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As the Great Recession Continues, the Need for Law Firms to Plan Carefully for the Challenges Ahead is Increasingly Critical

Is the sky falling, chicken little?

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Late October brought some interesting, distressing, if not completely startling news for the economy as a whole and certainly for the legal profession. Certainly, these recent reports require new inputs in to the algorithms employed by management.

We previously reported on steps taken by law firms to enhance their profitability by, among other things, establishing law firm subsidiaries which complement their principal business model. We also spoke of new models of professional staffing which are emerging. Much heavier lifting now is required: Now, added to this mix is that more legal outsourcing firms are working hard to compete directly with law firms. While I personally tend to agree with the assessment of Pete Kalis that LPO's may very well be simply be a "gnat on an elephant's ear," firms which derive material portions of their income from corporate work which in large measure can be characterized as commoditized will doubtless face both added competition and pressure on rates and fees charged to clients.

An additional component to the evolving calculus is the results of the survey recently conducted by Hildebrandt of some 252 corporate general counsel of major corporations in 26 industries from which Hildebrandt concluded that these general counsel expected that their budgets for outside counsel will be reduced by between 1 and 2%. This factor must be evaluated very carefully particularly where law firm fixed costs in certain areas not under a law firm's control (such as rent escalations, increased health care costs, costs of goods and services and the like) will likely rise at a higher rate.

Congressional elections are days away. No observer expects anything but a strong Republican resurgence. At the same time, every leading economist (see, for example some of Paul Krugman's views on the subject), agrees that the only way to crawl out of The Great Recession at anything other than a snail's pace requires a new massive federal expenditure for public works projects, serious federal investments in various economic stimuli and increases in tax. Doubtless, the new equilibrium in the legislative branch will simply preclude such spending. Thus, if these prognostications (from which there appear to be no dissenters) prove correct, we are all in for an extended long haul of economic decline.

The current mortgage foreclosure crisis adds a further conundrum: In order for banks to improve their capital bases and lending capacity, reserves set aside for mortgage loans default need to be converted to bank assets in the form of REO's (Real Estate Owned). Recent heightened judicial scrutiny of such proceedings, the "hide and seek" banks and loan servicers are required to go through right now ("Where's the original mortgage document? Anybody have a clue?"), state and federal regulatory and threatened criminal prosecutions have already slowed the process and continues to pinch banks' ability to make loans given the continued uncertainty of their own capital bases and lending limits.

The profession's response must be something other than "other than that, Mrs. Lincoln, how did you enjoy the play?"

2009 may have caught some in the profession by surprise. The reactions by too many law firm leaders at that time were too much whack-amole." The sense too often was let me knock down this emerging mole and then everything will be fine. There should be no surprises about what Q4 and much of 2011 will bring: There's more tunnel at the end of the tunnel.

Having already cut to the bone, options are becoming more limited: Here are some steps which *must* be taken:

- As demand for legal services decline, rather than demoralizing the firm's ranks of dedicated associates by engaging in a new round of layoffs, as needed and required by circumstances, flextime is likely required.
- Maintaining morale and associate job satisfaction, particularly in gloomy times is essential.
- Develop a plan. Obtain input from the partners and, yes, even from associates about the plan. Discuss the plan. Do not manage behind smoke and mirrors.
- Now is the time to begin developing the plan.
- Require partners to be more proactive in marketing. Each partner should have a marketing plan and each partner should be required to report monthly simply the time devoted to marketing.
- Review and your Alternative Fee Arrangement programs. We have consistently seen our law firm clients with sound AFA programs and active marketing of these programs actually increase revenues and more significantly, experience enhanced profitability.
- Rationalize the entire recruiting process. This one is a toughie, particularly since concerted action by the profession as a whole is required. While various committees are addressing the issue, we all recognize sadly, that among other things, committees too often are entities that take minutes but require hours to conclude their work.

An interesting, but surely irrelevant footnote: Simmonds and Simmonds of England is now requiring that each applicant undergo a psychological evaluation as part of the screening progress. There are without doubt a great number of punch lines here. Those of you who are devotees of *The New Yorker* are familiar with that magazine's weekly contest appearing on the last page of each edition in which a cartoon, *sans* a caption, is presented and the magazine conducts a contest in which readers are invited to submit clever captions. Consider this the same challenge.