

New practice areas: Filling gaps in the legal sector

■ BENNETT LOUDON

One way that law firms grow and generate new business is by filling a gap in the market and developing expertise sought by clients.



Mack

For example, Attorney Kyle W. Mack, special counsel in the Buffalo office of Phillips Lytle LLP, explained that the COVID pandemic

triggered an uptick in mental health conditions globally.

But it accompanied a “relaxation in discussing mental health,” he said.

“Some of the stigma was released. As part of that, more research started being conducted associated with the classical psychedelics for the treatment of mental health conditions,” he explained.

A growing number of pharmaceutical companies are evaluating new compounds as well as studying “the classics” — psilocybin, MDMA, LSD — “and the data coming out of it are pretty remarkable,” Mack said.

So, about a year ago Phillips Lytle launched a new psychedelics and mental health therapies practice group, which now has six lawyers.

“Everyone in our group is an attorney/scientist or a litigator who has long represented pharmaceutical companies,” Mack said.

Visit the websites of most large or even medium-size law firms and, alongside the more traditional practice areas such as criminal law,

civil litigation, trusts and estates and mergers and acquisitions, you are nowadays likely to notice some practice areas that didn’t exist five or 10 years ago.

Many law firms now have COVID practice teams devoted to helping clients comply with government regulations, especially in the area of labor law.

Also, the widening legalization of marijuana has triggered growth in teams of lawyers focused on cannabis law at many law firms.

Likewise, law firms have, in recent years, created teams of lawyers in practice areas such as blockchain technology, opportunity zones, self-driving vehicles, drone technology, photonics, renewable energy and diversity, equity and inclusion (DEI).

Mack said Phillips Lytle saw the psychedelics and mental health therapies practice as an opportunity to help the industry bring to market drugs that could address a need that is not currently being met in psychiatry.

The drugs being considered are currently listed as highly restrict-

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ed Schedule 1 drugs by the federal government. Schedule 1 drugs are regarded as having no accepted medical use and a high potential for abuse.

“You can research them, but you need specific DEA approval for the drug and a research protocol before you can proceed, so it’s a bit of a different space than the traditional pharmaceutical companies bringing prescription drugs to market,” Mack said.

The Food and Drug Administration has already granted breakthrough therapy status to psilocybin and MDMA for continued research, Mack adds.

“It’s anticipated that MDMA is going to have FDA approval as a prescription medication sometime next year. And people are hopeful psilocybin will follow,” he said. “It’s a new emerging market and it’s one that, unfortunately, has a lot of negative stigma around it.

“So, we wanted to make sure that we were entering the space at the right time and with the right people, and we believe we’ve done that, and we’re excited about being in the space.”

Phillips Lytle also recognized a need for specialized legal expertise to help clients in the agribusiness practice area.

The team consists of eight lawyers



Cook

who cover immigration, labor, litigation, corporate law and patents.

Phillips Lytle Partner David L. Cook, one of the state’s foremost experts on agribusiness law, explained that regulation of the federal Clean Water Act was initially focused on regulating industry two decades ago. But now it’s also directed at large-scale farming operations primarily related to nitrate and phosphorous runoff from animal operations.

Farms called Concentrated Animal Feeding Operations (CAFOs) now must obtain permits to operate.

“It really determines what they can do and what they can’t do, what practices they can use, what they shouldn’t use to prevent runoff of nitrates and phosphorous into the watershed,” Cook said.

Farmers are also turning to agribusiness practices to help navigate the government requirements for establishing recovered natural gas projects.

Those projects use organic matter, such as food waste, municipal waste or animal waste to capture methane to produce energy.

“As a firm we’re doing a lot of that work right now ... That’s really one of the big areas right now,” Cook said.

Agribusiness law also includes land use issues facing farmers operating near suburban residential areas. Growers in an agricultural district have protections not available in suburban non-agricultural districts, he said.

“We’ve had lots of companies or individuals come to us on the hemp side saying they want to do a grow operation, and the first thing we say is, ‘Have you identified property?’ and ‘Have you determined whether or not you’re in an agricultural district?’ because that will protect you,” Cook said. “If you’re in an agricultural district you have constitutional protections in New York state as long as you are operating what is called a certified agricultural practice.

“What that means is your neighbors can’t complain. They can complain, but they’re not going to have a cause of action,” he added.

The other area that agribusiness lawyers deal with is immigration and labor.

“It’s all Hispanic immigrant labor — 99% of it, and most of its from Central America. So, there are immigration issues that come along with that as well,” Cook said.

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