and frustrating amount of work because of internal conflicts.’ The merger with Clyde only compounded this problem. So it was mutually agreed O’Connell would not be part of the merged firm, for reasons of conflict, thus giving him a pay-off and time to re-evaluate his next move.

‘My real fascination in life is the management of insurance and reinsurance companies, rather than the management of law firms,’ he says. For a while he considered moving into re/insurance management instead of law, but one thing held him back: ‘I couldn’t foresee a life without suing people,’ he says. ‘I have been suing people since I was 17 years old. It’s part of my DNA. I really couldn’t see myself spending the rest of my life without writing rude letters and mediating and fighting arbitrations, that’s what I am about.’

That considered, the question was what type of law firm to work with. ‘In the type of work that we do, a transatlantic presence is becoming increasingly vital. So I needed to go to a firm with a strong US presence,’ he says.

‘The other thing that struck me was, to start with it was “brand” that was important to me but as my dialogues went on my thought process changed substantially and the key became “ethos” – the underlying philosophy behind the firm and the type of people within the firm.’

A contact put him in touch with US firm Goldberg Segalla which led to a brief meeting at Monte Carlo. ‘I was tremendously impressed by what they had to say. But they had not thought of setting up an office in London at the time,’ says O’Connell. Follow-up meetings in London and in Buffalo confirmed there were ‘very strong synergies, not merely professionally but also culturally between us.’ In January they took the decision to set up a London office, which is now up and running with three partners and looking for more.

So what made Goldberg Segalla so attractive to O’Connell? It is, he says, all about ethics and getting back to basics.
basics as to the purpose of a law firm. ‘The trouble with law firms is that they can be seen as annual ventures and lawyers look at the short term relationship as they are always trying to meet next year’s budget.’

Goldberg’s founding partners had come to a similar conclusion, that a law firm should be about more than meeting annual targets. They were greatly influenced by management consultant David Maister and his book True Professionalism, which sets out how a law firm should be structured and how lawyers within that firm should be rewarded. His key principles are i) build long term relationships with clients and ii) work as a team with colleagues not in competition with them.

And this, he says, is what Goldberg Segalla has done. The firm has grown from seven lawyers 11 years ago to almost 150 lawyers over 11 different offices (all but one in the US). The firm as a whole is focused on insurance, reinsurance, product liability – and litigation. So it is very much a specialised niche player,’ he says.

In taking this path, O’Connell sees a parallel with the insurance market and its increased focus on customer service. ‘I think the insurance market has actually got it right. Over the last few years in the insurance market there has been a huge shift to customer service, and the service point with insurers is the payment of claims.’ He points to the Lloyd’s initiatives on claims and protocols and the renewed efforts by many insurance companies on the proper and efficient payment of claims. ‘Look what Hiscox has done in the UK and Chubb in the US – first rate service has set them apart as market leaders – that’s a good example of how an insurer focusing on what they are there for brings rewards.’

Law firms, he feels, should follow this example: ‘Maybe I am at the stage in my career when I can afford to be holier than thou about it, but I strongly believe that the legal profession has to take that step forward and look to that point of service; and quite frankly I don’t think the insurance market, as a very sophisticated buyer of legal services, is going to tolerate the way in which the legal profession has acted for so long.’

This rather begs the question as to whether there is enough legal work in the market to support this business model. O’Connell points out that they are not solely relying on litigation work. ‘Over the past 30 years the bulk of my time has been spent doing litigation, but also I’ve done a lot of wording and other advisory work – the reason I can do wording work is because I have experience of litigation. I know what happens when things go wrong and that helps and guides one in drafting wordings,’ he says. His experience with wordings includes alternative risk transfer and insurance linked securities (ILS). ‘I find those fascinating and I also find the disputes that can arise out of those contracts fascinating as well.’

The number of reinsurance disputes, he admits, has dropped off. ‘The traditional model that we had was that disputes would arise out of a soft market, carry lawyers through the hard market to the next soft market, and so it went on …’

‘There was a particularly aggressive soft market from 1997-2000, which gave rise to some very complex and very interesting disputes.’ The market hardened in 2001, bolstered by the WTC, Florida hurricanes in 2004, then in 2005 came Katrina, Rita and Wilma. Disputes as a consequence dried up.

‘This has also affected the run-off and legacy market quite substantially as well,’ notes O’Connell. ‘Those soft markets that gave rise to disputes also gave rise to companies going into run-off, and there have been only a handful of companies that have gone into run-off in this period. At the moment we are in a soft market but it is not behaving in the way that former soft markets have behaved.’

Various factors have increased discipline both in brokers and in underwriters: ‘The size of entities in the market, the application of ERM, regulation, the role of rating agencies – all of those factors have changed things considerably. Even the way Lloyd’s syndicates are managed is very different. There is a big, big change in the market.’

‘Whether that will mean that the market as a whole will avoid ANY issues is a slightly different question,’ he adds. Human nature suggests less well managed companies may still find themselves with problems, as may those companies that do business with them.

Pending major disputes he foresees plenty of other work such as wordings on new products and believes the US link will bring in extra work. ‘A lot of our friends in the run-off sphere are paying a lot of attention to the US,’ he notes. A particular asset to the firm is that Jim Wrynn, former insurance superintendent of New York, recently joined as a partner in the Manhattan office bringing his extensive knowledge and contacts in the US.

But the big disputes are bound to arise at some point, something O’Connell believes is good for the market as well as the lawyers. ‘Without the downcycle taking out the weaker market members, the well managed companies don’t get to benefit in the hard markets.’

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