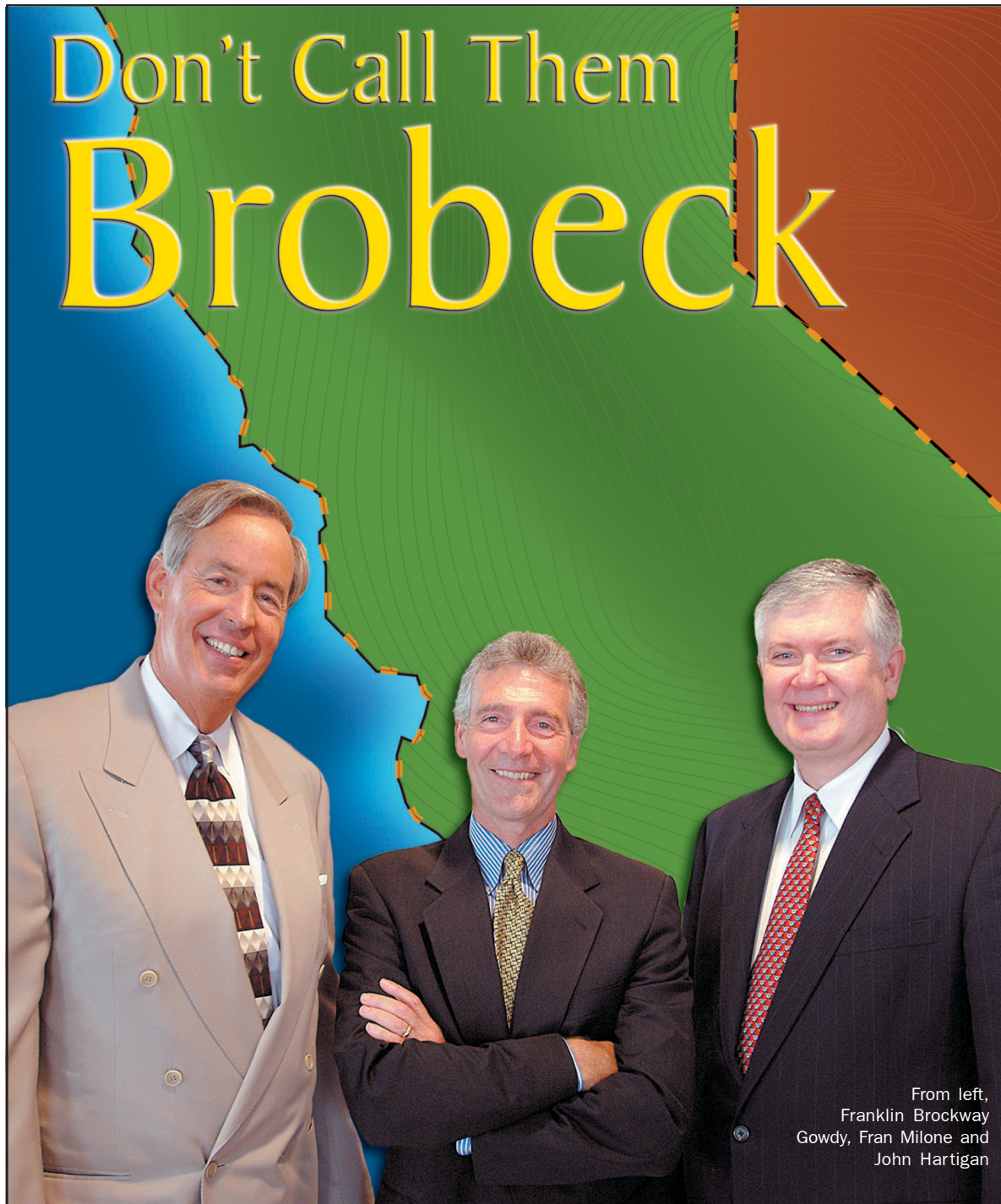


EXTRA

Trials, transactions and the
insider's guide to the
practice of law.

Supplement to the Los Angeles Daily Journal
and San Francisco Daily Journal

COVER STORY



Morgan, Lewis & Bockius took scores of lawyers from crumbling law firm legend Brobeck, Phleger & Harrison, catapulting the Philadelphia-founded firm up the California charts. Now, firm leaders are working on Morgan's own name recognition — and building their Golden State presence with even more attorney acquisitions.

Westward Ho

How did easterners Morgan, Lewis & Bockius become the state's 17th largest firm? A whole lotta lawyers from defunct Brobeck, Phleger & Harrison, another cluster from Pennie & Edmonds and the determination to plant roots in California's rich legal soil.

By Erik Cummins

You can't tell the story of Morgan, Lewis & Bockius in California without conjuring up Brobeck, Phleger & Harrison, a name linked to one of the worst law-firm blow-ups in U.S. history.

In fact, it was Brobeck Phleger's very demise that made Morgan Lewis a major player in California.

And that happened almost immediately after a Feb. 12, 2003, deal in which Morgan Lewis acquired 150 former Brobeck Phleger lawyers, 57 of them partners, and opened new offices in San Francisco, Palo Alto and Irvine. The foundering Brobeck Phleger, once California's most profitable firm, at \$1.17 million per partner during its peak in 2000, officially closed its doors two days later.

"There's no denying they have successfully become the largest non-Northern California firm of all Northern California firms," says Keith Wetmore, chairman of San Francisco's Morrison & Foerster.

As of June 25, 228 of Morgan Lewis' 1,200 lawyers were based in California, making it the state's 17th largest firm.

"The fact that they're in California just makes them a stronger player in that national market," says Mary Cranston, chairwoman of San

Francisco's Pillsbury Winthrop. "We see them in beauty contests all over the place."

Since Morgan Lewis' headline-grabbing move for the Brobeck Phleger lawyers last year, it has hired 31 intellectual-property lawyers from the defunct Pennie & Edmonds, 27 insurance recovery litigators from the former litigation boutique Zevnick Horton in Los Angeles, Chicago and Boston, and 18 more lateral partners in California from national and international firms.

With that kind of momentum, Silicon Valley legal search consultant Carl Baier says he's ready to describe Morgan Lewis as a formidable competitor in the state.

"They absorbed a very significant number of people from two very significant firms with significant presences here," Baier says. "They didn't just bring out five people from Philadelphia."

Firm managers, including former Brobeck Phleger partners Franklin Brockway Gowdy in San Francisco and Stephen Finn in Irvine, say Morgan Lewis' lateral hiring in California will continue in the coming weeks and months. Finn's recruiting confidence extends to bringing back even more former Brobeck Phleger lawyers who landed at other firms before and after Brobeck Phleger's dissolution.

Just days after Brobeck Phleger's fall, Morgan Lewis made Gowdy and Finn an impressive offer.

"They said we could bring over as many people as we wanted," Finn says. "We tried to take the people we viewed as core Brobeck."

In the chaotic days following Brobeck Phleger's dissolution, Finn says, "we weren't able to get all of them. We just didn't have time."

Morgan Lewis made its first foray into California in 1976, when it opened a Los Angeles office, making it one of the first out-of-town firms to have a West Coast branch. By 2002, the office had 65 lawyers.

Today, the Los Angeles office handles securities and regulatory work and does labor work for major Southern California employers such as Walt Disney Co.

John Hartigan, the office's managing partner and co-chairman of Morgan Lewis' securities practice, appears annually on \$10 million-plus rainmaker lists.

Despite Morgan Lewis' long history in California, the Brobeck Phleger acquisition was its boldest move in the state. It tripled the firm's head count in California and gave it three more offices. It also brought several major rainmakers, including Gowdy, a veteran trial lawyer who like Hartigan attracts \$10 million

in business a year.

"The addition of the lateral lawyers has been terrific for the firm in general and the Los Angeles office in particular," Hartigan says.

The firm, he says, was able to get a major case in Hawaii recently because of connections that the former Brobeck Phleger lawyers have there.

Although it gained several of Brobeck Phleger's key practices groups, Morgan Lewis originally wanted even more from the old San Francisco firm.

In October 2002, it began merger talks with Brobeck Phleger, a firm that was best known for litigation during most of its history but that transformed itself in the 1990s into one of California's most successful business and technology firms.

During the heady days of the dot-com boom, the once-conservative Brobeck Phleger soared from 400 to 950 lawyers in 14 offices.

Brobeck Phleger fell hard during the dot-com bust, with some blaming its rapid growth and heavy reliance on technology for its downfall. In 2002, just two years after its peak, it counted 600 lawyers and faced associate layoffs and partner defections, enormous debt and thousands of square feet of unused office space.

The firm's year-old management team, which took over the ailing firm after the departure of Brobeck Phleger's flashy chairman Tower Snow Jr. in 2002, cast around desperately for a merger partner and found Morgan Lewis, an old-line East Coast firm founded in 1873.

"This merger made a lot of sense to them and us," says Fran Milone, chairman of Morgan Lewis in Philadelphia.

"[Talks] got very far along," Milone says. "There were very heavy negotiations over everything."

Both firms had even worked out a way to deal with Brobeck Phleger's debt and excess real estate, Milone says.

Stephen Snyder, a former Brobeck Phleger chairman, says Brobeck Phleger partners had agreed to work their way out of the debt.

"If we [did] a deal with Morgan Lewis, it was going to cost us," he says.

Even so, the risks were enormous, particularly for Morgan Lewis. So much so that it called off the talks in January 2003.

Milone says the talks ended because Morgan Lewis couldn't be sure how many Brobeck Phleger partners would stick around after a merger.

Furthermore, Morgan Lewis' East Coast pharmaceutical practice had conflicts with Brobeck Phleger's San Diego intellectual-property group. Morgan Lewis, which derives 20 percent of its revenues from life sciences clients, represents brand-name drug makers such as Pharmacia, while Brobeck Phleger represented generics, according to Steve Mahinka, head of Morgan Lewis' life sciences practice in Washington, D.C.

The conflicts between the two types of clients were so obvious that Morgan Lewis managers

didn't even need to consult with clients about the possible merger, Milone says. For the same reason employment defense lawyers don't represent plaintiffs against employers, he says, big pharmaceutical companies don't appreciate their outside counsel advising generic companies, some of whom have competing intellectual-property claims.

"All of that added to the uncertainty," Milone says. Talks ended Jan. 29.

On Jan. 30, Brobeck Phleger's management committee called a partnership meeting. Few, save the firm's top managers, knew the talks were off.

"We went to the meeting fully expecting a merger term sheet," says Rod Howard, a Brobeck Phleger corporate partner now at Weil, Gotshal & Manges in Redwood Shores along with another leading Brobeck Phleger corporate partner, Curtis Mo. "When we came out of that meeting, we had the news the firm was not continuing as a firm."

On Feb. 14, just two weeks after merger talks fell through, Brobeck Phleger was gone.

"It's the same vision I have watching the Twin Towers collapse," Howard says. "Things that big shouldn't go down that quickly."

The merger talks did give Morgan Lewis an advantage in the rush to hire the former Brobeck Phleger lawyers, Howard says.

"They knew the firm and a lot of the people," Howard says. "They were well-positioned to move quickly after termination of the merger discussions."

Morgan Lewis hired so many former Brobeck Phleger lawyers that one lawsuit characterizes the firm as a "purchaser" of Brobeck Phleger. The suit was filed by Brobeck Phleger staffers who contend Morgan Lewis is liable for not giving them 60 days' notice of their impending layoffs. Parts of the lawsuit survived a summary judgment in February.

Milone says Morgan Lewis partners became friends with some of the Brobeck Phleger partners during the talks and wanted to work with them.

"A number contacted us, saying, 'Can we talk about getting together?'" Milone says of the former Brobeck Phleger lawyers. "There was a real sense, particularly in San Francisco, that people had been together their whole careers and wanted to stay together. It wasn't like we said this firm is falling apart and we want to take this, this and this."

Although it moved quickly, Morgan Lewis did take time to analyze the costs of acquiring the former Brobeck Phleger lawyers, Milone says.

Ultimately, he says, the deal made sense.

"There were some really good lawyers and very good people," he says. "That gives you a leg up with clients."

Brobeck Phleger's top lawyers had many options, and some headed to Heller, Ehrman, White & McAuliffe, O'Melveny & Myers, Paul Hastings Janofsky & Walker, Weil Gotshal, White & Case, Akin Gump Strauss Hauer & Feld, among others.

Snyder, one of Brobeck Phleger's biggest rainmakers, also tried to create a new firm of former Brobeck Phleger lawyers under the old Brobeck Phleger banner. Two days after Brobeck Phleger chairman Richard Odom announced the dissolution, Snyder spoke to the firm's creditors. They were equally shocked by the dissolution and seemed willing to negotiate. Then, he convened a well-attended meeting of the former Brobeck Phleger partners.

"What I learned is that lawyers are really conservative," Snyder says. "They were very concerned that they have a place to come to work. What I was presenting them was an opportunity to negotiate with the banks for another week or two and possibly make a deal."

By the time he made his pitch, most partners had begun talking with other firms, Snyder says.

"The ball of yarn unraveled very quickly after the announcement and could not be stuck together," he said.

The amount of interest in Snyder's plan did "reflect a desire of a lot of people to stay together," Howard says.

When Morgan Lewis offered to take over Brobeck Phleger's San Francisco office at One Market and most of its lawyers and staff there, "some people saw it as an opportunity to just stay in the same place," Howard says, "with a new name on the door."

Morgan Lewis ended up with one of the historic jewels of the old Brobeck Phleger: its complex litigation practice. In San Francisco alone, it acquired 26 litigation partners, many of them Brobeck Phleger "lifers" like Gowdy and Snyder. Morgan Lewis also snagged a half-dozen labor and employment lawyers in San Francisco and Palo Alto, a perfect fit for a firm with 180 labor and employment lawyers. Several longtime corporate lawyers, including partners John Larson and Ron Moskovitz, also landed at Morgan Lewis.

All told, the 150 former Brobeck Phleger lawyers represented 15 percent of Morgan Lewis' firmwide head count before the acquisition.

The risk for Morgan Lewis was acquiring some "dead weight" along with the stars, according to one former Brobeck Phleger partner who went to another firm.

"I would have given offers to about half the partners," the former Brobeck Phleger partner says. "That was the nobility of Morgan Lewis' offer. They would take the dead weight and not cherry-pick."

San Francisco law firm consultant Gary Davis says there might be "weak links within the system," but he disagrees with the former Brobeck Phleger partner's assessment of the talent Morgan Lewis eventually got.

"[Brobeck Phleger] was one of the most successful firms ever," Davis says. "It wasn't for lack of talent they failed."

Cranston says Morgan Lewis did the former Brobeck Phleger partners a big favor in hiring so many lawyers and staff. And Morgan Lewis got the benefit of getting a big group of good

California lawyers overnight, she says.

Much of the firm's savvy can be tied to Milone, the firm's charismatic but understated chairman, Cranston says.

Morgan Lewis elected Milone chairman in 1999, the same year partners changed the firm's management structure to give the chairman more decision-making authority.

Milone began his second five-year term in October. An 18-member advisory board, which includes California partners Gowdy, Finn and Hartigan, serves as a checks and balances committee for Milone.

"Before 1999, we were a big firm, a bit of a sleepy firm and an underachieving firm," Milone says. "Now, we're a more energetic, outward-looking organization."

Morgan Lewis' flexibility allowed it to fill a weakness it identified after the Brobeck Phleger acquisition.

Despite efforts to recruit members of Brobeck Phleger's vaunted intellectual property group, Morgan Lewis wasn't able to attract them; some went to Dewey Ballantine, Clifford Chance and Paul Hastings before and after the dissolution. And its Palo Alto office was thinly staffed with just seven partners.

So in December, Morgan Lewis competed in a hotly contested sweepstakes with Jones Day and a dozen other firms for remnants of the dissolving Pennie & Edmonds, a well-known intellectual-property boutique. Ultimately, it acquired the bulk of Pennie & Edmonds' Palo Alto office: 31 patent attorneys. Jones Day got Pennie & Edmonds' New York lawyers.

"We really sent a SWAT team to meet with them in Palo Alto, led by a number of former Brobeck lawyers," Milone says. "It had to happen very fast. The SWAT team was put together in hours."

Led by senior partners Gary Williams and Frank Morris and staffed by up-and-coming partners like Mike Lyons, the Pennie & Edmonds' group immediately made Morgan Lewis a force in intellectual property on the West Coast.

"This is a stellar group of people," says Gary Davis, a consultant with Patterson Davis Consulting. "Their list of clients is insane."

One of those clients, Google, will go public soon in one of the most prominent offerings since the dot-com boom.

The return of Tom Kellerman, a 19-year Brobeck partner who led the firm's European subsidiary, Brobeck, Hale & Dorr, in London for four years until Brobeck Phleger's demise, also gave Morgan Lewis credibility in the valley, Davis says.

"Every firm in the valley was dying to get this guy," Davis says. "He's a rock star."

Beginning with almost nothing in Palo Alto in 2003, Davis says, Morgan Lewis "finally stepped up to the plate."

Kellerman, who joined Brobeck Phleger in 1980, says he didn't consider joining a big

New York firm because they focus more on big deals and cases.

"I've spent my career working with young companies," he says. "Morgan Lewis was a pretty easy choice. They have a serious dedication to startups and emerging-growth companies."

The trouble is Morgan Lewis isn't a household name in Silicon Valley.

"People in Silicon Valley may not instantly recognize them, although they are a major national firm," Baier says. "They had no presence here."



Photo by Xiang Xing Zhou

Tom Kellerman joined Morgan Lewis from Brobeck, Hale & Dorr. "Morgan Lewis was a pretty easy choice. They have a serious dedication to startups and emerging-growth companies," Kellerman says.

Name recognition matters to some Silicon Valley clients for the same reason people buy Clorox rather than generic bleach, Baier says.

Kellerman says that, while most lawyers know about Morgan Lewis and the firms where Brobeck Phleger partners landed, "clients really don't."

Kellerman says he's contacting clients one by one to tell the Morgan Lewis story.

"The good news is that it works," he says. "You tell them about the Brobeck connection and Pennie & Edmonds. Almost universally, a light bulb goes off."

Morgan Lewis has suffered few defections from the former Brobeck Phleger and Pennie & Edmonds' camps in the past year and a half.

By comparison, London's Clifford Chance didn't hire a single lateral partner since it opened its four California offices in 2002 with Snow and 16 other former Brobeck partners.

In June, eight of those partners left Clifford Chance for San Francisco's Orrick, Herrington & Sutcliffe.

On July 1, Clifford Chance closed its offices in San Francisco, Los Angeles and San Diego. Two intellectual property partners, Daniel Harris and Joseph Ferraro, remain with Clifford Chance in Palo Alto.

Several former Brobeck Phleger partners have left Morgan Lewis since the acquisition. But they remain mostly upbeat about the firm.

Larry Engel, a veteran bankruptcy lawyer who started at Brobeck Phleger in 1972 and advised in its dissolution, left Morgan Lewis in May.

Engel, who had a prominent role in the Pacific Gas and Electric bankruptcy, says he followed his friends to Morgan Lewis last year to help with Brobeck Phleger's wind-down and place as many employees as possible.

Morgan Lewis, he says, "seemed to be the right place for that."

In May, he joined White & Case, where other members of his former Brobeck Phleger practice group landed after the firm's dissolution. Morgan Lewis, with just three bankruptcy lawyers in San Francisco, didn't have the resources to support him, he says.

"I had been trying to recruit my old team to Morgan," he says. "It was pretty clear they weren't going to move so I joined them."

Snyder and longtime cohort Jim Miller left Morgan Lewis earlier this year to set up their own litigation boutique, Snyder, Miller & Orton, with another Brobeck Phleger lifer, Luther Orton. Both praised the firm for its generosity and patience in helping them wind up Brobeck Phleger's affairs.

Morgan Lewis gave Snyder and Miller office space at One Market to run the dissolved firm full-time for three or four months after its dissolution, they say. And, while the two worked on high-stakes asbestos litigation and other complex cases, Morgan Lewis also gave them the freedom to manage their own schedules.

Eventually, Snyder says, he realized he had

become a liability to the firm that had been so kind to the former Brobeck Phleger.

"The [bankruptcy] trustee and others were using me as an example of why Morgan Lewis is incestuously entangled in the affairs of Brobeck," Snyder says.

His critics alleged, for instance, that Snyder and other former Brobeck Phleger partners helped Morgan Lewis negotiate sweetheart deals for Brobeck Phleger's furniture and equipment.

Former Brobeck Phleger partner Rod McLeod joined Jones Day on June 1 after a year at Morgan Lewis.

"Most of the Brobeck partners realized that the opportunity that would save the most jobs for everyone was the option given by Morgan Lewis," says McLeod, a complex commercial litigator who joined Brobeck Phleger in 1982. "I personally believed in that goal. We did meet that objective."

McLeod says he left Morgan Lewis because his new firm, the 2,100-lawyer Jones Day, has many more resources than Morgan Lewis. Jones Day opened its San Francisco office last year and now has 35 lawyers in the city. The Cleveland firm has 29 offices worldwide, compared to Morgan Lewis' 18.

"Morgan Lewis is a megafirm," McLeod says. "Jones Day is a superfirm."

Morgan Lewis is making a major investment in California and elsewhere, McLeod says. Recently, it opened offices in Paris, Boston and Chicago. But, he says, it endures growing pains.

"The larger firms get, there has to be a way the administrative support structure allows the attorneys to practice to their fullest potential," McLeod says.

Jones Day, he says, "has already figured out how to make this place hum."

Employment and labor partner Ward Kallstrom was among the dozen-plus lateral recruits who have joined Morgan Lewis in the past year from firms other than Brobeck Phleger or Pennie & Edmonds.

Kallstrom and partner Nicole Diller left Sonnenschein, Nath & Rosenthal's San Francisco office to join Morgan Lewis this month. Although he had friends at the former Brobeck Phleger, Kallstrom says, those connections had little to do with his decision to join Morgan Lewis.

"It was really my knowledge of the East Coast people that convinced me," Kallstrom says. "They're the gold standard for labor and employment law."

Morgan Lewis has 37 labor and employment lawyers in California and 180 firmwide.

Ed Zaelke, the former head of Arnold & Porter's real estate practice in Los Angeles, says the Brobeck Phleger deal was a factor in his decision to join Morgan Lewis.

"They were making a commitment to the West Coast in a serious way," says Zaelke, who joined Morgan Lewis April 15. "It's only been a year, but it looked like a successful acquisition."

John Sasaki joined Morgan Lewis' Tokyo



Photo by Xiang Xing Zhou

Morgan Lewis corporate partner John Larson was a 42-year veteran of Brobeck Phleger. "For most of the clients I have talked to, the fact that I was at Brobeck was a positive," Larson says.

office two years ago from Palo Alto's Wilson, Sonsini, Goodrich & Rosati.

Opening two offices in the Bay Area has made a big difference in his cross-border transactional practice, Sasaki says.

"People would ask me how many people we have in Silicon Valley, and my answer was that we don't have any," he says. "Now we do."

Although Morgan Lewis hasn't applied for a license to open in the People's Republic of China, that's next, Sasaki says.

"You really have to have people on the ground in China," he says.

In California, Gowdy says, Morgan Lewis has its sights set on opening an office in San Diego, a life sciences hotbed. Clients there could include a broad range of medical device, biotechnology and pharmaceutical clients, just as long as they're not making generics.

Finn says he also wants to hire more real estate lawyers in California, where Morgan Lewis has 20. He's also confident he'll attract more ex-Brobeckians into the Morgan Lewis fold. Although he won't name any prospects, he says he's looking at former Brobeck Phleger lawyers who went in-house before it imploded and at lawyers who landed at other major national and international firms.

One former Brobeck Phleger partner scoffs at Finn's efforts to recruit former Brobeck Phleger lawyers. How could Morgan Lewis, with per-partner-profits averaging \$200,000 to \$400,000 less than other major California and New York firms, attract former Brobeck Phleger lawyers who landed at those firms, the partner asked.

"He's smoking something," the partner says of Finn.

In 2003, Morgan Lewis reported profits-per-equity-partner of \$828,000.

In December, Morgan Lewis did manage to lure a former Brobeck Phleger lawyer away from a well-heeled competitor.

Rahul Kapoor, a corporate partner, joined O'Melveny & Myers with former Brobeck Phleger dealmaker Warren Lazarow last year. Kapoor also fielded offers from Morgan Lewis and Weil Gotshal the night of Brobeck Phleger's fall.

Although O'Melveny offered him the best package, Kapoor kept in touch with his former mentor, John Larson, a 42-year Brobeck Phleger veteran who is considered the architect of Brobeck Phleger's Silicon Valley practice.

"He's one of the reasons I enjoyed working at Brobeck," Kapoor says.

Another lure was Morgan Lewis' intimate understanding of the technology practice, Kapoor says.

Still, he concedes, part of the reason for rejoining Larson and his old pals at Morgan Lewis "might have been sentimentalities about Brobeck."

Larson, who took on his first technology client in 1963, says that like Brobeck Phleger, which was once among the top names in Silicon Valley, Morgan Lewis has well-established technology practices in Philadelphia, Pittsburgh and Princeton, N.J.

"They understand this business," he says.

Another former Brobeck Phleger partner, Steve Daniels, reunited with his old friends at Morgan Lewis in March after spending two years with New York's Dewey Ballantine in Austin, Texas. Daniels says his relationship with fellow litigator Gowdy brought him back to San Francisco and Morgan Lewis.

Finn and Gowdy haven't tried to recruit at least one high-profile group of former Brobeck

Phleger lawyers: the securities litigators who left the firm in 2002 with Snow.

"I don't know what happened at Clifford Chance," says Gowdy, head of Morgan Lewis' 103-lawyer San Francisco office. "The reason we've been successful generally is at the very core of this operation we have a set of values, learned from hard experience, to care for each other and the common good."

Snow, the lead rainmaker of Brobeck Phleger's old securities litigation group, was on vacation at press time and didn't return calls. Michael Torpey and James Burns, senior securities partners who left Clifford Chance for Orrick Herrington, also didn't return calls at press time.

Snow, who spoke in late June about Clifford Chance's two-year venture in San Francisco, Los Angeles and San Diego, said simply, "It failed."

While some former Brobeck Phleger partners such as Snow seem inexorably tied to the news of the firm's demise, there doesn't seem to be a similar tie on the former Brobeck Phleger lawyers at Morgan Lewis, even though Odom, Brobeck Phleger's last chairman, works in Morgan Lewis' Los Angeles office.

"For most of the clients I have talked to, the

fact that I was at Brobeck was a positive," Larson says.

Other lawyers not at Morgan Lewis also confirm that few connect veteran Brobeck Phleger partners at Morgan Lewis with the firm's break-up.

But memories remain.

George Stohner, a Morgan Lewis "lifer," has been working to integrate the former Brobeck Phleger lawyers into Morgan Lewis, a challenging process given Brobeck Phleger's ugly collapse. A lawyer at Morgan Lewis' Washington, D.C., office since 1977, Stohner recently relocated to Los Angeles, where clients include CBS, Dreamworks and several Viacom subsidiaries.

"The Brobeck folks were dealing with a lot of personal and emotional trauma," he says. "Many of them were like us. They spent their lives unselfishly building that institution."

Jami McKeon, a Morgan Lewis lawyer in Philadelphia since 1981, has traveled frequently to the firm's San Francisco office in the last year to do the same job in Northern California. In the last year and a half she's been working with the former Brobeck Phleger lawyers, McKeon says, their mood has changed dramatically.

"The mood is extremely positive," she says.

"It's been that way for quite some time. It's shifted from panic, fear and shock to optimism."

Resuming business as usual, McKeon says, "has been very cathartic."

Gowdy says that, while being busy has helped ex-Brobeckians get on with their lives, "even today, people in quiet moments are still in a kind of grieving for the firm."

Finn says he was preparing to retire just before Brobeck Phleger dissolved. Now, he says, he feels energized at Morgan Lewis, both because the firm encourages him to build a West Coast real estate practice and because of new work that's coming across his desk. This month, Morgan Lewis partners introduced him to Florida and Japanese clients, Finn says.

"Most tech guys at Brobeck were so busy they didn't have time to introduce people," Finn says.

Stohner says the Brobeck Phleger name won't be forgotten quickly. Brobeck Phleger lifers identify themselves so closely with Brobeck Phleger that many refer to themselves as Brobeck Phleger lawyers, he says.

"One of the challenges I've had is the recognition of us in the marketplace," Stohner says. "We're not Brobeck and Morgan Lewis. We're Morgan Lewis."