

Volume 2 Issue 8

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# Inside Outsourcing™



## Inside with: William B. Bierce, Esq., Bierce & Kenerson, P.C.

### Special points of interest:

Inside with:

Larry Janis' interview with  
**William B. Bierce, Esq.**

TPI and Nelson Hall

### From the Editor.

Welcome to our current issue!

Inside Outsourcing's goal is to provide you with articles of interest and with a forum for the exchange of information in this rapidly evolving industry.

Bierce & Kenerson, P.C. is an international law firm providing legal advisory and transactional support to clients in business, technology and finance. Responding to the global market in services of all kinds, they have developed a unique unifying concept called "infrastructure services law."

#### LJ: What are the changes taking place in BPO strategy and how do you see this evolving in the future?

**WB:** The BPO industry is maturing rapidly. On the business side, companies responding to the process transparency mandate of Sarbanes-Oxley have new opportunities to improve their strategic sourcing. The new scrutiny will expose waste and inefficiency, as well as risk and challenges for audit and control.

For service providers, this means an opportunity to offer a very tight, strategic fit, provided that appropriate transparency, security, audit and controls are established as part of the basic scope. For enterprise customers, the choices will be greater and easier, since some processes can be eliminated or outsourced, and vendor selection can be focused on suitability for integration of end-to-end business processes.

On the legal side, political decisions being made in the U.S. will have an impact on the degree and types of regulation. This will affect the feasibility, cost, comparative advantages and business rationale for engaging in offshore outsourcing of business processes, particularly those involving consumer information and customer relationships. Service providers who have established a global footprint, in both customer countries and "back office" countries, such as India and the Philippines, will thus be able more rapidly to respond to shifts in the regulatory climate. In deal making, the possibility of such shifts will increase the lawyer's attention to issues involving flexibility and the impact of law, legal systems and legal obligations on individual deals, the parties and the particular business process.

#### LJ: What are the changes taking place in HR strategy and how do you see this evolving in the future?

**WB:** The HRO model has been proven. The leaders are consolidating and moving to a broader scope of services. PEO's will continue to serve the middle market, but they will face pressure at the top and bottom ends.

HRO will become more generally accepted as a means of managing an increasingly complex "back office" function. The toolkit in ERP software exists, most large enterprises use ERP software, so the question becomes who should manage the operation. Service providers can offer economies of scale for standardized processes. Even in the largest global organizations, the administrative side can be outsourced for cost savings, variability in cost structure and quality management. This is old news, but perception will catch up and make HRO more strategic.

Globalization pushes for HRO too. As global enterprises now focus on a global approach to HR administration, HRO offers additional benefits of flexibility in allowing shifts in the employee pool from one country to another. This trend will affect middle-market companies the most due to considerations of scale and limited global presence.



## Inside with: William B. Bierce, Esq., Bierce & Kenerson, P.C.

### LJ: What are the most common misconceptions regarding BPO?

**WB:** The Sarbanes-Oxley Act of 2002 and the new global insecurity after 9/11 have changed the landscape for BPO. Two years ago, BPO was viewed as an interesting academic possibility. Today, the BPO marketplace has matured and is poised for accelerated growth.

The first misconception is that management and employees can escape intense reorganization. I'm not talking about industry consolidation through M&A. The key mandate from shareholders and regulators to virtually every organization, public or private, is that business processes must be transparent and managed through some form of "quality," "visibility" or "control" paradigm. For the viability of the enterprise, the business processes need to be mapped, analyzed, streamlined, reconfigured and matched with an array of possible competing resources (in-sourcing vs. outsourcing vs. "co-sourcing") through a new sourcing strategy. Sourcing strategy is now strategic and irreversible. And organizational change is accelerating. All this will feed greater reliance on BPO.

The second misconception is that internal process improvement, through Six Sigma and other methods, will kill BPO. Actually, such efficient business enterprises may become BPO customers, but only with true economies of scale, cost savings and continuing process improvements.

A third misconception revolves around the relative importance of pricing. While all BPO is price-driven, the best value is derived from selecting a suitable service provider. As compared to classic ITO, for BPO the enterprise customer's scorecard for vendor selection therefore must take into account an additional set of factors that should be dictated and reviewed by senior management. These factors address risk management, strategic alignment and fiduciary duty.

A fourth misconception involves the use of BPO to shift legal liability to the service provider. In BPO, the service provider is delegated the task of performing certain agreed services that are highly integrated into the customer's normal operations. As the value of BPO rises, so do the risks of consequential damages if the provider makes a serious mistake in performance. Enterprise customers should not be lulled into thinking that they are no longer responsible for compliance with legal mandates once the BPO service provider delivers a compliant solution. Outsourcing provides an ally for business

process management, but does not shift fiduciary or legal liability.

### LJ: Besides labor arbitrage, what are some of the advantages of have a presence in India?

**WB:** Like the story about the three blind men touching the elephant, India has many facets. Having a presence in India, either as a captive or through an outsourcer, opens a window onto these many facets. What makes India unique is its combination of those facets in one bundle, beyond wage rate arbitrage. Having a presence in India gives you access to all these facets.

The Indian talent pool is extraordinary in depth and breadth. The immense (and growing) pool of highly educated English-speaking computer-literate labor can be teamed with IT for specialized BPO, opening new avenues for global services. Creative managers can deploy this pool to rapidly scale up any project or new product introduction, especially for labor-intensive tasks.

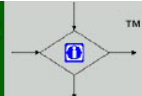
This talent pool has a pro-business attitude of global interdependency that we can call "India, Inc." Their focus is to promote exports of IT-enabled services. But this is not merely to strengthen India, but to integrate India into the global services economy. To achieve this goal, Nasscom and other trade associations have worked to develop management focus on customer-oriented solutions, nimble business solutions building incrementally on the successes of the past (most notably the Y2K conversion) and a focus on quality so that the service cannot be denigrated as "you pay for what you get."

Sales of foreign goods and services into India may grow with the increasing wealth of the Indian middle class. So having a local presence can help sell your primary business to Indian customers, or at least get started on a plan to do so.

On the buy-side, your presence in India can give you access to a large pool of talent that can provide greater speed to market (if you integrate that labor pool into your operations by a captive or by outsourcing). On the sell-side, you get credibility and market intelligence in a rapidly emerging consumer market. In either case, your "RSVP" includes a "reception" in a pro-business culture within tolerable levels of regulation, taxation and political risk.



**Bierce & Kenerson, P.C.**  
Infrastructure Services Law



## Inside with: William B. Bierce, Esq., Bierce & Kenerson, P.C.

### LJ: What do you see as the hurdles to success in F&A BPO?

**WB:** We are seeing interest in F&A BPO but few buyers. This reflects a range of factors that apply to the individual buyer in each case. While the hurdles resemble those that we found in the early days of IT outsourcing, the impact is different.

First, the largest enterprises have options such as centers of excellence and shared service organizations that compete with HRO service providers, at least initially. Over time, this competition will increasingly be cost-driven.

Second, fear of loss of control is a primary concern. That fear can be managed where the service delivery platform meets appropriate standards for transparency, security and change management.

Third, in scope definition, some CFO's may consider that F&A are "core business" processes that add value through either flexibility or control. The enterprise customer might want to retain certain F&A functions as a tool for customer satisfaction, brand management, or other high-level core business processes. In most cases, though, enterprise customers don't make this decision, so other factors apply.

Fourth, F&A represents a major psychological shift. Any outsourcing constitutes a major change in business process. Service providers should not only identify how the transition will work (with the "least pain"), but also the how the enterprise will work after transition. F&A service providers need to focus on such psychological impacts and offer solutions to ease the psychological pain.

Finally, F&A is more tightly affected by regulatory compliance issues. Service providers have to identify what risks they will assume, and enterprise customers need to face the fact that outsourcing is not a panacea. Within these two guideposts, there is plenty of room for risk allocation and management that will be mutually agreeable.

### LJ: What are the most important value adds that a law firm brings to the process?

**WB:** The business lawyer is an advocate, coach, seer, interpreter (of law into business), counselor, problem-solver and co-manager of risks. A great business lawyer understands the client's business from many angles and advises management on important decisions. An exceptional business lawyer will be publishing, teaching other lawyers and shaping the ever-emerging industry, which is what we at Bierce & Kenerson, P.C. do with [www.outsourcing-law.com](http://www.outsourcing-law.com), our free monthly newsletter *Outsourcing Law & Business Journal* (available for your readers by online subscription at the website), and our accredited CLE course on international outsourcing law.

A client's selection of a law firm (and, within that firm, the lead lawyer) will have a significant impact on the business and its supply chain. An experienced outsourcing lawyer can do more than just advise on the basics of legal validity, enforceability and legal risk management. The exceptional outsourcing lawyer will coach the client on what to expect in relation to the many complex issues that intertwine the law, business strategy, human relations, technology and international competition.

Powered by this coaching and advice, the client's team can express the corporate culture and management vision more effectively. The client can thus identify and shape opportunities for achieving corporate goals and mitigating risks. They can make faster, better-informed decisions. Speed and decisiveness translate into acceleration of benefits and reduction in the risks that delays and uncertainty can have.

In our experience, the well-coached client understands better the limitations of the outsourcing mechanism, the role that outsourcing plays with business process transformation, supply chain management, customer satisfaction and shareholder value. But this value can only be achieved by including the outsourcing lawyer on the team at an early stage.

Enterprise customers are increasingly concerned about the cost of their legal services. Costs are determined by negotiating style and philosophy, the number of lawyers that the law firm wants to throw at a transaction and the billing arrangements. Clients should make inquiry, since some very highly reputed law firms have significantly different approaches to cost containment.

They should select the lawyer and law firm that provide the best return on investment. ROI from a law firm includes coaching, insights, strategy, presence, sufficient depth, commitment, relevant experience, judgment and, yes, inspiration. In selecting your lawyers, clients should start with the individual lawyer's attributes and then decide on the basis of "firm" attributes. The individual lawyer's skills and personal depth are critical to see the big picture.





## Integrated Search Solutions Group

We are a retainer-based executive search firm that has a global presence with specific expertise in outsourcing. We have been involved in outsourcing as a discipline for over seven years. Our experience includes Information Technology, Business Process (Human Resources, Finance & Accounting, and Marketing), and Telecommunications.

We have a proven track record with established Fortune 500 companies as well as venture capitalized start-ups.

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### NelsonHall and TPI Partner to Deliver Global Business Process Outsourcing Market Insight

**NelsonHall** - August 11, 2004

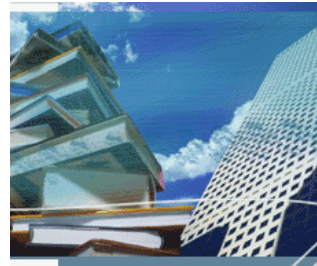
NelsonHall, a leading business process outsourcing (BPO) analyst firm, and TPI, a sourcing consultancy and transaction firm, and today announced an exclusive global partnership to provide organizations in the Americas, Europe and Asia Pacific with BPO market insight.

This collaboration enables the timely delivery of in-depth BPO knowledge and consultancy to organizations evaluating and contracting for BPO services worldwide.

"Many organizations have yet to fully understand the nature of BPO," said John Willmott, CEO of NelsonHall. "This unique collaboration between TPI and NelsonHall provides organizations with an insightful and objective view of the BPO market that will enable them to make faster and better informed BPO sourcing decisions."

Under the terms of the agreement, TPI and NelsonHall will correlate their unique BPO contract databases thereby creating a larger global resource of BPO contract data that possess even greater fidelity. The partnership will enhance BPO insight and provide a resource for organizations to identify the usage of BPO within their industries, while providing TPI and NelsonHall with a common and consistent platform for the prediction of BPO market demand. This combined platform will be used to support TPI's quarterly Index Reviews that analyze the outsourcing market demand and NelsonHall's quarterly BPO Contract Analysis Web Casts that analyze the emerging opportunities in global BPO activity by region, sector and service line.

According to Jack Benton, marketing vice president of TPI, "It has become apparent to us through the TPI Index Review that corporations, media and market analysts are seeking fact-based services able to monitor and report on the important trends influencing this immense industry." NelsonHall will additionally support TPI's advisors and clients in obtaining a more rapid and insightful understanding of BPO supply side positioning and delivery capability through access to industry leading BPO market research. NelsonHall's BPO service provider capability profiles and case studies will facilitate the initial collection of service provider information within TPI's sourcing assignments and provide an ongoing source of post-contract market information for TPI's clients thereby enabling organizations to stay abreast of changing service provider BPO capabilities and peer group BPO activity. In this latter context, TPI and NelsonHall will work together globally to develop new BPO case studies arising from TPI's assignments and client base. These BPO case studies will assist organizations in quantifying the benefits achievable from BPO and in appreciating the merits of adopting sound sourcing practices. The partnership also entails collaboration on the development of new, global BPO research reports for use by TPI advisors and clients worldwide



*"Obstacles are those frightful things you see when you take your eyes off your goal."*

*Henry Ford*