

Revenue Recovery through In-House Legal — Changing the Conversation

Randall Lehner August 17, 2016

Topics: [Business Development & Marketing Blog Posts](#), [Client Relations](#), [Corporate Legal](#), [Data Analytics](#), [Efficiency](#), [Midsize Law Firms Blog Posts](#)



"Legal is just a cost center."

"The business drives the revenue; legal puts the brakes on us."

"In-house lawyers should focus on preventing loss to the company."

These statements, often heard about in-house legal departments, have sometimes been used to minimize the role of the in-house lawyer or to suggest that other departments of a company should be viewed with more importance by the C-suite. But to quote Don Draper and the brilliant writers of one of my favorite shows, *Mad Men*: "If you don't like what's being said, change the conversation." This series of blog posts is going to explore one of the ways that you, as in-house legal counsel, can change that conversation, and through that change, alter the perception of the role of in-house counsel at your company and strengthen the relationships that you have with your business unit clients.

Revenue recovery is the way you can make that change in the conversation. Let me explain what I mean by revenue recovery by first stating what it is *not*. Revenue recovery does not mean that your in-house legal department will start offering its services outside of the company, effectively taking on external clients (although, interestingly, a couple of corporations in Europe are actually doing just that). Revenue recovery also does not mean that your company suddenly will start filing lawsuits left and right and the in-house legal department essentially will become a full-time plaintiff's firm (although, again, there may be occasions where your company will identify and choose to pursue legitimate claims as a result of these efforts).

Rather, revenue recovery refers to a structured process through which in-house counsel, in conjunction with their business unit clients, examine your company's agreements, operations and deals to identify legitimate claims and recoveries that already exist.

You, as in-house legal counsel, can change that conversation, and through that change, alter the perception of the role of in-house counsel at your company and strengthen the relationships that you have with your business unit clients.

The objective is for your company to preserve and protect its rights and interests. It is also to ensure that your vendors, suppliers, purchasers, joint venturers and other business partners are following the terms of your carefully negotiated agreements, delivering the products and inputs in the quantity and quality required, and otherwise performing their obligations. An obvious example of this is collecting royalties for licensed intellectual property. But a less obvious example is the recovery of incentives that may have been provided to buyers of your products that never made the required amount of purchases.

With this framework in mind, you can apply a simple description to this process: as in-house counsel, you are working to recover revenue that rightfully belongs to your clients.

In future postings, I am going to explore with you some details on why and how to start a revenue recovery program, sources of revenue recovery, the resources you will need to create and operate a successful revenue recovery program, overcoming obstacles you may encounter along the way, and some real life examples of how your in-house peers have used these kinds of programs to recover tens of millions of dollars.

I am excited to share with you these ideas to change the dynamic of the relationship between in-house counsel and your business unit clients because this approach offers a whole new way to create value for your clients. And I hope that you will share with me your ideas, questions, or comments (even if to tell me that you think my ideas are crazy) in the blog feedback form at the bottom of this post. I also welcome your feedback and suggestions on topics for future posts.



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Randy Lehner is a partner with the law firm of Kelley Drye & Warren LLP and practices out of its Chicago office. He focuses on helping clients with regulatory investigations, government enforcement actions, and commercial litigation.

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Why In-House Counsel Should be Leading the Way for Revenue Recovery

Randall Lehner October 31, 2016

Topics: [Billing & Pricing](#), [Corporate Legal](#), [Data Analytics](#), [Legal Innovation](#), [Midsize Law Firms Blog Posts](#)



My [last post](#) was an introduction in ways to change the conversation from in-house legal departments being cost centers to instead, being centers for recovering revenue for their companies. Now, the question may be *why* you would want to change the conversation in the first place.

After all, in-house legal counsel's primary responsibility is to make sure that a company's revenue isn't depleted through lawsuits, bad contract terms or failed deals. With shrinking budgets, increasing regulatory compliance and complexity, and the ever-present manta of "do more with less," who has the time or energy to take on the challenge of finding ways to generate revenue for the company?

Let me suggest that an in-house revenue recovery program is a great way to "do more with less", while allowing you to strengthen your relationships with your clients, ease budget pressures and increase the stature of the legal department within the C-suite. And while you're at it, you might also help to raise your own profile in the company and show that in-house lawyers are not cost centers at all, but can be revenue protectors and generators.

Let's look at each of these reasons in more detail:

- **"Doing more with less"** — Starting a revenue recovery program is certainly more than what most of your clients would expect from their lawyers. And, as you will see throughout the course of my future blog posts, there are recoveries to be had that can be done for relatively little in the way of resources and which can return multiples on the investments made to achieve those recoveries.
- **Strengthening client relationships** — Efforts made to recover revenue can demonstrate to your clients that you are looking for ways to help them add to their top lines while also deepening your understanding of their business lines, key relationships and the mix of products and services that make up their revenue streams. Not only will this process allow you to work with your clients directly on a specific revenue recovery strategy, but it will give you better visibility to see where their business is heading and help protect it against future problems and pitfalls.

- ***Easing budget pressures*** — When the legal department can show it helped bring in revenue for the company in the prior year, it will be in a better position when discussions occur about that proposed increase to the department budget (or, avoiding the dreaded budget ax). Your in-house colleagues and general counsel will thank you, believe me.
- ***Increasing the stature of the legal department*** — Some of your clients may continue to view the legal department as a cost center or a roadblock to completing their deals. Finding a way to bring in revenue can be one of the surest and quickest ways to counter those sentiments. And beyond fuzzy and soft metrics relating to losses prevented or early resolutions of problems, the legal department will be able to point to quantifiable amounts that would not have been collected but for the department's actions.
- ***Raising your own profile*** — All of the benefits noted above can contribute to your clients, your in-house colleagues, and even the company's General Counsel or other C-Suite executives noticing that you are proactively taking steps to find ways to help the company grow its revenue. Rather than reacting to the filing of a lawsuit or being requested to review and approve a contract, you are taking the initiative, which shows you are thinking about the broader company and not just your narrow slice of it.

These are identifiable benefits to the company and make a strong case that you, and the legal department overall should consider starting a revenue recovery program. In the next several blog posts, I will discuss some of the concrete steps necessary to do so. (And please share with me your experiences with your revenue recovery efforts, so that I can share them with other readers who can benefit from your knowledge and experience.)



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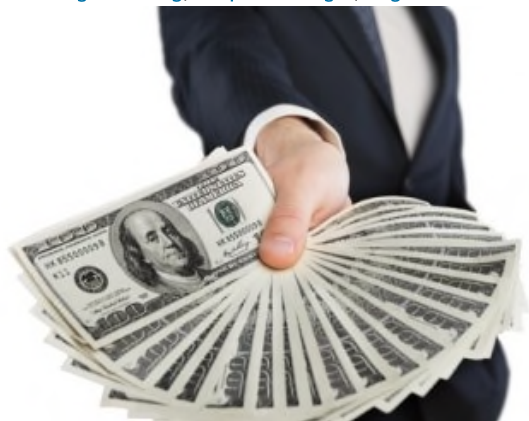
Representing a diverse clientele, Mr. Lehner works closely with corporations, government agencies, directors, officers, and regulated investment professionals across a broad spectrum of financial services, consumer products, and manufacturing industries. He has defended against a wide variety of SEC enforcement actions and securities lawsuits ranging from insider trading to misrepresentations in the purchase or sale of securities. In addition, he has prosecuted and defended many complex commercial litigation matters, including class actions, trade secrets and non-competition clauses, business torts, breach of contract, and insurance coverage.

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Starting an In-House Revenue Recovery Program – First Steps

Randall Lehner February 28, 2017

Topics: [Billing & Pricing](#), [Corporate Legal](#), [Legal Innovation](#), [Midsize Law Firms Blog Posts](#), [revenue recovery](#)



In the old adage of journalism, the important questions to answer with any story are “who, what, when, where, how and why.” [My last two posts explaining revenue recovery programs](#) explained the “why” — why they can be beneficial to you, your clients and your colleagues. If those posts have you revved up and ready to start a revenue recovery program, or even if your interest is just mildly piqued, then this new post should help stoke that fire. In this post, I will be covering the “who, where and when” while my next post will cover the “what” and “how” of revenue recovery programs.

Who should be involved in revenue recovery?

The first step to starting a revenue recovery program is identifying the key players necessary to move this effort off the ground. The legal department is the logical place to start looking for leaders. If you’re the general counsel, you likely will be able to initiate this. If you’re the head of a group within the legal department where these revenue opportunities might arise more frequently (e.g., intellectual property, insurance or antitrust), then you naturally may be in the best position to establish a program. But be sure to look outside the legal department as well.

The best leader for such a program may be the manager of the business unit that might benefit the most from any recoveries, or someone from procurement who handles many of the vendor and other contracting relationships. Alternatively, perhaps your company’s controller or CFO, who would track payments to suppliers, might be in the best position to launch this program. The point of this analysis is to identify all members of your legal and business teams who could be interested and benefit from a revenue recovery program and then to start a conversation with them about who can and should lead the effort.

Where can potential revenue recovery be identified and prioritized?

The next step after determining who should be involved in leading your revenue recovery program is to identify the most likely sources of revenue recovery for your company. This step should be tailored to your company. Collaboration with your colleagues identified as part of the first step will likely lead you toward some areas to examine for revenue recovery potential. Key stakeholders within the company, especially if they are not involved in leading the program, should be consulted for their input and ideas.

For larger companies, an informal or formal audit process may be appropriate, where either an internal auditor or a third-party consultant examines various areas of the company's operations, revenues and costs to see where the most likely revenue recovery opportunities exist. Smaller companies might opt to pursue revenues in a certain business unit, product line or geography. If the legal department is leading the effort, a certain type of legal claim, like IP or insurance, may present the best entry point for revenue recovery.

Most companies will need to decide whether the program will apply domestically, internationally or both. And for all of these decisions, a company may choose to phase the effort in over time or to start more comprehensively. The ideal combination of these factors will likely be affected by who is involved in the effort and what your goals are.

When should I start this process?

Ideally, the answer to when to start a revenue recovery program would be today! But that may not be realistic given other competing corporate and legal department goals that may more urgently need time and resources.

Look for opportunities when discussions occur about potential cuts to the legal department's budget or to concerns from your business unit clients about their need to add to the top-line of their revenue. These occasions will present natural opportunities to raise the issue and demonstrate that you are listening to the needs of your clients and your company and are creating positive ways to respond to those needs. And even if the time may not be right when these occasions occur, you will have planted the seeds for the future of your revenue recovery program.



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From Cost Center to Revenue Generator

A NEW APPROACH FOR IN-HOUSE LEGAL DEPARTMENTS

REVENUE GENERATION AND RECOVERY SOURCES

- Vendor fails to deliver product or raw materials timely
- Antitrust and unfair competition claims
- Subrogation for torts and workers compensation claims
- Supplier materials do not meet contracted specifications or amounts
- Recovery of incentives given to customers for purchases not made
- Advertising misrepresentations by competitors
- Patent infringement
- Licensing audits – underreporting of goods sold or amounts paid
- Disruptions in operations due to faulty equipment
- Representations and warranties in M&A or asset purchase agreements
- Disruptions in operations due to utility outages
- Over-billing of expenses by contractors and suppliers
- Insurance claims
- Filing claims in class actions
- Billing to third parties for services performed by legal department

For additional information or articles on revenue generation and recovery, please contact Partner Randy Lehner at (312) 857-7238 or visit http://www.kelleydrye.com/events/speaking_engagements/2813.