

Growing During Tough Times:

Building Your Small Firm

By Shawn Khorrami



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When I started practicing in 1996, I was told, and believed, that our industry is recession-proof. Over the years, I have come to know that not only is it not recession-proof, but that it will become increasingly susceptible to economic downturns in the future. One of the primary reasons for that is the increasing role that credit is playing in every aspect of our personal and professional lives. Plaintiff firms have traditionally been self-funded or made minimal use of credit. However, the use of credit has increased in the past few years, and will continue to increase in the upcoming years. While this is a welcome

change which will allow our industry to grow and better serve its clients, every period of economic downturn brings with it a tough credit market. Increasing reliance on credit will necessarily mean increasing susceptibility to economic downturns.

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California Litigation Vol. 23 • No 1 • 2010

Another increasing trend in our industry is specialization, and we will continue to see

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more of it going forward. Again, this is a good trend and will allow us to better serve

our clients. At the same time, specialization can make segments of our industry vulnerable to falling into economic hardship — even catastrophic ones — with the occurrence of a single event. (Editor’s Note: See Thomas McDermott’s article in this edition — *Descent into the Maelstrom*.) This is particularly true with respect to plaintiffs’ firms, as our industry is made up almost entirely of small businesses.

The bottom line is that we are going to have cyclical tough times — that’s just how it works with every industry. And most of us know that those who are able to not only survive, but see opportunities in tough times and exploit them, are the ones who come out of economic downturns catapulting past their competition. We have to realize that there are opportunities in the worst of times — we just have to look for them.

I will explain what I mean by using what occurred with my own firm as an example. Although mine is a plaintiffs’ firm, when plaintiff litigation gets affected, so do the corresponding defense firms. So these principles apply, irrespective of what side of the case you’re on, or the current size of your firm.

In January 2008, the U.S. Supreme Court granted certiorari in the case of *Wyeth v. Levine*. The *Levine* case involved a defective pharmaceutical resulting in amputation of the plaintiff’s arm. Ms. Levine was a professional musician. At trial, the jury had awarded her \$6.7 million. Wyeth, the manufacturer, appealed, arguing that FDA regulations preempted state common law and therefore, Ms. Levine could not sue Wyeth for her injuries — essentially that Wyeth was immune from injury suits based on its defective products. The Vermont Supreme Court had sided with Ms. Levine. Knowing the reversal rate of the U.S. Supreme Court, the future of pharmaceutical litigation seemed bleak.

On top of that, the FDA had done an aboutface under the Bush administration.

For decades, the FDA had taken the position that state tort laws were complimentary to its regulations and were an important part of assuring product safety. Under the Bush administration, the FDA reversed its position and said that its regulations preempted state

our industry — in this case, those that focus on pharmaceutical litigation.

What did my firm's caseload look like at the time? It was over 60% pharmaceutical cases. Not only that, but at about the same time, the country went into a deep recession — the worst in decades. Doomsday seemed eminent. Today, pharmaceutical cases make up less than 20% of my firm's caseload. We have even more active pharmaceutical cases, spread over as many different pharmaceutical products as we did before. However, our entire caseload has more than quadrupled — we developed other areas in which we were already working and added a few more. We have also more than doubled our workforce, and brought in employees with technical expertise, allowing us to conduct in-house medical review, among other things.

How did we do it?

— **Tighten Your Belt** —

Whether in good or bad times, tightening your belt needs to be an ongoing, daily agenda item. But this is particularly important in tough times. My view always was that the business side of my practice is second to the law side. Over time, I understood that I was wrong. Even with that realization, I found that I had little time to devote to becoming skilled in the business side of my practice. I became skilled by bringing on my partner, Danny Abir, and ultimately added a professional business manager who now runs a management team within my firm. There are several places to look when tightening your belt.

Cost Cutting — Cost cutting is obviously the first thing that comes to mind. As our caseload ballooned, so did our overhead — higher payroll, more office space, more infrastructure, and more bureaucracy. No matter what the size of the organization, there is going to be a significant amount of

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tort laws and had submitted briefs in trial and appellate courts alike making that contention. It appeared that pharmaceutical litigation was doomed. This is an example of where specialization plus a single event could spell a catastrophe for a segment of

waste. The first step is to audit to find all of the areas in which there is spending. For example, we were paying for services we had stopped using, or which some people insisted on using even though the firm had made a business decision to replace them — everything from research tools, to form programs, to cell phone numbers. That was the easy part.

We then had to begin the process of agreeing to preferred or exclusive vendor agreements in exchange for better pricing and/or payment terms. For example, we discovered that we were using several court reporters, including an outfit that was able to singlehandedly meet all of our needs. In the past, I had used this outfit only when other discount reporters were unable to service our needs. Because of the higher volume of work, they were now able to offer us their superior service at the same or lower prices than the discount reporters we were using. In another instance we were using several different overnight carriers. By picking one, we were able to obtain significantly discounted rates and better payment terms.

We looked at our employee benefits. After some research, we were able to make some significant changes. We were able to offer our employees better insurance — broader coverage, choices of insurance carriers, and better terms. We automated some human resource functions such as obtaining information on vacation days, and tax withholdings. We were able to provide a 401(k) plan — something we did not have previously. And we were able to provide our employees with discounts for various consumer items — everything from electronics, to movie tickets, to their phone bills. And the best part is that we were able to do this at virtually the same cost as our previous benefits package.

There are lots of places and ways to save. If done properly, cost cutting does not have

to be painful — it can actually enhance the services you provide. Professional and focused business management is the key. Three easy ways to bring it into your organization are by working with a partner who has the qualities you need, hiring a business manager, or retaining an outside consultant.

Protocols — Another place where professional business management can help is the implementation of protocols. Protocols — when properly created — can substantially improve efficiency, increase professionalism, and dramatically reduce mistakes. This is not only important for the bottom line, but also will help you better serve your clients and meet your ethical duties.

Protocols are particularly important when working in teams — whether it is two individuals or fifty. It is important to list all of the tasks that make up a project. Then, create a flow chart of how the work should be done, assigning tasks to appropriate individuals or positions within the firm. For example, at our firm, we create a customized database which contains fields for all of the information we need from our clients in a given mass tort. This may change or become more detailed as the litigation moves forward. We do our best to have as many checkboxes and drop down menus as possible so that we can assure uniformity in the terminology used. Sorting for a certain type of injury would be virtually impossible if your staff is not using uniform terminology.

Assuring uniformity also increases professionalism both within the firm and outside. For example, having a protocol for how letters are to be drafted — right down to the margins and how the signature block is going to look — assures that all correspondence, regardless of who sends it, is drafted to the best standards of the firm. People outside of the firm see an organized team. At the same time, it instills a sense of pride and teamwork within the firm.

Automation — Automation may have some upfront costs, but if done properly, it will pay for itself very quickly. Additionally, computer-related expenses do not need to be paid all upfront — increasingly, they are being financed. Automation can significantly reduce overhead such as payroll. Even mail delivery can benefit significantly. For example, at our firm, we scan all of the daily mail and no longer receive paper faxes — all of our faxes arrive electronically. A case may have 30 or 40 people who are working on it and within that, teams that are assigned to different portions. The mailroom is not going to know who is on what team. They don't need to — our teams are centrally selected. From there, scan templates are created so that our mail personnel do not have to be trained on various aspects of cases nor instructed on team members. They simply find the appropriate template and the scanner does the rest — it scans and then distributes.

Joint Ventures — Joint venturing is not only a way to tighten your belt, but I believe is the way to practice altogether. With the right joint venture relationships, you can cut costs, obtain expertise that you may lack, increase manpower, bring in necessary connections, and better manage your cases, among other things. Personally, with every case that we take on, I look for reasons to joint venture. Too often, I made the mistake of thinking that defendants are trying to find some way of defeating the case in the courtroom. The truth is defendants don't ask how they can defeat us in the courtroom — they wonder how they are going to defeat us, period — in the courtroom or otherwise. Regardless, joint ventures are a great way to reduce costs. Be creative and straightforward with your joint venture partners — there are lots of ways to make a deal where everyone benefits.

Marketing — No cuts should be made

from the marketing budget unless absolutely necessary. Having a steady pipeline of cases is crucial to the continued health of a law firm. Cutting from marketing will necessarily mean that there is going to be a lull in revenues at some point in the future — even when economic times are good. In our case, we actually increased our marketing budget. However, we concentrated on diversifying it. We added certain marketing methods which we had not employed in the past in order to capture the types of cases that we wanted. For example, we wanted to increase joint venture opportunities. So we started a marketing effort to let other plaintiff lawyers know that together, we can better serve our clients, and obtain better results for them and for ourselves.

— Acquisitions —

Tough times are a great time for acquisitions. And acquisitions are not just limited to personnel — they can be other practices or even services that your firm uses. Unfortunately, during economic downturns excellent individuals are laid off, and many businesses are struggling to make ends meet. This can be a great opportunity while at the same time helping those who aren't doing very well. As with everything else, it's important to be creative with acquisitions. For my firm, I divide acquisitions into three different areas: (1) Personnel; (2) Law Firms; and (3) Services.

In any organization, there may be some employees who are underperformers. Tough economic times leave no room for these individuals. Additionally, due to the job losses that are a part of any recession, there are a lot of great people who are eager to work. It's the perfect time to replace underperformers. Recessions are also a great opportunity to acquire star performers or specialists. In fact, in our firm, we used the opportunity to fill several positions where we wanted an indi-

vidual with specific expertise — positions for which we had difficulty getting applicants previously, we were able to fill in a period of weeks. Not only are more applicants and qualified individuals in the job market, but there has been a downward adjustment in average salaries, particularly for highly compensated positions.

Another area to consider for acquisitions is other practices. There are a number of ways to do this — everything from just acquiring a caseload to acquiring the personnel of another firm with the caseload. Contrary to what some may think, this type of acquisition can be appropriate and affordable — and in fact, profitable — regardless of the size of your firm. Again, creativity is key. There are a lot of variables that can be negotiated. For example, there can be any combination of upfront payments, periodic ones, cost reimbursements, fee sharing, salary negotiations for the owners of the practice being acquired, and even office space and staffing. There are many more variables to consider and to use as negotiating points. I consult with experts before doing any deal as I am not an expert on mergers and acquisitions — I am a plaintiff's lawyer.

The next area to consider is acquisition of a vendor that your firm uses frequently or alternatively in-housing a service which allows you to save costs. We hear a lot about outsourcing these days. But there are times that warrant in-housing. One issue to consider is whether the service that is being in-housed is a client-related expense. To the extent that it is, if not properly done, in-housing may result in the expense moving from a client-related expense to a part of the firm's overhead. Done properly, in-housing a service can result in lower cost to clients while at the same time reducing the firm's overhead.

Our industry will increasingly be affected

by recessions. Further, with the increase in specialization, segments of our industry can face significant economic downturns because of single events — this can happen because of a piece of legislation or a single court case.

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Those who look for and exploit opportunities in tough times are the ones who will catapult past the competition when there is an upward trend. Doom is a state of mind. Create opportunity!