

Putting Some Pepper Into Legal Project Management?

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It is not uncommon for law firms being pressed by clients for more accurate budgeting and better budget management to raise the “unpredictability defense.”

Whether in litigation or transactional matters, the unpredictability defense asserts that it is nearly impossible to precisely plan and completely control legal spend because legal matters are subject to such a plethora of unforeseeable variables, risks and unexpected events.

"But Law is *Different*"

“Law is unique,” they’ll argue. “It isn’t like manufacturing identical widgets where all the performance factors can be predicted, measured and controlled. Lawyers must continuously navigate shifting sands and storm-tossed waters.” One particularly erudite apologist for a huge budget overrun quoted German Field Marshall Helmut von Moltke’s famous claim that “No battle plan survives contact with the enemy.”

While there are outer limits to foreseeability, scoping and planning legal matters are not quite the game of blind man’s bluff many law firms make them out to be. And I’m not convinced that lawyers are more hamstrung in anticipating and accommodating unforeseen events than their business executive counterparts.

Business as Usual: Unusual

Accordingly, I was struck by Lauren Weber’s recent *Wall Street Journal* article chronicling McCormick Spices’ foresight, flexibility and willingness to adjust its business model when challenged by untoward circumstances. One of the world’s largest providers of spices, McCormick has been lashed by a perfect storm of unexpected events:

- Rapid price inflation for core commodities like cinnamon and pepper (the price of which has quadrupled)
- Catastrophic weather conditions in primary supply areas
- Political unrest in the equatorial regions where it sources most of its raw ingredients (including Egypt, where McCormick gets a lot of its exotic herbs)
- Dramatically reduced sales to restaurants as more recession-lashed Americans eat at home
- Drop-off of high-end spices as household cooks returned to using taco mix and spaghetti seasoning in simpler dishes.

If McCormick Was a Law Firm ...

If McCormick was a law firm, it would be time to bunker, hunker and wait out the storm, right? Wrong. Under CEO Alan Wilson, McCormick has explored alternative sourcing, expanded into new markets, shifted focus to home cooks from industrial markets, made some off-beat acquisitions (e.g., Polish seasonings and basmati rice), and also commenced a \$150 million four year cost reduction initiative. The result has been solid revenue growth (Q3 2011 revenue \$920M, compared with Q3 2010 revenue of \$795M) and stable profitability even during the GFC (Global Financial Crisis).

If McCormick was a law firm, it would be repricing its products constantly (always upward, of course), and your pepper would bear a different price tag at the supermarket every time you shopped. Fortunately, McCormick has done what forward-thinking businesses do: in this case, creating Plan B and Plan C for its spice supplies if Plan A is frustrated, perhaps by floods in Thailand, for example. It's response to "unexpected events" and "unforeseeable risks" has been to examine every aspect of its operating envelope, rather than employing reactive "magic bullet" tactical gambits.

Kudos to the Good Guys

Lest I overgeneralize about law firms' project planning inertia, let me say there are some exceptional firms whose approach to implementing Legal Project Management recognizes that few "risks" are utterly unprecedented and that few legal engagements are truly as unique as those handling them claim they are.

"Anything that has ever happened before is foreseeable," one partner commented, "and increasingly, clients are holding us accountable for foreseeing the foreseeable. We need to be more proactive about anticipating possible unpleasant surprises, rather than making excuses after we are 'blind-sided.'"

The foundation for coping successfully with risks and reversals can be laid effectively using forward-thinking during project planning. In gearing up for a bet-the-company case, for example, one firm scheduled a brainstorming session in which the project team was challenged to identify any and all forces and factors that could possibly derail their sophisticated litigation strategy. The team then was asked to sort and prioritize each item according to two distinctly different questions:

- 1) How likely is this event?*
- 2) What will its impact be if it happens?*

They came up with about 47 items, some of them wildly unlikely but hideous to contemplate, others more likely but less consequential.

Unanticipated Events Matrix

This “unanticipated events matrix” then was used to build an adaptable project plan and decision tree that distinguished probability from gravity. In so doing, the team converted possible unexpected events into uncontrollable-but-foreseeable events which could be assigned budgetary consequences for planning purposes.

In a sense, this exercise made them like McCormick – impacted by events but not surprised by events, and therefore not overtaken by events.

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