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Inside Outsourcing ™

INTERVIEWED BY LARRY JANIS

Adam Sak, President & Founder
Sourcing Strategies Law Group PC

We assist our clients by developing and negotiating complex, global business process outsourcing (BPO) transactions, information technology outsourcing (ITO) transactions, and general technology sourcing. These services encompass the legal aspects of sourcing event management including RFP development, competitive vendor down-select process, work-plan development, and emerging outsourcing contract standards and trends, with an emphasis on content and process optimization. We can scale our services from spot-expertise and legal team augmentation to full-service transaction management.

Our services encompass guidance across the contract life cycle. We assist clients with first generation sourcing, resourcing events, renewals, remediation, and termination support. We also perform "health checks" of existing agreements to advise on changed market positions as you approach contract renewal or resourcing events.

LJ: What are the most important values that a law firm brings to the process of outsourcing? Is it different from the buy side versus the sell side?

AS: I represent both buyers and providers in the outsourcing market and believe my value as legal counsel is identical in both situations. My responsibility to all of my clients is to assist them through the process of creating an equitable and reliable contract that ensures they receive the economic benefits and service requirements that drive their business case, wrapped with an appropriate allocation of risk and predictable exit strategy that allows both parties to manage the benefits, costs, and inevitable change during the course of the commercial relationship.

Through my background as external legal counsel, in-house legal counsel at a service provider (Exult, Inc., now Aon Hewitt) and as an outsourcing commercial consultant (at EquaTerra, now KPMG), I bring the added value to my clients of a holistic understanding of the commercial and legal drivers that shape successful outsourcing contracts. I strongly believe that value is created for my clients by guiding them to market-based, equitable contracts rather than trying to "win" individual deal points with imbalanced outcomes that may ultimately incentivize unproductive behaviors that undermine the greater utility of the solution. Winning and value-creation in the outsourcing context are predicated on equity and reliability of the underlying contract and solution.

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FROM THE EDITOR

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.

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I also strive to bring process efficiency to the transaction - this targets reducing the life cycle of sourcing transactions and accelerating the time to contract signature. Shorter contracting cycles not only reduce transaction costs but also promote the achievement of savings and revenue generation by accelerating service transition to the provider. This process efficiency is achieved by promoting market-based contract terms that embody equitable and sustainable transactions for all parties and through my provision of contract management tools: contract work plans, responsibility matrix, and market-tested templates to drive time line and process compliance.

LJ: Have the buyers of outsourcing become more sophisticated? Explain.

AS: Yes, most buyers today have prior experience with the service model and are aware of the associated risks and rewards. Buyers are more focused on levers that drive the desired business outcomes that attracted them to the solution – primarily service level adherence and economic certainty. I spend more time with my clients defining service level metrics and the contractual methodologies and remedies to drive that performance. With the greater understanding of the cost levers for outsourced services, the financial models and contracting methodologies have also become more sophisticated as the parties want to allocate these cost drivers and reward both buyer and provider activities that control their growth and ideally their reduction.

In the past, much of the volumetric and pricing validation was undertaken during transition leading to some post-contract signing surprises for both the buyer and the service provider. Today, if the transaction timeline permits, experienced buyers require service providers to complete rigorous due diligence before contracting. This process drives greater certainty for both parties and allows buyer and service provider alike to confidently commit to pricing and service scope.

Nonetheless, sophisticated buyers still accept a degree of uncertainty and flexibility with the outsourcing model, creating an increased demand for robust governance and change control structures to manage change in an effort to preserve the service quality and economic efficiencies. Having a contractually defined forum for evaluating and implementing change is essential to the viability of the relationship.

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LJ: From your perspective and experiences, what do the third party advisory firms (e.g., TPI, Deloitte, and KPMG) add to the process?

AS: Commercial advisors are invaluable for their broad vision of market developments, service provider capabilities, economic viability assessment of a transaction, and best practices for running the sourcing process and transaction structure. Moreover, the presence of a commercial advisor on the buy-side indicates to the service provider community that a buyer is serious and educated on the opportunity, thereby enticing more providers to engage and invest resources to scope an opportunity. From a perspective of managing my legal role in a transaction, the presence of an advisory firm allows me to more accurately predict my contributions, time requirements and associated costs for a client, allowing me to confidently commit to fixed-fee arrangements.

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The best sourcing initiatives follow a scripted process and timeline of requirements development, due diligence and service model validation, and economic and volumetric test cases. Many buyer organizations simply do not have the resources or the specific outsourcing expertise to define and manage these critical processes. Advisory firms are rich with process flows and experienced management capabilities to guide the buyer and service provider teams through the development milestones of a successful transaction.

Beyond transaction process management, the thought leadership teams of the advisory firms deliver exceptional strategic value to their clients. These firms can develop "big picture" strategies regarding global and integrated service models, blended outsourcing and shared service models, and redefining the sourcing objective and SG&A optimization.

LJ: What are the top goals your clients are hoping to achieve in outsourcing a function or functions?

AS: Each client is unique, but the most common priority is improving the service experience for the impacted user population – either external customers and business partners or the internal employee population. Part of improving the service experience also involves clients' desires to focus their key resources on core and strategic business functions. Outsourcing often frees these resources from routine transactional processing and allows them to create more strategic value for their company.

Of course the model remains underpinned by overall decreased cost, with the economic return being measured in terms of both bottom line budget reduction and capital cost avoidance. Clients are typically seeking a year-over-year declining price trajectory for outsourced services, subject to technology and process transformation investment spikes.

Clients also seek innovative service providers that can become a catalyst for change and transformation. Service providers can assist clients with long-range strategic planning, technology implementations and upgrades, and process change through proprietary tools and services and broad-based investment.

Interestingly, a newer goal of outsourcing arises with clients that are expanding operations into Europe and other geographies and want to avoid complex labor requirements. They achieve this by adopting an outsourced model at the outset – thereby avoiding any initial staffing up of employees in those regions. This results in the transfer of the complex employee issues to a service provider while further taking advantage of expert solutions and improved service economics

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LJ: From a legal perspective, are there significant differences in the approach to an ITO versus a BPO deal?

AS: From a legal and contracting perspective, the core objectives in and ITO and BPO transaction remain the same: equitable risk allocation and creating a predictable relationship. The services being provided of course vary, and will drive some different contracting methodologies that are unique to address the specific concerns of each model. For example, a typical outsourcing contract tool is the Financial Responsibility Matrix (also called the FRM) – a detailed allocation between buyer and service provider of financial and operational responsibility for various assets and cost drivers, such as facilities, hardware, software, equipment, third party contracts and employees. While there is value in defining the FRM in any outsourcing arrangement, the service and cost nature of an ITO typically sees a more robust definition of the FRM versus a BPO transaction (which may be less dependent on technology cost drivers).

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The service level management model also typically differs between ITO and BPO transactions in terms of the level of "At Risk" service level credit amounts and inflator "Pool Percentage" values. This variation is driven by the difference in maturity of the ITO solution versus most BPO solutions; ITO service delivery is more developed which allows the market to create higher levels of "skin in the game" for the service providers (driving typically higher service level risk profiles). Comparatively, newer and less mature BPO models often see the service providers accepting less service level risk as the collective industry experience has not yet matured to a standardized level of performance.

Other basic contract terms vary as well, such as the compliance obligations with applicable laws and regulatory schemes. These require expert assessment by service type – for example finance and accounting or human resources-related laws – as well as industry-specific regulations, such as laws specific to financial institutions or health systems. While the basic contract structure will remain consistent between ITO and BPO transactions, each deal requires evaluation and consideration of unique scope and industry factors to ensure an equitable and protective contract.

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LJ: What has allowed you to be successful?

***AS*:** I keep my focus on my clients' ultimate desired outcome in each transaction. Its my job to manage the end-to-end contracting process – from issue resolution to time line compliance. While my clients (both buyers and service providers) expect me to manage the legal risks in the transaction, it is my equal responsibility to remain a conduit of commerce – actively assisting my clients in achieving the commercial result of an equitable and reliable contract to receive or provide the services that the parties desire.

I've also been fortunate to work alongside several visionaries in the outsourcing industry. I learned valuable lessons in the art of the deal, how to deliver superlative customer service, and negotiation skills from leaders in our industry from the investor, consulting, service provider and legal communities. I learned how to view both sides of key issues – and to find a way of making a resolution work for both sides. The culmination of these experiences and variety of views has made me a better lawyer, and a better advisor to my clients.

Integrated Search Solutions Group

Integrated Search Solutions does more than just put people into companies. We approach every engagement with a unique focus on the successful alignment of executive talent with the client's business strategy and target markets. Partnering for the long term, we genuinely learn each client's business – operational and strategic - to produce lasting results.

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