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Cohen and Milstein Strategic Analysis

An Undergraduate Honors Thesis Submitted
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Abstract

Cohen Milstein is a medium-sized law firm operating out of six U.S. cities. It is a boutique-style firm specializing in niche areas of law and litigates higher-profile cases other firms avoid. This paper will examine Cohen and Milstein to understand its market position and competitiveness within the legal industry. The legal industry provides a unique set of challenges to firms as technology advances, new laws are imposed, and customer relationships evolve. To explore Cohen and Milstein, I will employ various tools, including Porter's Five Forces, PESTEL, and SWOT analyses. Following the firm's evaluation through these metrics, strategic recommendations will be provided for Cohen and Milstein.

Keywords: CohenMilstein, LegalIndustry, Lawyer, Strategy, Analysis, ProBono

Strategic Analysis

This analysis intends to discover Cohen and Milstein's competitive advantage, a law firm operating in the legal industry. This analysis examines external and internal factors to understand the position of Cohen and Milstein. Following the application of three analyses, strategic recommendations will be provided. This paper begins by first exploring the background of Cohen and Milstein.

Background

Cohen and Milstein a private, mid-sized law firm that was founded in 1986. It is a boutique-style (meaning it offers various services and employs attorneys specializing in a myriad of legal areas) law firm focusing on niche areas of law. Its main law areas include antitrust, civil rights, human rights, whistleblowers, employment, and ethics law. Currently, it employs 100 lawyers who work out of 6 locations situated in and around the East Coast. It specializes in litigating high-profile cases pro bono (free of charge) and has been incredibly successful in this area, winning multiple hundred-million-dollar settlements. Its profits are typically derived from the settlements achieved in the cases it brings forward. In 2020 it is estimated Cohen and Milstein netted \$26 million from its litigation (DNB, 2021).

Part of its mission is to "Level the playing field against powerful corporate actors with expansive legal and lobbying budgets." (CohenMilstein, 2021). It seeks to aid government enforcement agencies through its litigation, in addition to helping government agencies, Cohen and Milstein partner with the NAACP, ACLU, and Human rights Prevention Center. The National Law Review and BAR association consider it one of the Top 50 most diverse law firms. Additionally, U.S. News ranks them in 3 national and 10 metro categories. It has significant

credibility amongst other law firms and has created an industry standard for approaching new talent through its coaching and development protocols (Reuters, 2020).

PESTEL Analysis (Macroenvironment)

Political

The political climate for the legal industry has been relatively tame. The United States is regarded as a stable democracy that has fostered economic growth, especially within the service industry. The U.S. typically favors interventionist policies to right the market's wrongs and draft new laws to respond to consumer protection issues. In the macroenvironment, the rise of populism has led to increased political instability (Sousa et al., 2020). However, at this point, it is difficult to understand the business costs incurred in the legal service industry. Coinciding with the rise of populism is a rise in hate crimes (Allam, 202). While alarming, it presents an opportunity for practicing litigation in this area.

Some other political environment trends include the election of a new president as administrations differ in labor and regulation approaches. President Biden has signaled support for pro-union legislation that provides workers more power and made repeated promises while campaigning to address labor relations (Zakrzewski, 2020; Smith and Nagele-Piazza, 2020). Increased unionization ability could provide additional opportunities for litigation or cause law firms to offer more generous benefits or pay to employees.

Economic

The macroenvironment in the U.S. is experiencing rapid changes concerning the Covid-19 pandemic. The IMF estimates the global economy shrunk by 4.4% in 2020. Furthermore, in the United States, the proportion of people unemployed hit a high of 8.9%, ending a decade of job expansion (Jones et al., 2021). Economists have expressed optimism that the economy will

return to normal economic gains by the end of this year or 2022 (Conerly, 2020). However, while economic gains may return, it is difficult to determine how soon people will recover from the economic devastation caused by the pandemic.

The value of U.S. currency is expected to remain steady, and inflation is not likely to increase (Glassman, 2021), but this will not ensure a return to normal for the legal services industry. The need for legal services declined by 30% in 2020. Further, 56% of law firms saw a significant decrease in legal services requests (Wittenberg, 2020). When individuals were asked what they would do if they had a legal issue, more than half said they would delay reaching out until the end of the pandemic (Wittenberg, 2020). The economy's downturn has been especially hard on the legal services sector because people will either delay or disregard legal help without enough money to afford services.

Social:

Major social trends to be aware of include the increasing diversity of the United States. The population of the U.S. is growing, and younger, more diverse workers are entering the workforce (Alas, 2020). As the country becomes more diverse, Hispanics, Asians, and all other racial groups are projected to increase labor force participation. By 2024 Hispanics are projected to make up one-fifth of the labor force (BLS, 2015). A younger workforce will likely lead to changes in workplace structure. Millennial associates place a higher value on personal time than Gen-X and Baby Boomer predecessors (Stokes, 2020). When designing work schedules, employers will have to find ways to cater to time preferences and respect newer employees' work-life balance concerns while still ensuring work is completed.

A major social challenge for lawyers is a negative image of them towards the public. Lawyers are often regarded as arrogant and more concerned with winning than achieving any

sort of justice. Surveys conducted by the American Bar Association (ABA) support that claim and others. Including a perception lawyers care more about money than serving clients and that lawyers were more concerned with their self-promotion than their client's best interest (LaFleur, 2016). Based on these studies, firms need to bolster lawyers' image to the public or risk further negative publicity and public avoidance of services.

Technology:

New technologies have impacted every industry and have increased firms' need to operate online functionally (Glassman, 2021). Law firms have needed to cope with going fully digital and running remotely, similar to other professional occupations. The rise in remote work has exacerbated an already challenging cybersecurity issue. Law firms spend premium money on enhanced security and protection of their online assets and information, and as more firms go digital, the threat of cyber-attacks becomes greater (Tillay, 2021). In 2017, one global law firm was entirely shut down for a week after an employee clicked a spam email link. The firm took months to recover entirely from the incident (Evans, 2020).

While cyber risks loom large, the advantages of new technologies appear even greater for firms. Machine learning is being instituted into law firms to conduct legal research and predict litigation outcomes. AI is being integrated to assist lawyers with daily tasks. While it is unlikely AI will replace lawyers, some jobs may disappear as AI becomes more widely accepted in the legal industry (Evans, 2020). New technology presents an opportunity for firms to reduce costs and increase the efficiency of work. It can also reduce the workload on individuals and potentially provide some work-life balance relief.

Environmental:

Within the environmental area, there is not much impacting daily business decisions of firms. Some firms may participate in sustainability initiatives; however, their influence is limited. An item to note is the rejoining of the Paris Climate Accords and possible new climate legislation. There is the possibility of prosecuting abusers of environmental policy, but at this time, the environmental area is a lesser factor.

Legal:

As touched on previously, a new administration could signal a change to U.S. laws and enforcement of those laws. One such law that could shift labor laws is the Pro-Act, giving more freedom to employees seeking to unionize (Gonyea, 2021). This law has passed the House and has the support of the White House, but it is unclear whether it will pass the Senate. Its passage could open up new avenues to unionization providing law firms a new source of litigation.

Additionally, uniform ethical rules do not exist within the legal industry. Each state has the power to determine the rules to follow and the laws regulating the practice of law. California has adopted new, more stringent regulations that could spread to other states around the country (Basner et al., 2018). Furthermore, in the case *Bates v. Arizona*, the courts found legal advertising was commercially protected speech, which allows lawyers more freedom when advertising (Zlotowicz, 2020). Finally, there are laws regarding who can practice as a lawyer. Lawyers are required to achieve a bachelor's and a Juris Doctorate. Further, as with all industries, new laws and court decisions impact daily business.

Porter's Five Forces Analysis (Industry-Specific)

One could broadly define the industry for Cohen and Milstein as the professional services industry. Still, for this analysis, the industry will be restricted to legal services.

Industry Rivalry:

The legal services industry is highly competitive. There are many firms, and each one is competing for a small share of the market. The industry had seen substantial growth before the Great Recession of 2008, but since it has struggled to recover, which has increased competition (Olson, 2017). Many firms depend on a few companies to control more than half of the firm's yearly revenue to add to competitive pressures. The loss of one of these significant clients could deeply harm a business. With rising competition, firms have begun to rely on mergers and acquisitions to hold off rivals and protect market shares. In 2018 alone, there were a record 106 law firm mergers and acquisitions in the United States (Prescott, 2019).

A recent report by Mordor Intelligence categorizes the legal services industry as very mature within the United States (Mordor, 2021). The slow growth has led to increased price competition and forced even larger firms to compete on price. Superior quality is not the most important factor to clients anymore. They want to have quality and cost savings. One factor keeping the legal services industry competitive is the absence of a significant player. While there are very large firms, no major players control more than 5% of the market (IBIS, 2021). Additionally, because of customers' price sensitivity, smaller firms have been able to compete with larger firms for larger clients, adding to the competition.

Buyer Power:

Above I noted increasing competition on price fueled by customers' unwillingness to pay rates they consider too high. This, in turn, has increased buyer power. Since 2008, clients began to push back on law firms' requested rate increases. Previously, firms had been able to charge considerable markups on services, but customers became less willing to work with firms consistently raising rates (Brown and Nelson, 2019). Customers in the legal industry are not loyal to specific firms, and an abundance of firms has further increased the power of a customer.

To retain customers, service quality and cost are essential features. Unsatisfied customers are likely to look elsewhere for help (Staub, 2020).

While those seeking legal services are price sensitive, a crucial determinant of which firm is chosen is proximity. Proximity and rates determine the firm. When searching for legal services, clients often do their research into firms to decide which one to select (Robertson, 2017). A difficulty firms in the legal services industry encounter is pricing their services. Often prices are case-specific and must be adjusted for each individual. To combat the challenges in costs and buyer power, firms have begun offering discounts and alternative fee arrangements. While these have brought in new customers, it has hurt the ability to retain clients since there is usually another firm willing to offer a slightly lower rate (Brown and Nelson, 2019).

Supplier Power:

While buyers retain a lot of power in the legal industry, suppliers are relatively weak. The suppliers of the legal sector are lawyers, especially new law graduates. Presently, some elements increase supplier power, like demands for work-life balance and junior associates leaving the field because of pandemic-related stress (Beioley, 2021). Lawyers' job outlook is expected to grow at 4% per year, the average for all professions (BLS, 2021). While the job outlook is increasing, competition for those jobs is also growing.

In reaction to the Great Recession in 2008, Juris Doctorate seekers decline. The response to the recession was somewhat delayed, but in 2010 fifty-two thousand individuals sought a law degree. That number has dramatically decreased to about thirty-eight thousand today, as job prospects have become limited and the legal industry's growth has lessened (LST, 2020).

Another trend hampering the power of suppliers is changing laws regarding paralegals.

Paralegals have been allowed to do more legal work, which has, in turn, lessened the need for lawyers (BLS, 2021). These factors taken together have caused supplier power to become low.

Substitutes:

Firms within the legal industry have a low risk of being substituted. If a company or individual needs legal help, there are not apparent substitutes to provide those services. However, some online legal services can draft contracts, wills, and other legal documents without a lawyer's presence (Davis, 2020). While the completion of some legal work may be conducted via software, AI is still unable to represent clients in court, limiting the ability of software as a substitute to lawyers. A cautionary note for law firms is that people are willing to put off some legal items when the economy is struggling. Some non-law firms have begun to offer legal services like Law on Call (Packel, 2021). These present a substitution to traditional law firms as they can provide some legal advice to clients.

Moreover, Arizona and California have allowed legal paraprofessionals who are nonlawyers to represent clients in court (Moran, 2020). This presents a challenge for traditional law firms and lawyers as people with less education can perform some of their jobs' functions. There is also the growing use of AI to conduct legal research and provide help to firms. Online resources can be utilized by clients seeking legal help (Sahota, 2019). These are all interindustry phenomena, and the threat of legal services being substituted by another industry is unlikely. There is no genuine replacement for lawyers at this time.

Threat of New Entrants:

Rising competition and the failure of one firm to control a significant portion of the market allow the legal industry to remain highly competitive. Established firms are also faced with a high threat of new entrants. There are very few entry barriers, provided an individual or

group can afford the five to fifteen thousand needed to cover startup costs and meet state licensing requirements (Lawyerist, 2021). State licensing requirements generally require individuals to have a law degree and have passed the BAR in that state (Winston and Karpilow, 2016). Once those minimum requirements are met, an individual could start a new firm.

There are examples of people establishing law firms immediately following law school (Robertson, 2014). While there are financial challenges to starting a firm, there is always the threat of new players in the legal industry. New entrants also benefit from an ability to succeed as smaller or midsized firms. Once established and experiencing some growth, midsized law firms can compete with larger firms for the same clients (Schuetzle, 2020). Existing law firms must ensure superior quality and low costs to ensure a new firm does not erode their market share.

Firm Strategy

Cohen and Milstein aim to provide legal services to individuals who would otherwise not have legal representation. It handles complex plaintiff-side litigation and class action lawsuits. It seeks to take on cases other firms did not want to handle (Cohen and Milstein, 2021). It represents most of its client's pro bono (for the public good). Most client services are free for those who cannot afford them. To make money, Cohen and Milstein depend on settlements in court and take a percentage of winnings in successful cases. It also utilizes class action settlements to gain revenue by taking a portion of winnings, providing an ample financial opportunity (Fisher, 2013). Firms undertaking pro bono work often can take advantage of court waivers to excuse fees other firms have to pay (LexisNexis, 2020). Cohen and Milstein is respected within its industry for its pro bono work and named one of the best pro bono law firms

(Helem, 2019). It can utilize its credibility to select higher-profile cases with more significant potential returns. This allows the firm to remain highly profitable despite providing free services.

SWOT Analysis

Strengths:

Cohen and Milstein benefit from its boutique-style law firm. This allows the firm to excel in multiple different areas and to undertake cases within those areas. The focus on niche areas increases the firm's notoriety in those areas and brings clients needing specific help (Yale, 2018). The firm's additional strength is its partnerships with high-profile organizations like the NAACP, ACLU, and Human Rights Prevention Center. These relationships open the door to more specialized litigation and increase Cohen and Milstein's industry credibility. The firm also enjoys a strong industry reputation, as mentioned previously, and profits above \$26 million.

Another source of strength for Cohen and Milstein is its talent development and coaching practices. It can develop and retain employees better than competitors (Reuters, 2020). Its staff is better developed and, on average, will remain with the firm longer, about 6.7 years (LinkedIn, 2021) compared to the industry average of 5.4 (Weiss, 2015). The ability to cultivate talent provides Cohen and Milstein an edge over the competition. As a firm, Cohen and Milstein employ 12 of the top 500 lawyers (Lawdragon, 2021) and 2 of the top 50 trial lawyers (Cohen and Milstein, 2021). Talent is a significant advantage for the firm.

Weaknesses:

Some weaknesses of Cohen and Milstein include its geographical locations. It is only located in six cities around the United States (Cohen and Milstein, 2021). Its sites are primarily in the Northeastern section of the United States to miss cases outside this region. Moreover, the dependence on pro bono work may limit the possibility of growing revenue. Other firms benefit

from fee schedules and guaranteed income, whereas the nature of the firm limits Cohen and Milstein. Additionally, clients' retention has become more costly as other firms frequently infringe on each other's markets (Mordor, 2021).

In the industry rivalry section, the consolidation of firms occurring within the legal industry was noted. This trend could prohibit midsized firms' growth. This is concerning, especially when there is an abundance of firms of similar size or larger than Cohen and Milstein (Public Legal, 2019). While Cohen and Milstein benefit from a well-trained staff, the cost of hiring new lawyers often exceeds \$200,000 and can reach \$400,000 (Fryer, 2016). Retaining staff who have received industry awards and recognition is costly, and top talent is frequently poached, creating an issue of finding new lawyers to replace former ones.

Opportunities:

There is a myriad of expansion opportunities. As previously noted, new statutes are enacted frequently, leading to changes in labor, climate, and employment law. Shifting demographic trends may also provide avenues for litigation as the workplace becomes more diverse. The election of President Biden has marked differences in handling labor. Biden supports unionization and stricter enforcement of labor laws (Baker et al., 2020). The new administration has also signaled a willingness to reclassify gig workers, a move that would require legal guidance and likely involve litigation for workers reclassified (LexisNexis, 2021).

Additional opportunities for Cohen and Milstein include expansion abroad. The firm has experienced stability at home and remained highly profitable. It also partners with the Human Rights Prevention Center and practices international law. Opening an office abroad may provide an avenue for additional revenue, especially if it emulates competitors and opens an office in London (Seal, 2019). While Cohen and Milstein are not a large firm, industry dynamics have

changed, and mid-sized firms can be highly successful abroad by leveraging its boutique style and flexibility advantage (Winslow, 2015).

Threats:

The primary threat to Cohen and Milstein is its competitors consolidating and forming larger firms. In 2018 a record number of firms participated in mergers and acquisitions, and this trend was forecasted to continue (Prescott, 2019). If firms gain too much power, smaller/midsized firms will likely lose their market share. Globalization provides an opportunity for expansion, but there is a significant threat tied to it. Globalization and social media have shifted the balance of power into client's hands, which can drive down law firms' profitability like Cohen and Milstein (Yale, 2018).

Further, there is a significant threat of alternative suppliers of legal services. Non-law firms can provide some legal assistance. There is also the risk of a business shifting from firms to in-house lawyers (Winslow, 2015). A final threat is the negative public perception of lawyers (LaFleur, 2016). Lawyers are in an image crisis, and even if a firm participates in work for the public good like Cohen and Milstein, it is still influenced by the public's perception of the industry.

Strategic Recommendations

Following my analysis of Cohen and Milstein, I have detected several areas where the firm could implement changes to retain a competitive advantage.

Expansion:

My first recommendation is to consider expanding operations. International expansion, while risky, is a profitable avenue for Cohen and Milstein because of its relationships with human rights groups. Expansion abroad would allow international lawyers access to more clients

and cases, enabling competition with clients in the international arena. This avenue is costly, but as previously mentioned, medium-sized firms can compete with larger firms, and given Cohen and Milstein's success at home, international expansion would increase firm strength.

Expansion internationally is undoubtedly a potential route for Cohen and Milstein to expand the firm. However, if the firm was skeptical of international expansion, it could focus on national or regional expansion. Its six locations within the U.S. go as far west as Chicago, leaving portions of the U.S. outside its influence zone. Opening a new office in the western part of the U.S. would allow the firm to expand in a country with a successful track record and be less risky than entering an international market.

New Technology:

Above I noted the new technology is entering the legal industry. As AI becomes more prevalent firms will be forced to adopt technology to remain competitive. I recommend Cohen and Milstein begin implementing new technologies before other firms. There are several first-mover advantages available for law firms who act quickly. The firm will likely incur some costs, including lost productivity and fewer profits, as employees navigate the new technology. Still, this temporary loss will be followed by increased competence and productivity. Firms adopting new technology before competitors will have time to adopt practices to utilize the technology best and achieve advantages over late movers who will have to adapt to increased financial and performative pressures quickly. The utilization of technology is crucial for retaining a viable business.

Fostering Strategic Relationships:

One of Cohen and Milstein's strengths is its partnerships with national and international groups like the NAACP, ACLU, Human Rights Prevention Center, and Gun control groups.

Cohen and Milstein derive significant benefits from these relationships as these groups utilize Cohen and Milstein to help litigate higher-profile cases. Working with these groups is pertinent to the firm as it delivers national attention and provides substantial payouts in winnings. The addition of more national groups like those previously mentioned increases its potential profits and market power. Larger national groups will likely provide more high-profile cases and boost the prestige of the firm.

Conclusion

Cohen and Milstein have achieved remarkable success throughout its nearly four decades of operation. Its current market position is strong but shifting industry factors could impact future profitability. It has garnered a strong reputation within the legal industry and employs multiple award-winning lawyers. Overall, Cohen and Milstein possess the necessary resources for future competitiveness and profitability. To ensure its advantages are retained in the future, it must adopt new technology, form new strategic relationships, and expand its firm into new markets as future success is dependent on present actions.

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