

THE LAW FIRM OF THE FUTURE

BUDGETING CONSIDERATIONS FOR 2021

An MPF Webinar – November 18, 2020

by

Frederick J. Esposito, Jr.

Chief Operating Officer, Rivkin Radler, LLP

Uri Gutfreund

Law Firm Group Leader, Risk Strategies Company

Tom Obermaier

Chief Executive Officer, SurePoint Technologies

John Remsen, Jr.

President, TheRemsenGroup

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Smart Strategies for the Forward Thinking Law Firm

TheRemsenGroup.com

BIOGRAPHICAL PROFILE

Frederick J. Esposito, Jr., MBA, CLM

Chief Operating Officer
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Frederick J. Esposito, Jr, MBA, CLM, Chief Operating Officer of the regional law firm Rivkin Radler LLP, has more than 25 years of law and accounting firm experience and has been a Certified Legal Manager (CLM)SM since 2006.

Fred specializes in financial and organizational management and has managed and worked in a consulting capacity with several law firms, both international and domestic.

Fred brings considerable “real world” experience to his role as a speaker and educator. Also, he is a senior member of the faculty and a consultant for the Legal Lean Sigma[®] Institute LLC. In May 2018, Fred earned a Yellow Belt Certification in Legal Lean Sigma[®] and Project Management and is working toward his Green Belt Certification.

With more than 25 years of law and accounting firm experience, Fred is a thought-leader, frequent speaker, and an author of articles on a wide-range of topics and best practices. He has been published on topics such as billing and collections, profitability, attorney compensation systems, alternative fee arrangements, process improvement, project management and strategic planning by Thomson Reuters Legal Executive Institute blog, *Law Practice Magazine*, *Law Practice Today* and *Attorney at Work*, among others.

Fred is a highly-rated, frequent author and speaker for the ABA, ALA, BNA/Bloomberg, Lexis/Nexis, and Thomson Reuters. In the Fall of 2016, he became a Faculty Advisor and Presenter for the Nassau County Bar Association Academy of Law and in June 2013, he was inducted into the National Speakers Association.

In 2012 he received the Association of Legal Administrator’s Outstanding Association Volunteer Award for his service as a leader and national speaker and was also named CFO of the Year by Long Island Business News. Fred was the first CLM on Long Island and from May 2013 - May 2016, was the Chair of ALA’s Certification Committee.

November 2020

BIOGRAPHICAL PROFILE

Uri Gutfreund

National Law Firm Practice Leader
Risk Strategies Company
New York, New York
212.826.9744 – ugutfreund@risk-strategies.com

Uri Gutfreund is The National Law Firm Practice Leader at Risk Strategies Company, a top 25 national insurance brokerage and The Founder and Moderator of The Managing Partner Round Table™, a regional peer-to-peer professional development group. This unique program has quickly become a leading venue for thought leaders in the legal industry.

At Risk Strategies, Uri is responsible for the development and execution of all insurance and risk management services to the company's law firm clients. He oversees all law firm specialty areas including: Health, Professional Liability, Property and Casualty, Cyber and EPLI. His practice leadership combines 20 years personal experience with cutting edge innovation remaking law firm insurance programs using the latest technology, peer benchmarking, and real-time best practices to serve the company's law firm clients.

He has been a Registered Professional Liability Underwriter since 2001 and a frequent speaker and is a writer on law firm leadership, law firm business practices and insurance and risk management at national and regional conferences.

September 2020

BIOGRAPHICAL PROFILE

Tom Obermaier

Chief Executive Officer

Surepoint Technologies

513-241-1375 - tobermaier@rippe.com



Chief Executive Officer

SurePoint Technologies

Sep 2018 – Present · 2 yrs 3 mos

Cincinnati, Ohio



Chief Executive Officer

Regulatory DataCorp. (RDC)

Jul 2009 – Aug 2018 · 9 yrs 2 mos

Greater Philadelphia Area

CEO of this Vista Equity RegTech portfolio company specializing in providing regulatory risk technology solutions to the financial services industry, Fortune 500 companies, and public sector clients across the globe.



Chief Risk Officer, Global Transaction Services

Citi

Aug 2003 – Jul 2009 · 6 yrs

Chief Risk Officer of this \$9Billion a year transaction banking business. Managing all credit, market, operational and regulatory risks across \$6 trillion in daily transactions, 28,000 employees and 140 countries. Portfolio included \$1.6 trillion in clearing and settlement exposures and \$70 billion in credit outstandings.



Managing Director, Global Head of Risk, Global Transaction Bank

Deutsche Bank

Jun 1999 – Aug 2003 · 4 yrs 3 mos

Managed risk across Deutsche Bank's Global Transaction Bank and built its Global Supply Chain Management team. Managed over 159 associates in 47 countries.



Director

Bankers Trust Company

Oct 1996 – Jun 1999 · 2 yrs 9 mos

Global Head, Anti Money Laundering Compliance



Senior Associate

Skadden Arps

Aug 1989 – Oct 1996 · 7 yrs 3 mos

Senior Associate in White Collar Crime Practice Group

BIOGRAPHICAL PROFILE

John Remsen, Jr.

President

TheRemsenGroup

Atlanta, Georgia

404.885.9100 – jremsen@therem sengroup.com

John Remsen, Jr., is widely recognized as one of the country's leading authorities on law firm leadership, management, marketing and business development. Since 1997 TheRemsenGroup has consulted with more than 400 law firms and thousands of law firm leaders to help them develop and implement long-term strategic objectives to improve cohesiveness, profitability and sustainability.

John is a frequent speaker and author on law-firm leadership and marketing topics. He has spoken at national and regional conferences of the Legal Marketing Association, Association of Legal Administrators, American Bar Association, and numerous state and local bar associations. His articles have appeared in dozens of highly respected legal publications, including the *ABA Journal*, *Law Practice Management*, *Law Practice Today*, *Law360*, *Legal Management*, *Marketing for Lawyers*, *Marketing the Law Firm*, *Managing Partner*, *National Law Review* and *New York Law Journal*.

Since 1988, John has been an active member of the Legal Marketing Association, and he has served as President of LMA's Southeastern Chapter, Executive Editor of *Strategies* (LMA's newsletter) and a member of LMA's national Board of Directors. He is also an active member of the Association of Legal Administrators and a popular speaker at ALA meetings and conferences.

In 2002, John created The Managing Partner Forum, a highly acclaimed conference series and community for managing partners and law firm leaders. More than 1,200 firm leaders from 900 law firms and 43 states have participated in 26 conferences. In addition, John distributes *The MPF Weekly*, an electronic newsletter to more than 10,500 firm leaders throughout the U.S., Canada and 28 other countries.

John's influence was underscored when he was inducted as a Fellow of the College of Law Practice Management in 2013, in recognition of his 25 years of demonstrated expertise in law firm leadership and management. Founded in 1994, the College honors those who "inspire excellence and innovation in law practice management." Membership is by invitation only and includes just 200 individuals.

And the College was not alone: in 2016, John was recognized by LawDragon as one of the "Top 100 Consultants and Strategists" to the legal profession; and in 2017, John was recognized as one of the world's top "leaders and influencers" in the business of law by the Association of International Law Firm Networks.

A native of West Palm Beach, Florida, John holds an MBA from The University of Virginia (1985) and a bachelor's degree in Business Administration from the University of Florida (1980). Prior to enrolling in graduate school, John was Executive Director of The Florida Council of 100, an organization comprised of Florida's top CEOs and other business leaders.

September 2020

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The MPF Webinar Series: The Law Firm of the Future
Budgeting Considerations for 2021
An MPF Webinar with Fred Esposito and Tom Obermaier
November 18, 2020 – 2:00-3:00pm ET





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John Remsen, Jr.

- President, TheRemsenGroup
- President & CEO, Managing Partner Forum
- Strategic Planning, Marketing/Business Development, Firm Retreats, COO/CMO Search
- Fellow, College of Law Practice Management
- Speaker:
 - American Bar Association
 - Association of Legal Administrators
 - Legal Marketing Association
 - MPF Annual Conference
 - Law Firm Networks
- Education:
 - University of Virginia – MBA
 - University of Florida – BSBA



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Uri Gutfreund

- National Law Firm Practice Leader, Risk Strategies Company
- Founder, The Managing Partner Roundtable
- Speaker:
 - American Bar Association
 - Association of Legal Administrators
 - Managing Partner Summit
 - MPF Annual Conference
 - Law Firm Networks
- Education:
 - Yeshiva University – BA



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Fred Esposito

- COO, Rivkin Radler LLP
- 200 lawyers, five office locations
- Based in Uniondale, New York
- Certified Legal Manager (CLM)
- Legal Lean Six Sigma Institute
 - Yellow and Green Belt Certified
- Finance columnist – *Law Practice Magazine*
- Frequent speaker and author
- Education:
 - NYU-Stern School of Business – MBA
 - Siena College – BS, Chemistry



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Tom Obermaier

- Chief Executive Officer, SurePoint Technologies
- Based in Cincinnati, Ohio
- CEO, RDC (sold to Moody's Analytics)
- Chief risk officer positions at Citi, Deutsche Bank
- Deutsche Bank Attorney, Skadden Arps
- Education:
Columbia University in the City of New York



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TODAY'S SESSION

- Opening Remarks
- Registrant Survey Results
- Comments from Tom and Fred
- Group Discussion
- Audience Polling and Questions
- Recording and Handout Materials



RISK STRATEGIES



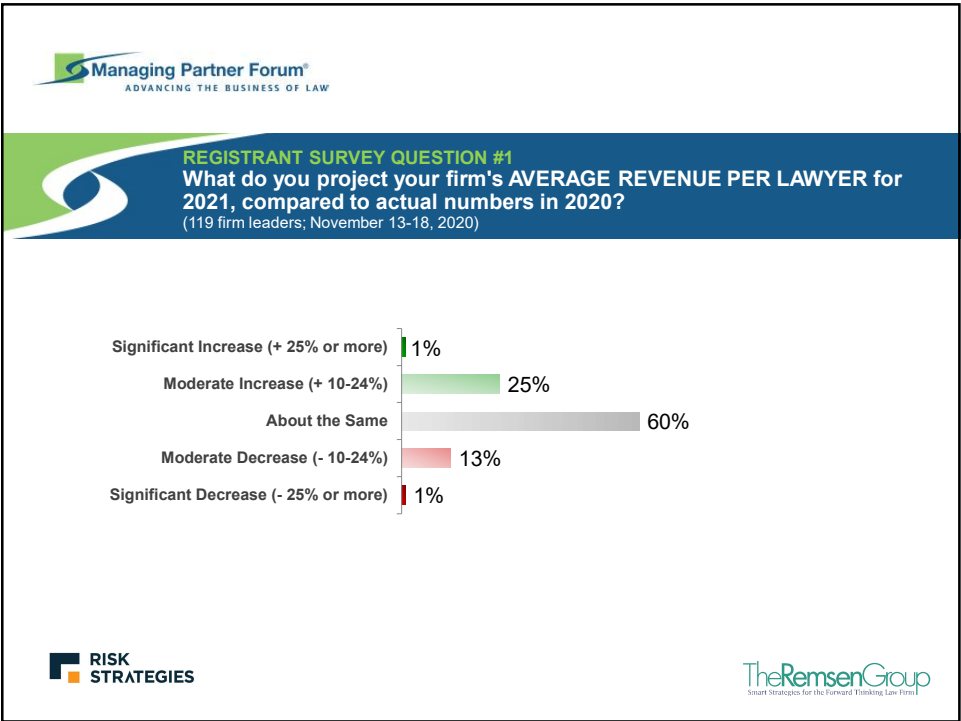
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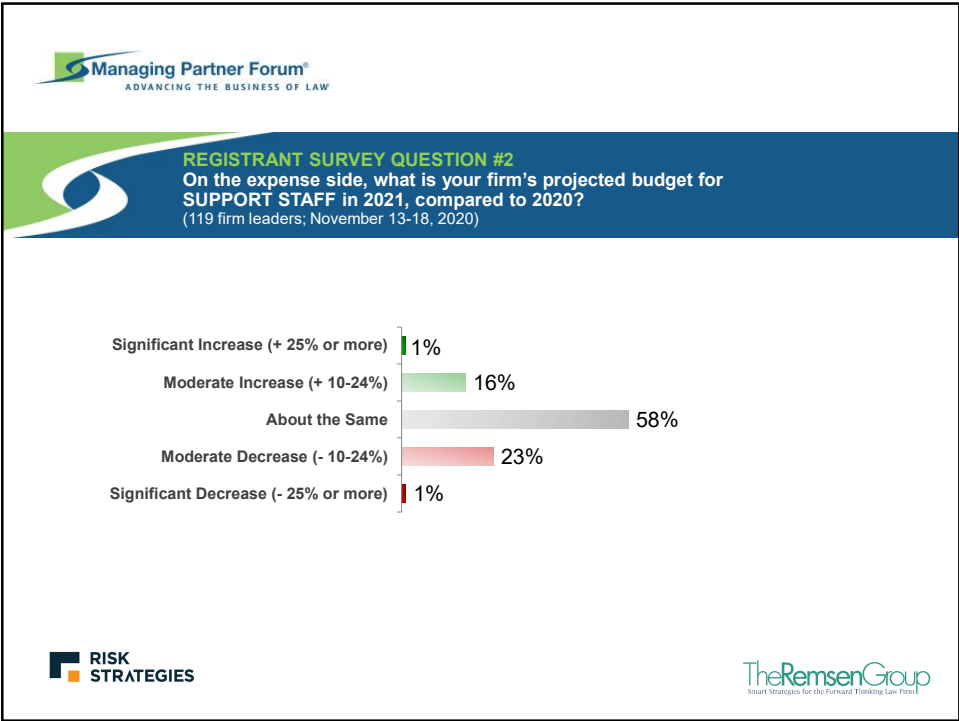


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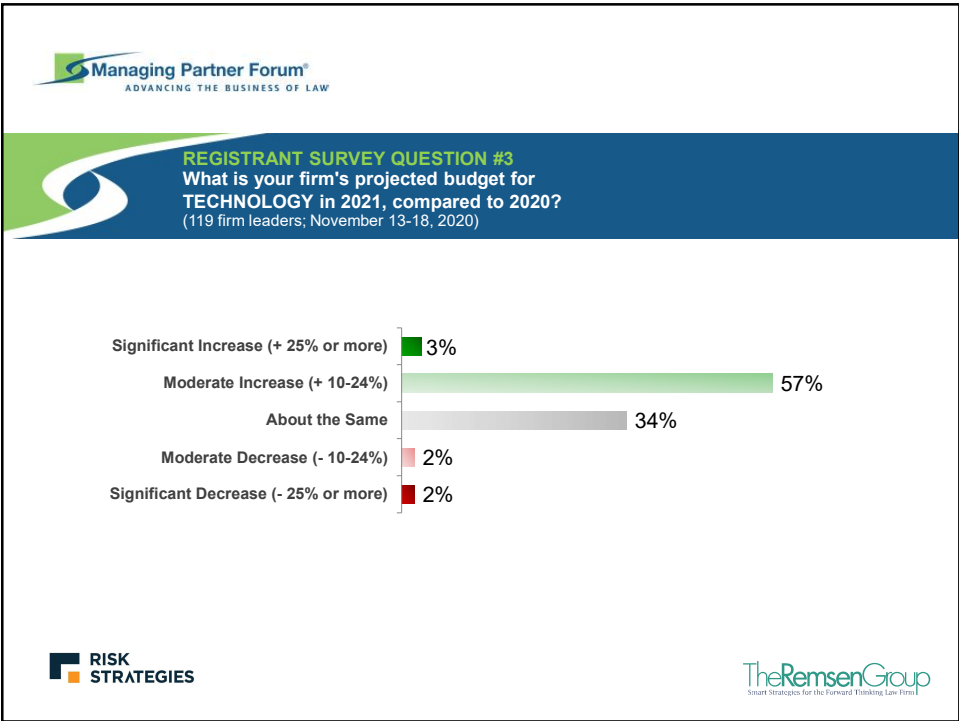


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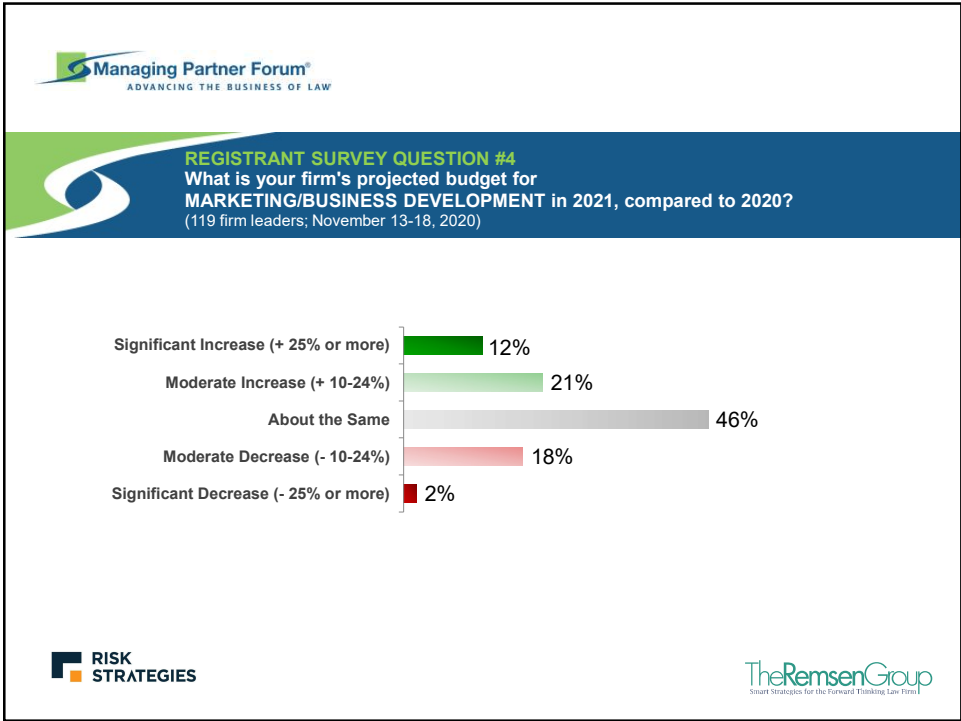


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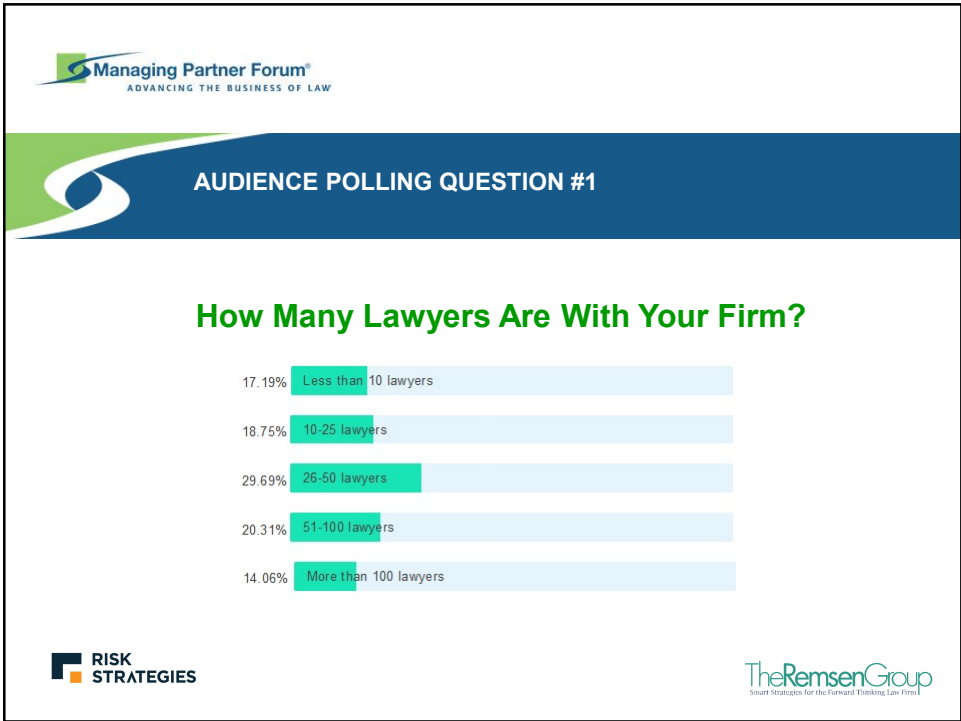


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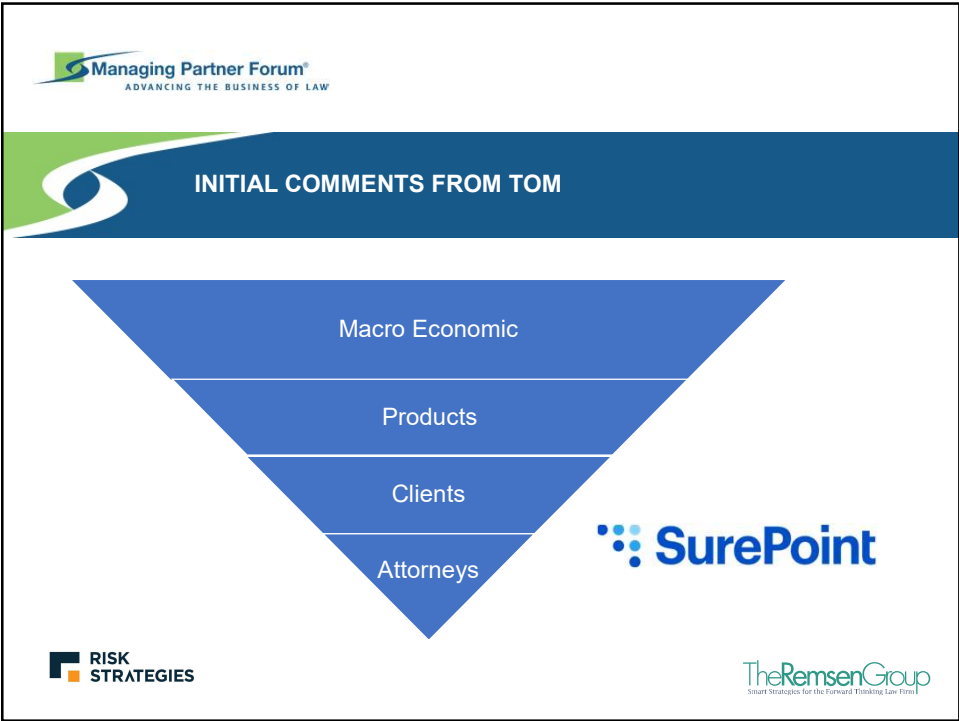


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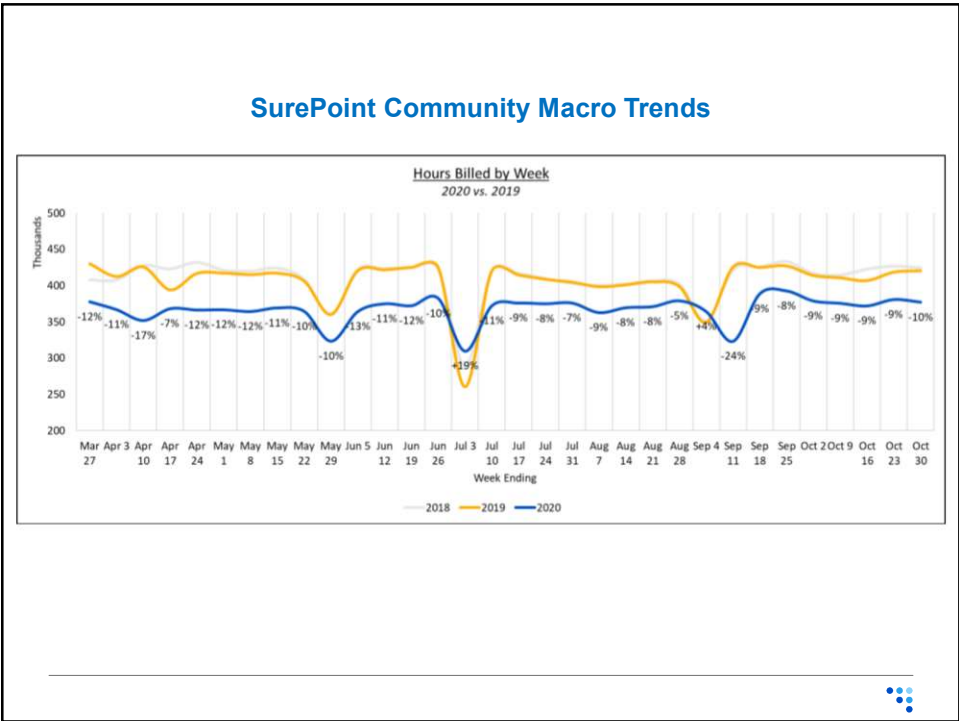


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Top Line Planning Channels

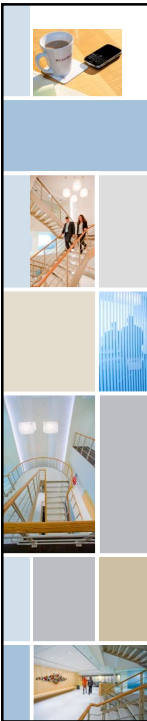
Existing Clients

- ❑ Client Engagement
 - ✓ Client Portals
 - ✓ Satisfaction Surveys
- ❑ Community Importance
 - ✓ Thought Leadership
 - ✓ Webinars
 - ✓ Events
- ❑ Systemic Relationship Pricing

New Client Acquisition

- ❑ Get Aggressive
- ❑ Go Beyond Thought Leadership
- ❑ Tech-driven Marketing Machine
 - ✓ Salesforce
 - ✓ Marketo
 - ✓ HubSpot
 - ✓ Marketing Memes
 - ✓ Positive – Post Pandemic
- ❑ Consider Embracing Start Ups
 - ✓ Subscription Basis
- ❑ Rationalize Pricing

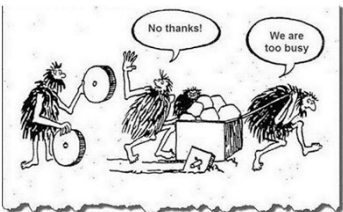
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Process Improvement

We Don't Have Time To Look at Data!

- *We're Too Busy!*
- *Don't Worry, We'll Get To It!*

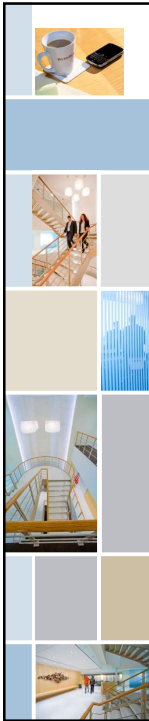


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For Starters.....

What's a Process?

- A describable, repeatable sequence of activities that generates an outcome
- The way we create and deliver value to the client
- The embodiment of our knowledge as to (ideally) the best way to do something



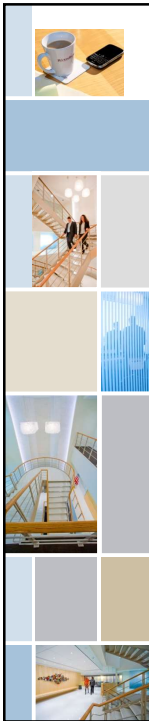
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institute

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Legal Lean Sigma® Institute Process Improvement

What is Process Improvement?

The systematic practice of analyzing, searching, solving, and controlling



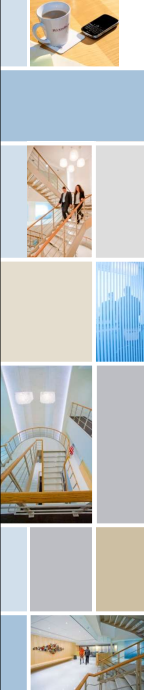
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Legal Lean – Examples of Law Firm Waste

Lean – Translating to Legal – Examples of Waste

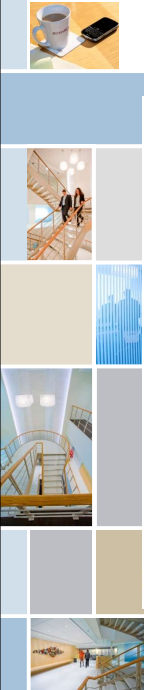
1. Defects - missing a filing deadline, incomplete forms, bad drafting, data entry errors
2. Overproduction – starting work before clearing conflicts, too many hard copies, copying too many people
3. Waiting – people late to meetings, documents waiting to be worked on, boot up/warm up time for technology, interruptions, late responses from clients, employees, opposing counsel, etc.
4. Non-Utilized Talent/Excess Capacity – not using talented paralegals, partners doing associate level work, outside counsel doing work that is best done by the client
5. Transportation – sending docs by courier v. email, multiple deliveries to one client, checks v. direct deposit, too many handoffs
6. Inventory/ WIP – unanswered email, voicemail, files waiting to be worked on, marketing items, conflicts awaiting clearance.
7. Motion – unnecessary travel, extra keystrokes/clicks to find documents, poor office design/layout
8. Extra processing steps – too much research, triple checking, over staffing a file

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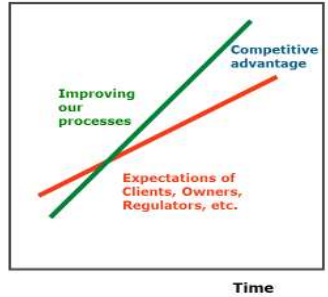


Bring it All Home!

The future
if we do not innovate...



The future
when we innovate...




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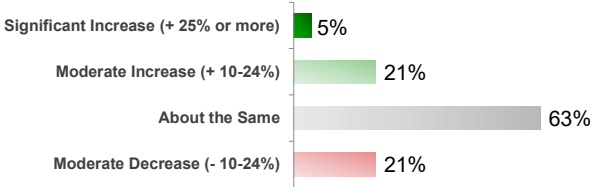


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REGISTRANT SURVEY QUESTION #1
How Has Remote Working Impacted Partner Productivity?
(135 firm leaders; October 16-21, 2020)

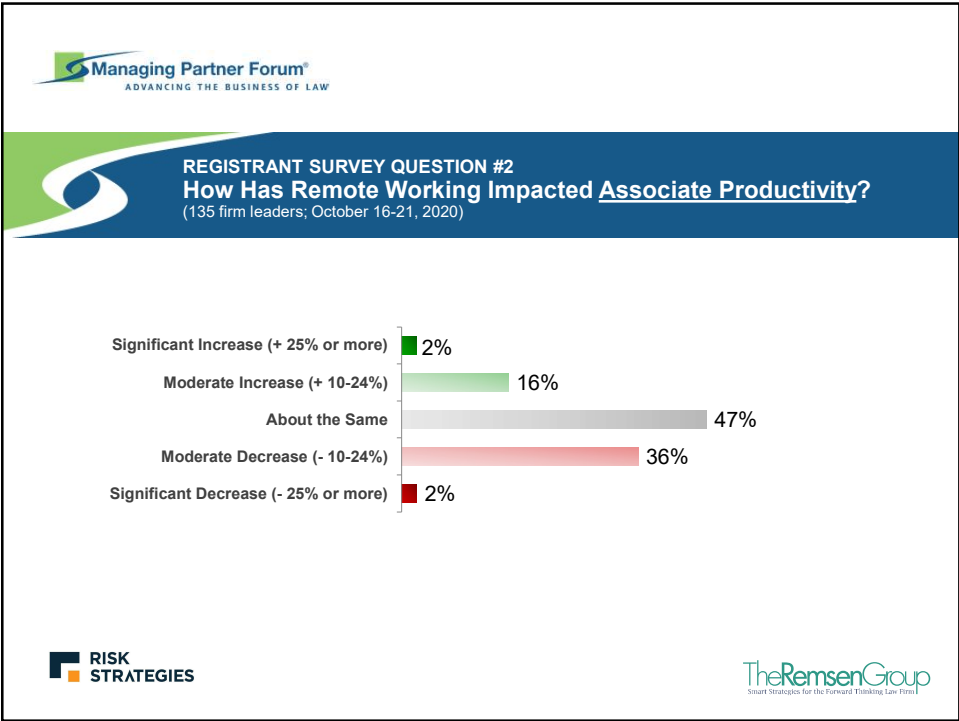


Impact Category	Percentage
Significant Increase (+ 25% or more)	5%
Moderate Increase (+ 10-24%)	21%
About the Same	63%
Moderate Decrease (- 10-24%)	21%

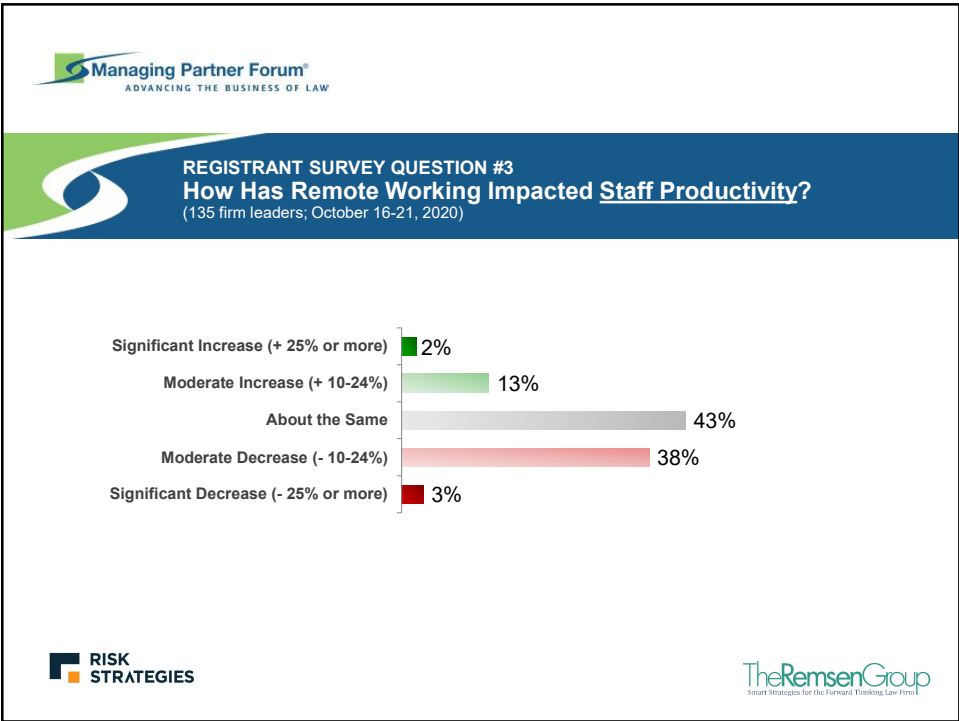


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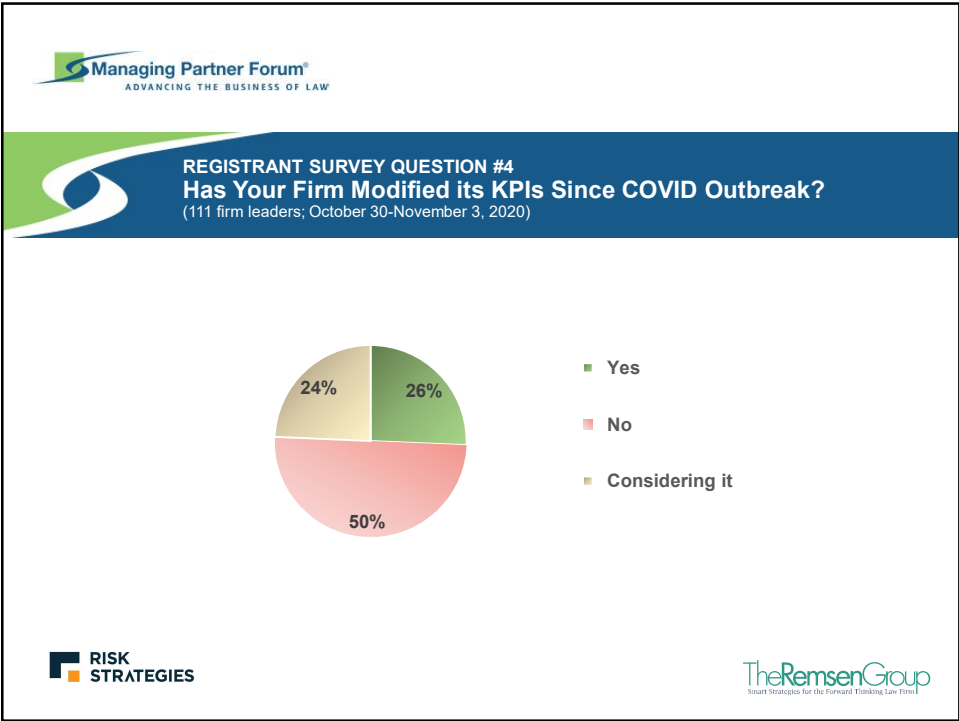


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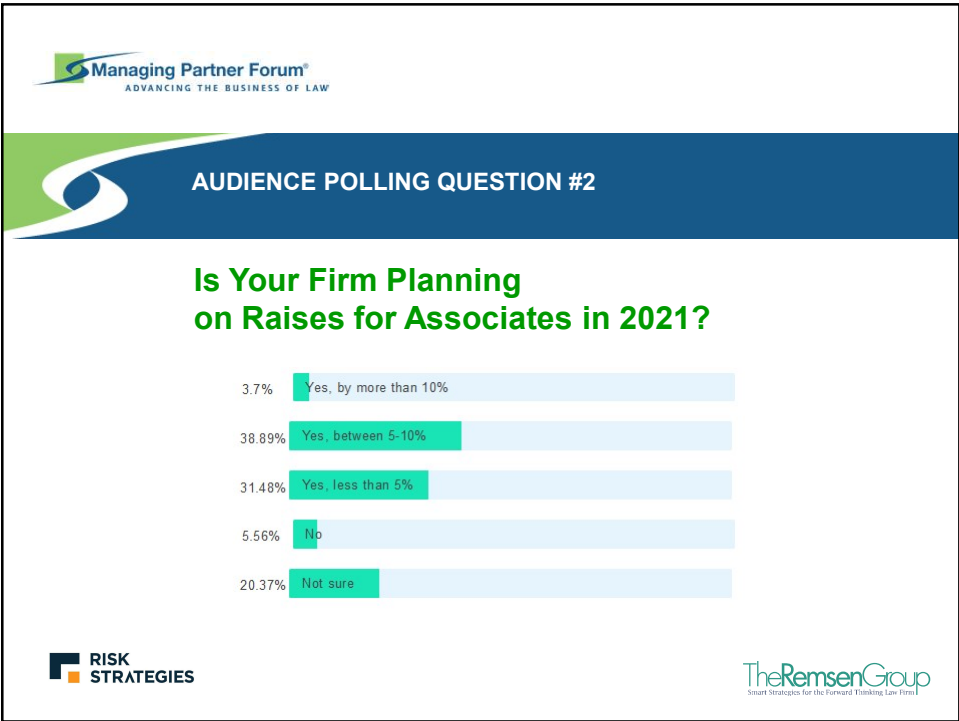


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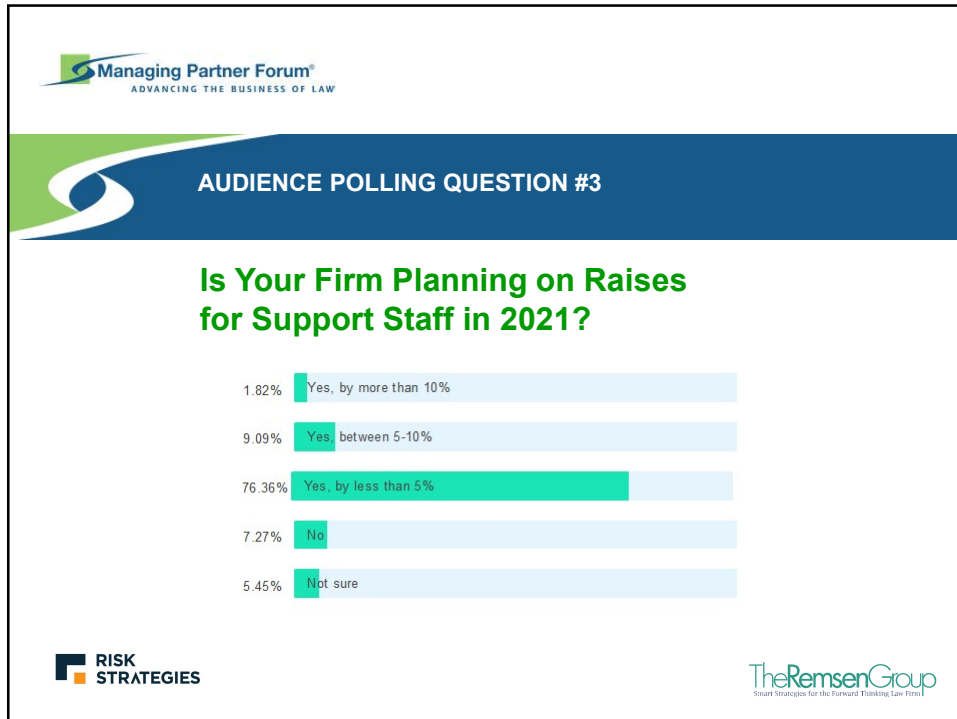
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BUDGETING CONSIDERATIONS FOR 2021

- Revenues
- Expenses
- Best Case, Worst Case, Most Likely Scenarios
- Tune into Your KPIs
- Be Flexible
- PPP Loan Considerations
- Biden Administration and GA Senate Races
- Areas of Law and Industries
- Geographical/Jurisdictional Considerations

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MPF RESOURCES

- MPF Website – www.ManagingPartnerForum.org
- *The MPF Weekly*
- MPF Webinar Series
- The MPF 2021 Leadership Conference – May 5-6, 2021, in Atlanta
- MPF Listserv and Conference Calls
- Webinars for Your Firm or Organization



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The “New” New Normal: Pricing, Profitability and a Process Improvement Twist

BY FREDERICK J. ESPOSITO JR.

WHEN WE HEAR THE PHRASE the “new normal,” we all flash back to the Great Recession, which began at the end of 2007, and remember the collapse of the real estate market, how credit dried up and how law firms struggled through a most difficult time. The immediate reaction was to cut costs. The profession saw attorneys and staff losing their jobs, and many smaller firms were acquired. The new business model that followed created an atmosphere for commoditized work thus creating opportunities for third-party legal service providers such as LegalZoom. But more importantly, we saw a shift

in client expectations and the need for “alternative” pricing. In response, we saw many alternative fee or fixed fee boutique law firms emerging, so the business model for law firms radically changed with a renewed attention to pricing, legal project management, efficiency, business development, more client focus, and the biggest one of them all, value.

WHAT DO WE SEE HAPPENING DURING THE PANDEMIC?

We are seeing many of the same symptoms from the Great Recession as we officially enter the recession of 2020. The 2020

Under the new normal, law firms will need to rise to a new level of operational proficiency to effectively price legal services.



recession was already on the horizon, but the COVID-19 pandemic accelerated a trend already in motion. Clients, particularly with general counsel, continue to push back on fees, looking for more predictability and creative pricing. Again, the Paycheck Protection Program (PPP) and other federal subsidies notwithstanding, there was an immediate reaction to reduce legal spend. Many law firms furloughed employees and, for those remaining, initiated salary reductions that were in some cases as high as 50 percent. As always, the knee-jerk reaction is to cut expenses, but it is still a revenue game, and a focus on productivity should not get lost in the mix. While alternative fee arrangements (AFAs) and legal project management (LPM) have been around for quite some time, they are making another strong comeback, but with an added twist. We are seeing more focus on not only LPM as a tool for managing legal work and AFAs, but we are now adding process improvement (PI) to the new mix.

Without Data You're Just Another Person with an Opinion.
—W. Edwards Deming

There is no question the recent pandemic has precipitated many changes as well as opportunities for law firms. Change management has become the buzz phrase, and the need for current and new performance metrics is increasing. Law firms have followed David Maister's Rules of the 5 Drivers: Realization, Utilization, Leverage, Expenses and Speed. All these, with some variations, are key performance indicators for profitability. But with the changes in the law firm business environment taking place at an increasing rate, law firms need to take deeper dives into client, employee, competitor, financial and technology data, and much more to fully understand how their law firms really work. With respect to pricing and profitability, law firms need data from these areas to understand the factors that contribute to the cost of producing legal services. Also, law firms need to understand what their competitors are doing so they can differentiate their firms in a legal market that is looking for firms to address inefficiencies and waste in their delivery of legal services, and change their legal service delivery model to increase the value being delivered. Trends suggest that law firms in general have not demonstrated or have been very slow to move the dial in focusing on improved practice efficiency. More important, law firms need to understand how they are measuring profit. By firm or practice group? Client or matter? Originating or working time-keeper? How are expenses allocated? Law firms can discuss income statements and financial performance, but do law firms have the aforementioned data to analyze and address the issues of cost to produce legal services, qualify and quantify firm risk, and ascertain predictability in spend for clients? And, do clients perceive the value of the services provided for the AFA proposed? Law firms need to exercise aggressive adaptation and leadership to initiate these "process" changes to stay competitive. Herein lies significant opportunities for law firms.

Under the new normal, law firms will need to rise to a new level of operational proficiency to effectively price legal services. Some of the metrics to consider in our ascent: efficiency, client retention, legal market, collaboration, leverage and fiscal hygiene.

CHANGE MANAGEMENT WITH PROCESS IMPROVEMENT

The pandemic abruptly threw law firms into change management mode, which many firms were not ready for, but it is clear many firms have risen to the challenge. While there is now a rebirth of AFAs and LPM, there is also more of a focus on efficiency with law firms working in a virtual market. During the last recession, AFAs and profitability could be hit or miss. This was attributed to a lack of formal structure or deep focus on pricing strategies other than going through firm historical data and trying to get in line with legal service budgeting. One of the benefits of working virtually has been the added perspective of being able to see inefficiencies or "waste" in preparing and providing legal services, which in turn can produce excessive and unnecessary costs that impact pricing and profitability.

Many law firms will immediately implement "quick fixes" due to the urgency with delivering timely work product, and whether law firms realize it or not, they are diving headlong into a process improvement and management mode. Process improvement is the added twist that allows us to consider *how* we are producing legal services and *what* we can do to improve how we create and deliver value to the client.

For law firms, process improvement is a systematic practice of analyzing how work flows and the steps taken to produce the current outcome. Law firms analyze the steps searching for issues, problems and opportunities, which include the review of data as noted above, and then solving those problems by creating opportunities that are then developed and implemented for a more improved and efficient workflow. LPM steps in so we can manage the new process for continued optimum performance. It is clear the relationship between urgency and arriving at innovation has created opportunities for law firms to make needed process changes that will benefit firms operationally, but even more so strategically, with improved processes for better pricing and maximum profitability. **LP**



Frederick J. Esposito Jr. is the chief operating officer of the regional law firm Rivkin Radler LLP and has more than 25 years of law and accounting firm experience. He is an author and sought-after speaker specializing in financial and organizational management and has managed and worked in a consulting capacity with several domestic and international law firms. He is also a senior faculty member and consultant with the Legal Lean Sigma Institute. **Fred.Esposito@rivkin.com**



THE ALPHABET SOUP OF LAW FIRM PRICING: Alternative Fee Arrangements, Behavior, Cost Predictability, Demand and Efficiency

By Fred Esposito

Abstract: The intricacies of law firm pricing and the use of alternative fee arrangements (AFAs) are examined in this white paper by Fred Esposito, CLM, Executive Director of Rivkin Radler, LLP. Mr. Esposito discusses how law firms can use AFAs – which the author describes as impacting areas of practice group development, cost predictability and client relationships – to their fullest advantage.



According to the 2015 *Law Firms in Transition Survey* prepared by Altman Weil, 2015 began with signs of optimism among law firm leaders. We've seen increases in gross revenues, revenue per lawyer and profits per equity partner, with a third of law firm leaders indicating that demand for legal services has already returned to pre-recession levels in their firms. This is an interesting assessment, but not a surprise. Demand is definitely coming back, but with it will come pricing pressures which could potentially affect revenues, and thus a knee jerk to reduce expenses.

Law firms that are prepared to address pricing pressures will have a competitive edge and will differentiate themselves from their competition. With that said, firms need to get a better handle on their internal economics and ascertain what it actually costs to generate the work. You would think based on pricing pressures, the message would be loud and clear, but many firms continue to move forward in a more reactive than proactive manner in addressing this growing trend.

PROACTIVE VS. REACTIVE PRICING

Firms that are proactive and understand their own economics can propose pricing alternatives to clients that will not only prove profitable as the methodologies become more fine-tuned, but will also facilitate capturing business that other firms cannot otherwise take on because they have not explored this ever-growing area. More and more clients are saying they want some form of alternative fee arrangements (AFAs) at least some of the time, but law firms still do not approach AFAs proactively. According to the same Altman Weil survey, only 31% of law firms are actually proactive in addressing pricing pressures. The remaining 69% are reactive, and it often becomes hit or miss at best. Law firms that change their strategic approach to lawyer staffing, efficiency of legal service delivery and pricing are consistently more likely to see increases in gross revenues, revenue per lawyer and profits per equity partner than those that have not embraced strategic change.

Clearly, pricing by alternative arrangement is not in most firms' comfort zone. Many firms struggling with AFAs lack resources which include project management skills, pricing experience and access to historical information. Moreover, these firms also cannot accept the firm sharing in the risk. While firms move to address those struggles, the important question to ask while doing so is "What do our clients want?" Clients are looking for efficiency, cost predictability, transparency, targeted advice, increased use of AFAs and most important, clients want *value*.

So that begs the question: What kind of AFA structures are law firms using and how do they make them work? How do you put a face *value* on a piece of work? And how do you ensure continuing profitability? Questions like these force law firms to take a hard look at their business models and the conclusion drawn by many is that in order to remain competitive, law firms must change those models. Fees must align with economic interests of the client and law firm and must create a financial incentive for law firms to reduce cost; and the fee structures themselves must create incentives to accomplish specific, identifiable client objectives. In short, law firms must create relationships between fee structures and the behaviors they want to encourage. Avoiding AFAs is **not** a strategy.

Before embarking into the AFA arena, it must be understood that fee structures are an incentive to behavior. To draw the distinction, note the following:

Only 31% of law firms are actually proactive in addressing pricing pressures. The remaining 69% are reactive, and it often becomes hit or miss at best.

FEE STRUCTURE INCENTIVES

Hourly Rate Behaviors	AFA Fees Behaviors
Larger Teams	Smaller Teams
More work; not less	Less work; not more
Settle late; not early	Settle as early as possible
Keep work in the firm	Use cheapest resource

It is no longer about the billing rates used in providing legal services, it is now more about the cost rates to produce the work. This is a major paradigm shift for many law firms, that now must be more mindful of cost, efficiency and project management capabilities in delivering legal services under the “new landscape” in a profitable manner. Law firms need to do their homework and understand metrics such as profit margin, overhead costs and be able to answer the fundamental questions such as *“How much does it cost the firm to produce a billable hour for each attorney? Each task? Each practice area?”*

When I’ve presented on the subject of AFAs around the country, the audience is made up of mostly law firm partners, legal administrators and CFOs; on average there are usually 90 to 100 attendees at any given session. When the aforementioned question is asked, maybe between just three to five hands go up. That means only 3% to 5% of participants in each audience have these metrics available – an alarming statistic!

WHICH PRACTICE GROUP IS BEST?

The first question asked by many law firms is “Which practice groups should be considered for AFAs?”

The short answer is that any firm can develop an AFA for *any* practice group, and, in fact, many law firms have already done so in the simplest form – contingency matters. When you think about it, a firm will take a matter on contingency for a variety of reasons. First, the attorney has the comfort level that they can achieve a positive outcome and yield a positive monetary result for the client. The firm may take a standard 33.3% with the balance of the recovery going to the client. Sounds like a win-win, right?

However, there are two schools of thought to consider here: legal strategy, which includes managing the case in all respects, but also the financial component. This creates an opportunity for the attorney to review the financial aspects of the case with the firm’s administrator or finance director, which places more focus on case management to ensure the firm (and the lawyer) stays on track with the time/expense so the contingency matter will yield a profit when all is said and done.

The firm’s mantra should be: “The key is to create an arrangement that reflects and supports the long-term, broad scope of the client relationship and provides a chance to grow the client relationship further and into new practice groups.”

While any practice group should be considered for an AFA, I would recommend a methodical and practical approach.

- First, identify practice groups where the firm has the most financial intelligence. Attorneys should be working with their administrators and finance directors to ascertain these costs. Specifically drilling down to tasks performed, routine and otherwise, and agreeing on a methodology for determining the cost to complete those tasks at varying levels of the firm (e.g., partner, associate, paralegal) as well as how to best staff the matter is vital at this stage.

- To maximize the efficiency and cost-effectiveness of the matter, you need to develop methods for producing or *managing* the work to be performed. This is where I like to think that AFAs are a lot like revenue budgeting, being both a science and an art form. Let the financial intelligence guide you in determining the staffing of the matter to ensure that efficiency and cost-effectiveness are maintained. Keep in mind that your goal is to produce a positive result, while minimizing the cost to produce the work. However, to make an AFA really work, clients are looking for law firms that are willing to take more risk, thus raising the issues of how to best approach pricing.

In my experience I have seen AFAs developed for corporate/transactional matters, trust/wills/estates administration, and (may the forces of good forgive me) litigation! I will be the first to admit that I cringe when I hear the words “litigation” and “contingency” in the same sentence, but AFAs *indeed* can work with litigation matters *if* the work is phased properly.

WHAT DO CLIENTS WANT?

Clients prefer a mix of standard hourly rates and AFAs depending on their varying goals for individual matters, so what is a suitable AFA? In addition to common practices like flat fee or contingency fees, here are some examples that give a flavor of *risk-sharing* AFAs used in litigation:

- Client retains firm to pursue arbitration against its partner in a \$500 million development project. Under the arrangement, client paid 50% of standard rates and firm received a percentage of the value the client received upon liquidation or sale of the venture.
- Client retains firm to pursue litigation against numerous former officers and directors for fraud. Client requested firm pay all expenses including expert costs. In return, firm received full reimbursement of expenses, from “first dollar out” and a percentage of the recoveries from the litigation.
- Client and firm negotiated an agreement, whereby the firm handled a fixed group of defense cases for a 30% reduction in its normal fees in exchange for the right of first refusal for all plaintiff contingent fee cases the client has for a three-year period.
- Several clients asked one firm to “hold back” 20% to 30% of its normal fees in return for payment of the “hold back” and multiples thereof depending on the outcome of the litigation.

These are litigation risk-sharing AFAs that have been utilized by firms with varying levels of success. However, before going in any (or all) of these directions, firms need to ask questions about what their client is really looking for, and what the firm is willing to accept regarding the profitability of the work.

A lawyer’s goal is to “play-to-win” for the firm and the client, but unless the AFA makes business sense to undertake, it’s important the firm learns to say “No” to some of these engagements. One of the most significant criteria law firms struggle with is achieving profitability with AFAs. Some firms are generating profits, while other firms continue to lose their shirts by making the same mistakes. The question is, are those firms learning from these mistakes?

Unless the AFA makes business sense to undertake, it’s important the firm learns to say “No” to some of these engagements.

USING AFAS TO ACHIEVE PROFITABILITY

The immediate question comes: “Are law firms using AFAs and achieving profitability?”

The short answer is “yes and yes.” There are a variety of different reasons why one law firm can achieve great profits while others struggle.

To get to these answers, attorneys have to ask the tough questions – “Are we making money?” and “Are we looking at all of the various metrics that contribute to the success or failure of an AFA?”

Once determined, law firms can move on to measurement. Below are a few profitability metrics that law firms may want to consider as ways promoting value, monitoring and managing time and minimizing write-offs:

- **Fees Collections** – No matter what type of fees/payment arrangement the firm has in place for a matter, the firm still needs to get paid in a timely fashion. Many firms will outline their payment terms at the beginning of an engagement, but seldom follow through on those terms. Payment expectations must be established at the beginning of the relationship and *must* be enforced. AFAs are developed based on factors of cost and efficiency, and much of that planning goes to the wayside when collections are not made a priority.
- **Contemporaneous Timekeeping** – Historical timekeeping records play a very important role in developing a solid AFA. Time is the firm’s only inventory and a powerful planning tool for determining costs. If attorneys are not recording all of their time contemporaneously, statistics show that an attorney can lose up to 30% of their time when recording/recreating their time weekly or as much as 50% or more beyond one week. Contemporaneous timekeeping can assist in preparing improved estimates for legal spend, provide a better handle on firm investment and assist the firm in generating profit. Attorneys who do not keep contemporaneous time can seriously compromise the planning necessary to arrive at an AFA that works for the client and the firm. If a law firm does not have a time entry policy in place, it needs to get one.
- **Time and Accounts Receivable Write-Offs** – There are many reasons why attorneys will write off time or accounts receivable. Sometimes write-offs are justified when acclimating new attorneys or done in the interest of client relations. In any event, some write-offs are a necessary evil with some clients, but should never be considered absolute. When using AFAs, you are promoting client focus, value and efficiency. So, while it is easier said than done, attorneys must educate their clients to perceive the value of their time and expertise and not be so quick to get out the red pen.

MARKETING GAME PLAN – PLANNING, IMPLEMENTATION & MANAGEMENT

As noted previously, only 31% of law firms are proactive in approaching AFAs with their clients. The first step is to “cherry pick” clients that your firm believes would be suitable to approach about an AFA and start off simple with a basic AFA. Look at what other firms that are geared primarily to AFA and value billing are doing, including [Summit Law Group](#) and the law firm that has “trailblazed” AFAs since 2008, [The Valorem Law Group](#). Both firms have websites that discuss their respective approaches to AFAs and are definitely worth reviewing for ideas on how to get started.

Once your firm has identified a client to approach and develop an AFA, planning, implementation and project management become essential. Here are some points to consider:

- **Budgeting Is Critical** – Remember the firm’s financial due diligence and profitability metrics when establishing and monitoring AFAs.
- **Prepare an Outline** – Track progress on the matter, identify delays and overcome them.
- **Schedule Weekly Meetings** – Get together regularly to discuss progress and problems and identify forthcoming issues and plan for same.
- **Monitoring and Management** – Accountability and keeping within the cost structure are critical to the pricing process.
- **Create the Right Mindset** – Change can be very difficult for attorneys so managing that change and making sure attorneys understand the process are vital.

HOW CAN FIRMS HELP THEIR ATTORNEYS SUCCEED?

The word that sums up AFA success? Monitor! Law firms need to see that as an opportunity rather than a hardship. Those that do will reap the benefits of working with AFAs. There are three components to consider in helping your firm and its attorneys achieve success with AFAs:

1. **Tools and Training** – Get the project management training necessary to assist the firm in moving from hourly to value billing. This is a major paradigm shift for most firms, and as with any change initiative, the key is to provide the tools, training and patience.
2. **Resources** – Attorneys need to become familiar and proficient with the firm’s historical and economic data. This can and will make or break an AFA. Be sure your team is informed!
3. **Personnel Management** – Attorneys need to assign and utilize the necessary and appropriate resources. In order to work within an AFA cost structure, firms need to be mindful of how they staff AFAs. The goal is to obtain the best result for the client in a cost-effective manner and proper leveraging of attorney staffing is essential to that success.

As Tommy Lasorda famously once said, *“There are three types of baseball players: Those who make it happen, those who watch it happen, and those who wonder what happens.”*

With respect to AFAs, which one best describes your firm?



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Journal of Accountancy

It's a tough year for year-end tax planning

Advisers face the difficult task of helping clients plan for next year without knowing for certain which party will control the Senate.

By Dave Strausfeld, J.D.

Today

Performing year-end tax planning this year is going to be “very, very difficult,” Bob Keebler, CPA/PFS, said in a Nov. 10 webcast sponsored by the AICPA’s Personal Financial Planning Section.

Advisers face the challenge of helping clients plan for 2021 while control of the Senate remains uncertain. The breakdown of seats in the Senate, and the fate of Democrats’ plans to raise taxes on wealthy taxpayers, likely will not be known until Georgia conducts a special election for its two senators on Jan. 5. The runoff is necessary because none of the candidates for either Senate seat garnered 50% of the vote, a threshold set by Georgia law.

If the Democrats win *both* Georgia Senate seats, the Senate will be divided 50-50, which would give Democrats control of the Senate because the vice president has the constitutional power to break ties. Through the reconciliation process, Democrats would be able to enact tax reforms President-elect Joe Biden proposed in his campaign platform. On the other hand, if the Republicans win *either* of the Georgia Senate seats, they will be able to block Biden’s tax proposals.

Calculating Senate probabilities

All other things being equal, the Democrats’ odds of winning *both* Georgia Senate seats is only 25%. “We all learned in probability and stats,” Keebler said in the AICPA webcast, that if you flip a coin twice, there’s a 25% chance of heads coming up both times. Keebler recommended teaching clients this basic principle of probability.

Even if a client doubts that the Democratic candidates will prevail in the longtime red state of Georgia (and thinks, for instance, that each has only 40% odds of winning), there is still a 16% chance of the Democrats winning both seats (0.4×0.4). That may be enough to drive a planning decision because, Keebler said, if the financial stakes are high, “most people just wouldn’t take that risk.”

“This is what you have to tell your clients. Do not make these decisions for them,” Keebler stressed. “Let them weigh the odds. Just lay out the facts and encourage them to go online and read more about this.”

Capital gain tax

In other words, while Democratic control of the Senate is unlikely, the possibility should not be overlooked in planning for 2021. Three important Biden tax proposals to be aware of involve capital gain tax, charitable giving, and estate tax, Keebler said.

Beginning with capital gain tax, Biden has proposed raising the capital gain rate from 20% to 39.6% for taxpayers with income over \$1 million. Therefore, individuals who are planning to sell in 2021 should perhaps consider doing so in 2020 instead, because of the possibility that Democrats could win both Georgia Senate seats, Keebler said.

For instance, imagine that a father is selling a car dealership to his daughter for \$10 million and has scheduled the deal to close on her 30th birthday, March 18. By moving up the transaction to December, he guarantees himself a 20% capital gain tax rate rather than the possibility of 39.6%.

To take another example, a partner of a CPA firm who is scheduled to retire in May might wish to say to her partners, "Hey, guys, do you want to buy my stock at the end of December?"

Charitable donations

With respect to charitable donations, the Biden campaign platform would cap itemized deductions to a 28% tax benefit for those earning more than \$400,000, compared to 37% currently. Thus, if your client is going to make the charitable donation anyway, it may make sense to do it this year, to protect against the possibility (even if small) that the new Congress will make donation deductions less favorable, Keebler said.

Think of it this way, Keebler said: "You give \$100,000 to Children's Hospital this year, you get a \$37,000 benefit. You give \$100,000 to Children's Hospital next year, if this changes, you get a \$28,000 benefit." If you are planning to donate anyway, making the donation this year may be the safest thing to do, if you are in the highest tax bracket. "Don't take the chance that you'll only get a 28-cent benefit," Keebler said.

Estate tax

With respect to the estate tax, the Biden plan would reduce the gift and estate tax exemption to \$3.5 million from the current \$11.58 million level. Thus, if your high-wealth client has a choice of whether to give away money in December 2020 or wait until later, it may make sense to consider doing it now to avoid being detrimentally affected by an estate tax change such as Biden has proposed, Keebler said.

Biden is also proposing to eliminate the at-death step-up in the basis of inherited assets.

On a separate point, Keebler noted that Biden's proposed tax changes conceivably could be made retroactive to Jan. 1, 2021. All of this assumes, of course, that the Democrats control the Senate and can push through tax legislation. Keebler's webcast also discussed Roth conversions and many other topics.

"The next 51 days [the number of days left in 2020] will certainly be an adventure for most of us," Keebler said. Because the prospect of significant tax changes on the horizon remains unclear for now, "We're all going to have to work very hard to take care of the clients that have entrusted us with giving them solid advice," Keebler said.

—**Dave Strausfeld, J.D.**, is a JofA senior editor. To comment on this article or suggest an idea for another article, contact him at David.Strausfeld@aicpa-cima.com (<mailto:David.Strausfeld@aicpa-cima.com>).

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