



As many BigLaw attorneys have experienced over the tumultuous year since Donald Trump was elected president, uncertainty makes James Pack's phone ring.

Pack practices immigration law with Fragomen, Del Rey, Bernsen & Loewy LLP and has witnessed first-hand how things have gotten tougher for his corporate clients. They're facing more scrutiny over the immigrant workers they're looking to sponsor and longer delays in getting their applications processed.

While it's not the white-knuckle experience of rushing to an airport or racing to keep members of a family from being detained, the increasing demands and unpredictability of the government have made clients anxious for advice.

"After any memo or pronouncement or tweet that has to do with immigration, I've got 10 clients that want a call, that want a presentation, that want a white paper to their employees wanting to know how it's going to affect them," said Pack, a partner in Fragomen's Irvine, California, office.

Some might say there is a silver lining for Pack: His law practice is busy. "But," he said, "it's not really a good kind of busy."

“The uncertainty in our area, as well as I’m sure as any other area of the law, it’s really stressful.”

So goes life as a lawyer under President Trump.

Last year’s stunning election of Trump heralded a new era for the country, and by extension the legal industry, as his presidency promised to upend the political order, doom the signature policies of President Barack Obama, and set the stage for a sharp reversal on long-standing commitments to free trade and environmental protection. With a Republican Congress at his side, action was expected to be swift and decisive on repealing the Affordable Care Act, passing comprehensive tax reform and fulfilling other campaign promises.

All this change promised to be a clarion call — or a dinner bell — for lawyers who’d be needed to guide businesses through one of the most unanticipated moments of modern American political history.

A year on, though, the picture is decidedly mixed. While Trump has stayed true to certain campaign vows, like clamping down on immigration and yanking support for key environmental initiatives, many top-line priorities remain unfulfilled.

Attempts to repeal the Affordable Care Act have spectacularly failed, while markups of the Republican tax bill have just gotten underway and Trump’s pledge to unleash a huge infrastructure investment boom remains just that. Meanwhile, the ongoing investigations into suspected Russian interference in the 2016 election have created a degree of uncertainty about how everything will turn out.

For some lawyers, that’s meant less work than they anticipated. But the flip side may be that there is some shine returning to the legal profession. The public has seen attorneys from across the ideological spectrum on the frontlines, fighting back against controversial policies of the administration, calling foul on perceived ethical lapses by leaders, and otherwise speaking out in defense of the rule of law.

“I think it’s a very positive time for lawyers,” said Hilarie Bass, president of the American Bar Association. “Lawyers are once again perceived as having important roles to play in our democracy.”

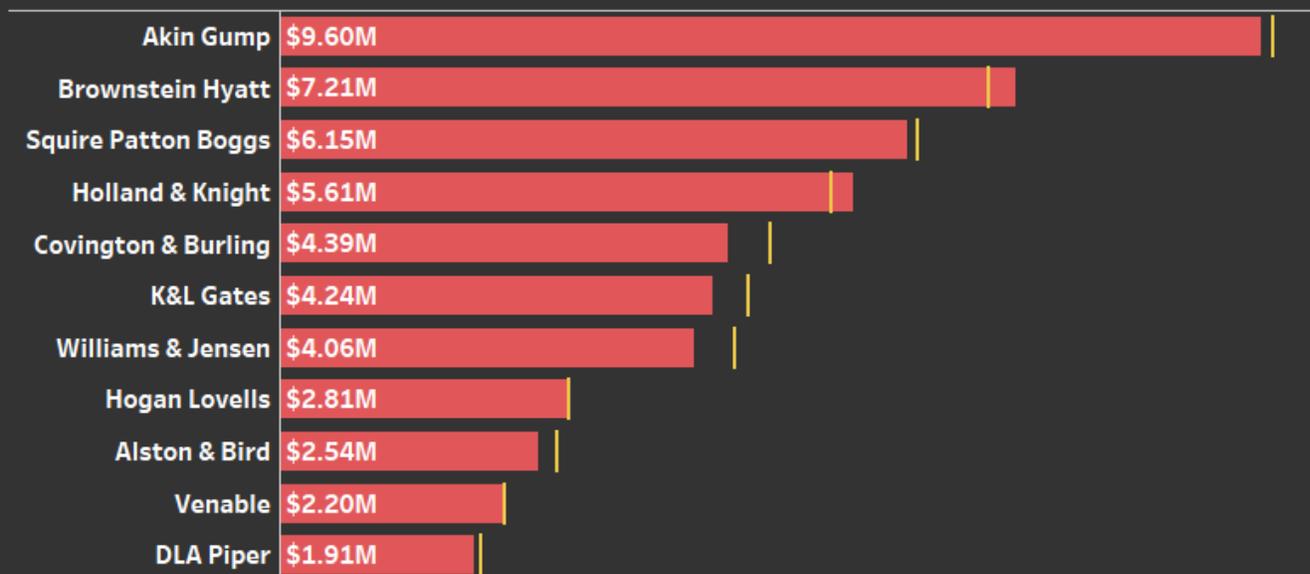
All in all, lawyers say the new administration has kept them busy, even if only to walk their clients through the unknowns of the world they entered Nov. 9 of last year.

“I would liken it to a football game where there is a lot of hard-fought battles even when there’s not points on the board,” said Hunter Bates, co-head of the public law and policy practice at Akin Gump Strauss Hauer & Feld LLP and a former chief of staff to Sen. Mitch McConnell, now the majority leader.

“The fact that a lot of initiatives have yet to get across the goal line doesn’t change the fact that it’s been very frenetic from one 20-yard line to the other 20-yard line.”

## Akin Tops Q3 Lobbying Revenue With \$9.6M

Akin Gump again finished the quarter at the head of the pack for lobbying revenue, though the firm fell short of its **second quarter** posting.



Source: Firm self-reporting and Senate Lobbying Disclosure Act database

### Life in the Swamp

On the campaign trail, Trump famously pledged to drain the proverbial swamp in Washington, D.C. But if that meant unplugging the reservoir of lobbyists around the city, the president has barely made a dent.

While the number of registered lobbyists continues to shrink, money has been pouring into K Street since the election. Spending on lobbying is up this year, from \$2.38 billion at the end of the third quarter of 2016 to \$2.43 billion at the end of the third quarter of 2017, according to data maintained by the Center for Responsive Politics.

But while spending is up this year, it's hardly been dramatic, according to one veteran lobbyist. Rich Gold, head of Holland & Knight LLP's public policy and regulation group, said he expects revenue at D.C. firms to be up 5 to 12 percent for the year. "That is not necessarily a good performance for the first year of presidency," he said.

Indeed, even the nonprofit watchdog group Center for Responsive Politics noted that companies and groups spent less on lobbying during the third quarter of 2017 than in any other quarter since at least 2008, when it began monitoring spending totals. Overall spending on lobbying has grown only by 2 percent year-over-year, its data shows.

Some of that may be due to the lack of cohesion in Congress, on one hand, and the frenetic pace of policy shifts and curveballs announced via the world's most famous Twitter account, on the other.

But while the Republican-led Congress has proven to be dysfunctional, there is activity taking place away from Capitol Hill.

“While there’s all this circus turbulence, there is still a lot getting done inside a lot of the departments in the administration,” said Kevin O’Neill, co-chair of the legislative practice group at Arnold & Porter Kaye Scholer LLP. “When you look at the EPA, Energy, Education, Health and Human Services, and even Justice, there are huge, wholesale, 180-degree reversals of major policies of the Obama administration.”

Lobbyists say their clients have made a strong push lobbying the regulatory agencies. Yet even this may get hampered if dust continues to collect on vacant seats at federal agencies.

More than nine months into the administration, the White House has successfully appointed just over a quarter of the roughly 600 key executive branch posts that require Senate confirmation, according to data kept by The Washington Post and The Partnership for Public Service. And more than 40 percent of those seats, or 261, have yet to have a person nominated to them, the news organization found.

Empty seats make it hard to get the administration’s deregulatory agenda underway, lawyers note. “Even in order to implement regulatory rollbacks, you need staff in place to do that,” said Jamie Wickett, a partner at Hogan Lovells.

Further delays could dull demand for lobbyists. But perhaps only by so much.

“If expectations diminish for what can get accomplished, it will have some effect on the market, at least around the edges,” Bates from Akin Gump said.

“But sophisticated companies and trade associations in Washington know that you can’t turn on and off lobbying like a light switch. They know that you need a sustained presence on both sides of the aisle, regardless of whether the legislative market is a bull market or a bear market.”



Protesters assemble at Kennedy Airport in New York on Jan. 28, the day after President Donald Trump signed an executive order suspending all immigration from seven countries for 90 days. (AP)

## Border Clash

One of the most dramatic scenes of the year came in late January, when the week-old administration first tried to impose its travel ban on visitors from certain Muslim-majority countries.

Scores of lawyers immediately responded, including volunteers from BigLaw, flooding airports across the nation with offers to help travelers caught up in the ban. Litigation quickly followed, and that alone has opened a number of opportunities for lawyers, either on a pro bono basis or on modest retainers.

Neal Katyal, a former acting U.S. solicitor general who now co-heads the appellate and U.S. Supreme Court practice at Hogan Lovells, has spent much of the past year with his team representing the state of Hawaii in its fight against the travel ban, litigating the case all the way up to the high court and back.

“This is not a political case. Republicans have as much to lose as Democrats when the president denigrates the freedom of religion,” Katyal told Law360 in an interview.

The White House has insisted that the travel ban is focused on national security, although federal judges have found that its various iterations appear to unfairly target Muslims in violation of the U.S. Constitution.

Beyond this high-profile fight, attorneys are battling to keep up with all the change hitting immigration law.

Since Trump’s election, the White House and immigration agencies have gradually tightened the screws on the system and those who rely on it.

While much of the public attention has been on individuals caught up in the machinery, employers are also facing greater challenges. Agencies are demanding more evidence from employers looking to sponsor workers for H-1B visas and have mandated, for the first time in years, in-person interviews with workers on track for an employer-sponsored green card.

The federal government is tightening the borders in other ways, by announcing plans to quadruple inspections of worksites and by revising policies to close loopholes for legal immigration, lawyers say.

Susan Cohen, chair of the immigration practice at Mintz Levin Cohn Ferris Glovsky and Popeo PC, calls it a “hostile environment” for immigrants of all walks of life. She said CEOs and successful entrepreneurs are among those being adversely affected.

“It’s not an environment in which immigrants are appreciated, regardless of who they are,” she said.

This is all having a big impact on corporate America, particularly those industries that rely on high-skilled immigrant workers, she said. It’s also driving up their legal bills. The cost of filing initial visa applications is more than doubling because of all the extra steps companies are having to take to justify the overseas workers they want to hire, Cohen said.

There is also greater litigation risk now if agencies deny visas that arguably would have been approved during years prior. “Some of the companies will have enough of a budget and appetite to sue and try to create precedent,” Cohen said.

For Mintz Levin, the changes have brought in new business, and Cohen doesn't see it going away. But she said she'd rather not have stricter regulation be the cause of more business, if only because of the anxiety it is producing in clients.

"I've been practicing immigration law for going on 33 years," she said, "and I've never seen as many people be concerned and anxious about their futures."

### **Building Blues**

When historians look back on the early days of Trump's presidency, they may find themselves asking the same question as Greg Hummel: Why was health care, and not infrastructure, the first item on the White House's legislative to-do list?

The fight to end Obamacare of course appeals to much of Trump's Republican base, but to Hummel, a partner at Bryan Cave LLP, the president's campaign-trail pledge of encouraging \$1 trillion of infrastructure investment seemed a more natural objective. For one, there's bipartisan support for better roads and airports, and, for another, it fits better with the president's background as a real estate developer.

"His core strength is understanding the 'built environment.' He could have gotten, and I think ultimately will get, major wins here," said Hummel, who focuses on real estate projects. "If he started with that, I think there would have been an interesting opportunity for cooperation."

There would have been interesting opportunities for lawyers, as well. Trump's vision of an infrastructure boom intends to attract a significant chunk of private investment in public works projects. Invariably, such projects also bring a lot of work to a variety of practice areas, from real estate to public finance to tax.

As it stands, the public has yet to see any infrastructure plan, and many observers expect one won't be released before Congress acts on tax reform. Hummel says he doesn't expect anything to surface before midterm elections next year.

Still, Hummel remains optimistic something eventually will happen. Government agencies have been working on proposals for a while, he said, and his clients are getting ready for the moment the lid is lifted.

"There is quite a bit of activity under what might appear to be still water," he said.

### **Raring for Trade Fights**

By dusting off old laws on international trade, the Trump administration has been able to take a more protectionist stance on global commerce — and create more work for lawyers in the field.

In April, for example, Commerce Secretary Wilbur Ross invoked a seldom-used power when he ordered so-called Section 232 investigations of U.S. steel and aluminum imports, with an eye to the impact they're having on national security.

Then, over the summer, the U.S. International Trade Commission launched a rare investigation of washing machine imports after Whirlpool Corp. filed a petition seeking the agency's review. The ITC sided with the Michigan-based company in October when it found that importers like Samsung and LG were injuring domestic manufacturers like Whirlpool, setting the stage for potential tariffs down the road.

This has stirred a whirl of enforcement activity that the trade bar hasn't experienced in years, said John Brew, chair of the international trade group at Crowell & Moring LLP.

"We haven't seen this since the early '90s," he said, adding U.S. industries are feeling "emboldened by the current environment and feeling like they can obtain relief from the ITC and Commerce on what they view as unfairly traded imports."

Law firms are certainly reaping some benefit from this heightened activity. Pointing to a recent joint petition by a U.S.-based manufacturer and labor union against three overseas countries over the importing of forged steel fittings into the U.S., Brew said, "That one petition will keep five different law firms busy."

### **Environmental Logjams**

Energy and mining companies have had reasons to cheer the steps the White House has taken to undo Obama-era regulations. But lawyers say the administration's efforts are not all cause for celebration.

Hiring freezes, planned budget cuts and the slow pace of appointing people at the Environmental Protection Agency and Department of the Interior have made it harder to get agency review and approval of new project proposals, they said.

"It's easy to say you are going to prioritize things but if you don't have a federal workforce in place to be able to carry that out, it's really more of a hollow gesture than anything else," said Parker Moore, co-chair of the environmental practice group at Beveridge & Diamond PC.

Other lawyers say they have concerns that the Trump administration could go too far in its efforts to hack away at Obama's environmental legacy. Some of it was actually liked by their corporate clients, they say, and there can be complications by simply shutting down a program.

"Sometimes undoing things in a haphazard way can make things more confusing and muddier," said Paul Weiland, chair of the environment and land use practice group at Nossaman LLP.

Environmental lawyers are also having to contend with the fact that advocacy groups will try to fill the enforcement void left by the business-friendly Trump administration. Many federal environmental statutes empower ordinary citizens and nongovernmental organizations to become private attorneys general and sue on behalf of the government, Moore noted.

Already, there are signs that environmental groups are beginning to take up that challenge, he said. And it's likely that more lawsuits will be filed, as groups across the country plot out how to spend the flood of donations they received after last year's election.

“Many of them have war chests that are far larger than they have before,” Moore said.

“We’re starting to see an increasing number of citizen suits at a faster pace,” he continued. “It’s almost matching the pace of policy change coming out of the Trump administration on the environmental landscape.”

*Ed Beeson is a feature reporter with Law360 who last wrote about Justice Neil Gorsuch’s statements on Chevron deference. Editing by Jocelyn Allison, Jeremy Barker and Aaron Pelc.*