2012 ABA LPL Bert W. Levit Essay Contest Hypothetical

You are the general counsel of Baum, Denslow & Garland LLP (“BDG”), a law firm located in the Land of Oz. The firm’s largest (and most loyal) client is Yellow Brick Cola, Inc. (“Yellow Brick”), a global soft-drink company headquartered in Oz. BDG represents Yellow Brick in numerous matters, but most of the engagement letters between the two, including the engagement letter governing general matters, specify that their relationship is governed by Oz law. Oz has adopted the ABA Model Rules of Professional Conduct.

BDG maintains offices in several countries throughout the world, which, because of differing rules governing the practice of law by foreign attorneys, are structured in different ways. For example, some BDG offices are simply branch offices of BDG itself; others are locally formed partnerships held by an umbrella holding company; and still others are controlled through an affiliation agreement between BDG and a locally formed law firm entity.

One of BDG’s offices is located in Sikinia. That office has about 20 lawyers, all of whom are licensed to practice law only in Sikinia. The Sikinian office is presently structured as an independent office which has a contractual affiliation arrangement with BDG. But because the Sikinian legal market is scheduled to be opened to foreign lawyers in the coming year, BDG management has already begun plans to restructure the office with a view to fully integrating it into the firm’s global partnership.

BDG’s Management Committee has received an email from the Managing Partner of the Sikinian office, T. N. Mann. Mr. Mann has explained that two major potential matters have come to the office’s attention, both of which would both be adverse to Yellow Brick. As in many countries, Sikinian ethics rules do not require clients to waive potential conflicts as long as the matter is unrelated to any current work for the client and the law firm can erect an appropriate ethical screen. Mr. Mann does not know what Oz law specifies on this subject, or if the choice-of-law provisions in Yellow Brick’s engagement letters govern the question.

The Sikinian office has worked on some matters for Yellow Brick in the past under engagement letters specifying that Sikinian conflicts rules will apply, and expects to do so in the future under similar terms. The work that the Sikinian office has done for Yellow Brick mostly relates to local tax issues, and would not be related to the two potential new matters.

The first potential matter involves Eastwich Brew, a local soft drink company in Sikinia. Eastwich is weighing whether to bring a lawsuit against Yellow Brick alleging a violation of Sikinia’s False Patriotism Law, which imposes civil penalties for advertising that is intentionally misleading in its patriotism. Eastwich Brew’s contemplated suit arises out of Yellow Brick’s sponsorship of the Sikinian Olympic team, and its advertisements which incorrectly identify Yellow Brick as the official soft drink of the Sikinian Olympic team.
The second matter involves a different local competitor, Westwich Bottling. Due to restrictions on foreign-owned business in Sikinia, Yellow Brick only owns 40% of the shares of its local affiliate in Sikinia. Although Yellow Brick’s intellectual property is protected by various treaties and licensing agreements, Westwich Bottling would like to buy up shares of this local Yellow Brick affiliate and force a sale of its non-IP assets to Westwich. BDG’s Oz office helped structure the 40% ownership structure and licensing agreement for Yellow Brick but BDG’s Sikinian office was not involved in this work. Mr. Mann explained to both potential clients that he would like to be able to secure Yellow Brick’s consent to these representations, but neither potential client was willing to let Yellow Brick know in advance about the legal actions it was considering taking.

In considering how to respond to Mr. Mann’s email, the Management Committee has asked your opinion on these potential conflicts in the form of a legal memorandum. The committee would like you to pay special attention to three questions: (1) what is the impact of the choice of law clauses in Yellow Brick’s engagement letters with BDG; (2) whether the planned restructuring of BDG’s Sikinian office complicates the question in any way; and (3) what action(s) you recommend that BDG take with regard to the potential new matters.