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How Law Firms Can Make an Extra Buck During the Continued Period of Economic Disruption

Consider establishing affiliated law firm subsidiaries and increased secondments

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The Great Recession is continuing to take its toll as both corporate legal departments and law firms are seeking ways to squirm through these difficult time. Some law firms are endeavoring to meet these challenges by creating wholly owned subsidiaries which provide outsourcing, and temporary staff lawyers. These law firms staff these separate entities with lawyers, compensated at lower rates, who are not employed by the firms directly and typically house these lawyers in facilities separate from the law firm and in low rent districts. More about these later.

Corporate law departments are also feeling the squeeze. In one recent survey of corporate law departments, 80% of the respondents reported that their department's work load increased in 2009, as compared to 70% reporting increased workloads during the preceding year. Corporate law department's expenses increased to a median .33% of corporate revenues from the preceding year's .29% (compared to 2008's .33% of total revenues). An additional factor to be considered is that at least one quarter of corporate departments reported that budgets for corporate law departments have been reduced by at least 15%.

Recessionary times historically have created enormous burdens on corporate law departments. Steps taken by corporations to meet recessionary challenges

necessarily keep the lawyers busy, as corporations deal with reductions in force, followed, as night follows day, a spate of age, sex or gender discrimination claims. Companies seek to divest or close down units, all of which is fodder for the legal grist mill. Corporate lawyers are required to deal with defaults by corporate customers and vendors, as well as defaults by the company itself. Matters previously referred to outside counsel are retained by the corporate law department. The corporate law departments are being instructed to bend every effort to see to it that disputes with vendors, suppliers and other parties should be resolved by the corporate law department, without litigation and without referring such matters to outside counsel. All of this occurs, of course, against a general backdrop in which corporations impose ever increasing restraints on incurring the expense of retaining outside counsel.

These corporate constraints on fees of outside counsel are being met in a variety of different methods:

One is an ever increasing use of [alternative fee arrangements](#), a topic we have been addressing for some time. To no great surprise to us, corporations report that almost three quarters of the fees they paid to outside counsel were based on some form of AFA. Equally of no great surprise, some 90% of law firms report that they offer a variety of AFA's to their clients.

Second is keeping as much work inside the company as possible. The consequence is not only significant increases of work for corporate law departments, but, in addition, as noted, a substantially greater reluctance to litigate controversies. The Great Recession marks a major departure from previous recessions and downward cycles over the past half century. Previously, the onset of a downward cycle set litigators drooling as they anticipated the bakes of additional work previous recessionary cycles produced. I believe it's fair to say that most law firms were caught by surprise when The Great Recession did not produce a great wave of litigation.

A third result has been compelling outside counsel to rely more heavily on outsourcing routine work, such as document review, by both law firms and corporate law departments to independent vendors, often, based overseas.

Most law firms do profit directly from work performed by staff lawyers by purchasing such work at wholesale and selling it at retail. In other words, the client is billed a premium above the cost of such lawyers, whether these staff lawyers are hired by the law firm directly or through a staffing agency. Corporate

consumers of legal services are like customers of [retail clothier Syms](#): They are well educated and make the best customers. Accordingly, many corporations have struck their own direct favorable deals with staffing companies and outside counsel are directed to utilize those agencies, which are in turn paid directly by the corporate client, thus eliminating the mark up.

Corporate legal departments themselves, in meeting the ebbs and flows of their own work loads and keep a tight rein on their own shrinking budget, have also been utilizing staffing agencies to beef up when demands of their own time are at their peak. What's good for the goose is good for the gander.

As mentioned at the outset of this piece, some law firms, such as King & Spalding owns a separate entity known as [Discovery Center](#) an outsourcing litigation support center, obviously in direct competition with other outsourcing services, both domestic and abroad. Baker & McKenzie reportedly has a separate subsidiary which provides litigation prep and support services. London based Berwyn Leighton Paisner established a separate entity named "[Lawyers on Demand](#)" which seems nothing more or less than a temporary lawyer staffing agency, which focuses its efforts on providing temp lawyer staffing to corporate clients, apparently not at all very much different than [Axiom](#). Other law firms, such as [Mintz Levin](#), have long had separate subsidiaries which provide wealth management and investment advisory services.

It has been said that endeavors such as these are inspired by an article written by Clayton Christensen and Michael Oberdorff in the Harvard Business Review entitled "[Meeting the Challenge of Disruptive Change](#)". , which, among other things, suggests that in disruptive economic periods, companies should retain their basic business model, on the assumption that such models remains viable during periods of economic disruption, while *simultaneously* pursuing different and new business models which can separately yield profitability.

One salient point made by Professors Christensen and Oberdorff should not be overlooked, namely, as new business models are pursued, the basic business model should not be abandoned.

Towards that end, I would urge law firms to seriously consider secondments. The concept, more popular in Europe than in the United States, involves "lending" an associate to a client for some fixed temporary period of time. In a typical seconding arrangement, the client pays the seconded associate directly. Seconding has a number of distinct advantages including: (1) the firm assists corporate law

departments in times of peak demand, without requiring either a permanent addition to the corporate payroll; (2) a seconded associate employed full time by a law firm, particularly a law firm which has had an ongoing relationship with the company, and is therefore presumably well trained and comes on board at a running start, typically far more advantageous than a temp staff lawyer; (3) upon the associate's return to the firm, he or she will have a far better understanding of the company and its workings and objectives; (4) the investment made by the law firm in highly qualified, well trained associates who may be underutilized at the law firm, given current economic conditions, can be continued in the law firm ranks as economic conditions stabilize; (5) the seconded associate will add to his or her skill set and value to the law firm as he or she gains a far better understanding of the client's business, objectives and culture; (6) client loyalty is enhanced; and (7) [morale among firm associates](#) are enhanced as the firm displays loyalty to its own associates.

The client's interest in having a seconded associate is one of the matters which should be discussed during periodic face to face meetings with clients, which I [previously discussed](#).

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