

**W**ith decades of revenue and profit growth, and insulated from earlier recessions by counter-cyclical practices (litigation improved as commercial transaction work declined), many law firms now face a drop in earnings unprecedented in recent history.

of one of the biggest tensions between organizational clients and their outside counsel — incompatible objectives, with hourly billing at its core.

### **Incompatible Objectives and Hourly Billing**

Clients want to achieve commercial objectives with the least legal costs.

possible. The trouble is that this is often *in spite of* law firms' back office systems. Most are excellent, yet few have deployed the same technology to develop service delivery methods that provide legal solutions in innovative ways that significantly save time and cost for the client. The traditional labor-intensive "one-to-one consultative advice" model, with hourly billing at its core, continues at most law firms. Sometimes it seems that firms and their clients are not even on the same field or that each is playing a different game entirely.

This inherent conflict of interest between law firms and clients is similar with other services professionals such as accountants, architects and management consultants. Today, however, many architects' fees are based on project value, and accountants and consultants often offer fixed fees and other arrangements linked to value and cost certainty for the client. Lawyers have been amongst the slowest to wean themselves off the hourly billing comforter — or perhaps their clients (with notable exceptions) have not tried hard enough to engineer change.

The ongoing economic crisis, however, exerting the greatest pressures in living memory on legal departments (to reduce costs) and on law firms (with falling profits, to truly understand and respond to, the client perspective), potentially heralds fundamental change in the working relationship between lawyers and their organizational clients.

### **The Future Is Already Here**

Change has already begun. For example, the general counsel of Cisco has famously migrated 75 percent of his organization's \$125 million legal spend to fixed fees, including litiga-

## **It Would Be a Shame to Waste a Good Recession**

BY RONALD F. POL

In-house legal teams, already under pressure from mounting workloads and the need to contain outside counsel costs, also face considerable pressures as their organizations deal with the evolving economic crisis; faced with "all department" cost-cutting measures, even the most effective legal departments are not immune.

Doom and gloom? Yes and no. It seems to me that the future could not be brighter for the relationship between law firms and their organizational clients.

Let me explain. The immediate future — cost cutting, headcount reductions, more legal risk and fewer resources — will still be hard work, and many lawyers will no longer be in the same roles in a few years' time. Overall, however, dealing with the recession delivers a once-in-a-lifetime opportunity to help reduce the impact

For transactions, this means contracts that quickly and accurately document the commercial deal and for litigation, resolving disputes quickly — or better still, creating strategies that minimize the likelihood of litigation at all.

For law firms, however, the greater the legal challenges faced by their clients, the more profitable. The best transactions involve extensive due diligence and contract negotiations spanning many months of careful drafting, and the best litigation involves the most complex arguments in the highest courts, necessarily after multiple appeals.

This is not to say that law firms deliberately milk the system or pad time sheets. Absent notable exceptions, most are scrupulously honest. Likewise, lawyers are almost invariably genuine about their desire to resolve issues as quickly and effectively as

**Dealing with the recession delivers a once-in-a-lifetime opportunity to help reduce the impact of one of the biggest tensions between organizational clients and their outside counsel — incompatible objectives, with hourly billing at its core.**



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tion. Earlier this year, the presiding partner of New York heavyweight law firm Cravath's (himself a trial lawyer), set out a remarkably similar ideal, remarking that "the billable hour makes no sense" for clients or lawyers, and suggesting a template for better correlation between cost and quality for the client. Exemplar Law ([exemplarlaw.com](http://exemplarlaw.com)) was reputedly the first corporate law firm in America to exclusively adopt a fixed price model "to align [their interests with their clients' interests] while enabling businesses to better manage their legal budgets."

Specialist law firms, with lower overheads and cheaper rates than their bigger competitors, have also gained work from newly cost-conscious clients. New law firm models, without the overhead cost of their predecessors, are also appearing, offering

innovative solutions and big savings. Next, we should see entirely new service delivery methods in which technology is central.

### **Aligned Interests, If You Choose**

Within the next few years, organizational clients and their legal services providers might increasingly be playing the same game, dedicated to profitable legal services delivery designed to reduce legal risk — *and* cost — to the client. The prospect of better alignment between the interests of lawyer and client, with big savings in legal costs, is now clearly on the table, *provided* that in-house counsel actively seek out and support the new game in town. If not, in five years' time we may revert to much the same as now. But why waste a perfectly good recession?<sup>1</sup> 

### **Editor's note:**

The ACC Value Challenge seeks to reconnect value to costs for legal services. [www.acc.com/valuechallenge](http://www.acc.com/valuechallenge)

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### **NOTE**

- 1 Title prompted by Rahm Emanuel, November 2008 (White House chief of staff for then President-elect Obama) "You don't ever want a crisis to go to waste; it's an opportunity to do important things that you would otherwise avoid."