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## New Jersey and Pennsylvania – Law Firms

### New Jersey Law Firm Practice – Adapting To Change And Finding Opportunity

*The Editor interviews Joseph A. Boyle, Partner at Kelley Drye & Warren LLP and Managing Partner of its Parsippany, New Jersey office.*

**Editor:** Please describe your professional background for our readers.

**Boyle:** I was a 1988 summer associate at Kelley Drye, a first-year associate in 1989 and made partner in 1999. I have been a commercial litigator throughout my career. After three years in Kelley Drye's New York office, I transferred to the New Jersey office. In 2003, I was named managing partner and have held that position since then. I am also the chairman of the commercial litigation practice group in New Jersey.

**Editor:** Kelley Drye is a large international firm, many clients being international and major national companies. Do you represent mostly New Jersey companies, and what are the benefits of having an office located in Parsippany, New Jersey?

**Boyle:** I do represent a number of New Jersey-based companies. However, a major benefit of having our Parsippany office is that New Jersey is a major litigation center. It is a tremendous benefit to Kelley Drye clients who are located in other states or countries and deal primarily with one of our other offices to know that the firm has an office and can defend lawsuits brought against them in New Jersey. These clients do not have to engage local counsel and benefit from the continued involvement of the attor-

neys they normally work with in the other Kelley Drye offices.

**Editor:** In 2007, the American Tort Reform Association criticized New Jersey as a “top destination” for “litigation tourism.” Have you observed any changes in New Jersey litigation practice since then?

**Boyle:** No. New Jersey is a center for tort litigation. However, I believe the ebbs and flows of tort litigation in New Jersey turn mainly on developments in the law. In other words, the volume of cases depends more on where the law stands than on any changes in New Jersey's legal profile. That said, in my opinion the legal system in New Jersey is well run. I suspect that a lot of national companies and their general counsels would say that while they know they are going to get sued in New Jersey, and they will have to expend money defending the case, they are not as concerned about the outcome as they might be in other jurisdictions.

**Editor:** As managing partner of Kelley Drye's Parsippany office, what are some of the legal trends you are witnessing in New Jersey?

**Boyle:** From my perspective in this downturn, there has not yet been a major spike in the volume of litigation over failed financial transactions or deals that prematurely terminated due to adverse economic circumstances as there has been in other downturns. There certainly has been litigation on those issues but I do not think it is at the volume that we

have seen in the past. There has been a spike in commercial mortgage foreclosures. These have been fairly vigorously litigated. While borrowers have been feisty about defending these cases, despite asserting what are typically losing arguments, the borrowers do not appear to be able to attract alternative financing as they litigate these foreclosures. In my view, this signals that there will be more foreclosures in the commercial area in the coming months and years.

**Editor:** What is unique, if anything, about New Jersey's legal system and practice before its courts?

**Boyle:** I would not say there is anything “unique,” but what I do think is a great benefit in New Jersey is that the judiciary is generally strong. The state system pretty much tracks the federal system. Both have excellent judges. Besides having a solid judiciary, the main benefit of litigating in New Jersey state court is that the common law is well developed, the mid-level appeals court is excellent and the Supreme Court is stellar. So, while there is a lot of litigation in New Jersey, the litigation system here is very well established, fair and well run.

**Editor:** How has the economic downturn affected your clients and the nature of your legal practice?

**Boyle:** Certainly, as you might imagine, there is a significant client focus on cost control – not only the obvious seeking of discounts – but also in focusing on efficiency. Our New Jersey office is lean and

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we simply have to be driven by efficiency. We have no choice. So, the efficiency of this office has been a great help to us with our clients and particularly in this economic downturn.

The New Jersey office has bankruptcy, corporate and environmental areas, but the two principal practices are litigation and real estate finance. Prior to August 2007, real estate finance was going great and this office was basically working around the clock. The litigation department has always been very busy and during the heyday of securitizations, the real estate finance department was even busier. As a result of the downturn, the real estate finance department has redirected its activities toward workouts and foreclosures. This is a traditional shifting of gears that has really started to take hold.

**Editor: What can you sense about how New Jersey legal practices have been affected by the recession compared to the rest of the country?**

**Boyle:** New Jersey seems not to have been the locus of many major bankruptcy filings over the last few years. For example, I believe General Motors utilized a dealership in Harlem in order to get into the Southern District of New York as a venue. One might have expected Michigan as a venue, but the fact that they have gone to New York, as have others, means that New Jersey, like other bankruptcy courts, are not seeing those major bankruptcy filings. Obviously, this means there is not as much debtors' or secured creditors' work in New Jersey. So, that has been a negative. The other side of the coin is that New Jersey is a large real estate market, particularly for commercial real estate, so the foreclosure and debtor/creditor type of litigation that is not bankruptcy-centric has occurred here at perhaps a greater level, and this has been a bit more beneficial to practitioners in those areas.

**Editor: Has the federal stimulus package helped any businesses you represent?**

**Boyle:** We represent entities that have received TARP funds and we have represented some entities that were formed as a result of the federal government's activities occurring immediately post-financial crisis. So, it has helped some of our clients and has indirectly helped Kelley Drye as well.

**Editor: Has any particular kind of legal work resulted from this federal government involvement?**

**Boyle:** Yes, workout and foreclosure work as well as litigation and transactional activities. In addition, and obviously not limited to just the result of the actions of the federal government, we have handled UCC foreclosures and a lot of issues arising out of the management of distressed assets. This work has allowed us to tap the synergies of our real estate lawyers, the litigation team and the debtor/creditor practice areas.

**Editor: What are some of the most significant recent legal developments that have affected clients represented by your office?**

**Boyle:** I believe the *Twombly* decision, in which the U.S. Supreme Court put some teeth in the general pleading requirements under the Federal Rules of Civil Procedure, has had a significant impact. It was a benefit to corporate defendants because plaintiffs are now being told that you cannot lump all defendants together, and the pleading must give each defendant notice of the reason why they are in the case. The Supreme Court only just recently reaffirmed that *Twombly* does not apply only to antitrust cases. We have utilized *Twombly* in numerous motions to dismiss and thereby forced the hands of plaintiffs by getting the courts to agree with us that a pleading did not meet that standard. From the perspective of litigation as a whole, I believe that decision has had more effect than people expected.

There are numerous areas affected by different developments. For example, in pharmaceutical litigation Congress is

looking at amending the patent laws, and as a result, there will be significant issues relating to Hatch-Waxman and the generic pharmaceutical industry.

New Jersey's federal court rules were being amended to specifically address Hatch-Waxman litigation, which is something that has happened in other jurisdictions as well. I believe the Northern District of California has done something similar. These new rules provide an interesting take on the court's view of how these cases develop and what the practitioner should or should not be doing.

I think this is very positive. I also think the New Jersey judiciary, both federal and state, is quite good, aware and proactive. Overall, I think the litigation climate in New Jersey is better than it is portrayed by surveys claiming that New Jersey is attractive to the plaintiffs' bar. To the extent that view has any merit, the situation is mitigated by the quality of the judiciary.

**Editor: Do you foresee any other substantial changes in the law that you will be following for future advice you will be providing to clients?**

**Boyle:** There are too many for me to keep track of and name. A major advantage to clients of Kelley Drye is that we have a Washington, D.C. group dedicated almost entirely to monitoring changes in the law. This is our government relations group headed by Paul Rosenthal. Paul is one of the real bright lights of this section of the D.C. bar. We constantly receive client advisories about what is under consideration and what has just happened at the various agencies and on Capitol Hill. So, from my perspective, as managing partner of the New Jersey office, I have the best of both worlds – I am located in New Jersey doing New Jersey-centric work as well as work in other jurisdictions, and I am able to offer my New Jersey clients and clients of the firm outside the state all the resources of an international law firm.