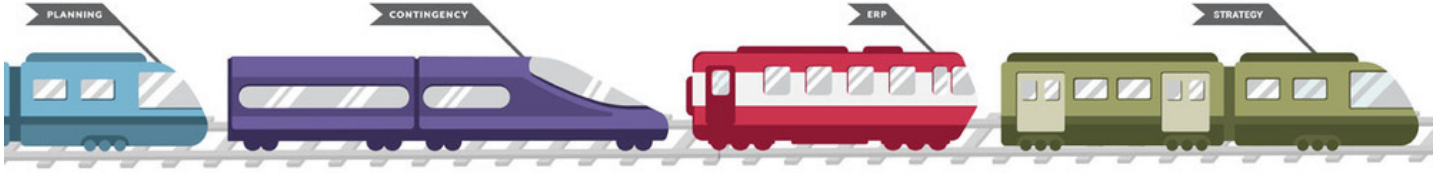
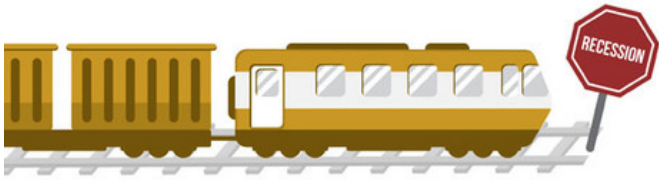
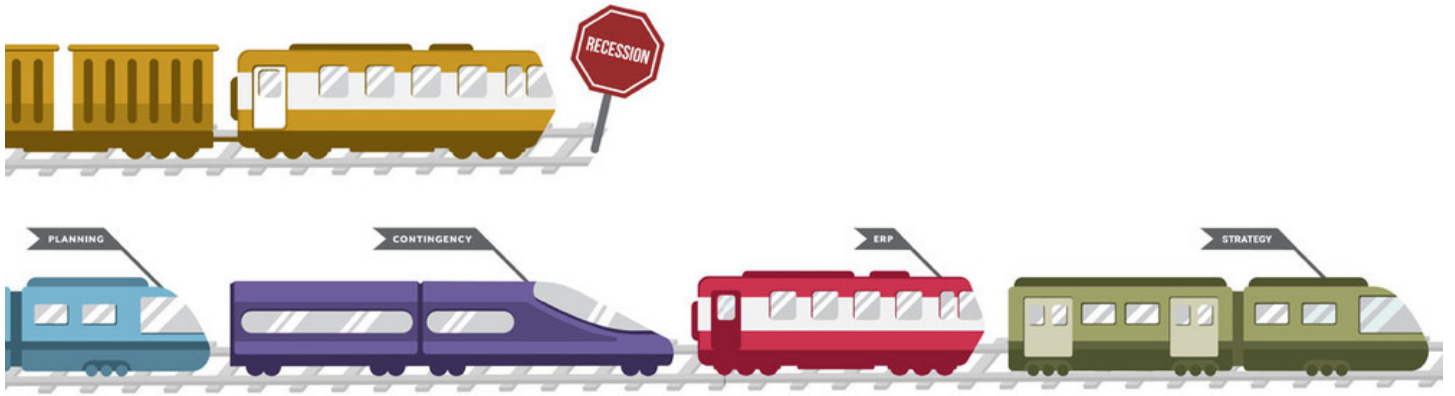




## **An Executive Recession Plan Can Help Protect Your Company**

**Law Department Management**





## CHEAT SHEET

- **ERP.** An Executive Recession Plan (ERP) is a high-level multi-disciplinary tool to prepare the organization for an economic recession.
- **Pitch.** When pitching an ERP to your company, identify your target, take into account the current economic climate and organization culture, and adjust your medium accordingly.
- **All-stars.** Once an ERP has buy-in, form a team that consists of all business functions.
- **Content.** Think of the ERP as a menu or playbook of options, covering high-level information, and providing recommendations.

As in-house counsel, we are always looking for opportunities to act strategically within our organization. This hazy concept of strategy is described in articles, discussed at networking events, and encouraged by C-suite executives. But organizations — and the people who comprise them — are all incredibly diverse; there is no one-size-fits-all game plan. Being strategic, ultimately, is reflected in everything in-house counsel does: communication style, forethought in legal analysis, understanding

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the industry, and more.

One option for strategic in-house lawyering is to spearhead an Executive Recession Plan (ERP). An ERP is a high-level multi-disciplinary plan designed to prepare the organization for an economic recession. The ERP is not created to predict when the next recession will occur; its goal is only to protect and progress the company if and when a recession happens. It contains a menu of maneuvers that the company can consider if and when a significant global recession occurs. It also might recommend some activities or projects to undertake before the next recession occurs, in order to bolster the organization's defenses against recession risks. There is a plethora of topics that an ERP may address, including production scenario planning, focusing on core revenue, aggressive M&A strategies, HR contingency plans, aggressive pre-emptive financing, and many more.

**Often times, senior leadership is preoccupied with short-term goals and “emergencies” that make it difficult to carve out time for long-term strategic planning. In these cases, in-house counsel have a unique opportunity to lead an effort that can change the DNA of their organization.**

The creation of such a plan involves strategy, creativity, and forethought. It requires the ERP team to study past recessions and imagine a new one, and to think of out-of-the-box solutions that will give the organization the edge. It also requires senior leadership to consider difficult questions about costs and priorities. Lastly, it primes senior leadership to approach a recession with proactive and strategic policies, rather than with fear and uncertainty.

Many organizations do not have an ERP. Often times, senior leadership is preoccupied with short-term goals and “emergencies” that make it difficult to carve out time for long-term strategic planning. In these cases, in-house counsel have a unique opportunity to lead an effort that can change the DNA of their organization.

This article will discuss:

- How to pitch an ERP to your organization;
- How to form an ERP team;
- How to write and structure your ERP;
- Some examples of recommendations; and
- How to present the ERP to your management and board of directors when it is complete.

## **How to pitch an ERP to your organization**

Your initial pitch will vary in style and target, depending on your organization and your position within it.

### **Choose the target of your pitch**

If you are general counsel, then your pitch will be directly to the CEO/president. If you are in an in-house position that reports to the general counsel or to another managing attorney, then your pitch will be to your direct manager (unless you get permission from your manager to skip ahead and pitch the ERP to an executive).

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## **Adjust your pitch depending on the current economic climate**

The goal of your plan will vary as well, depending on the present economic environment. During good economic times, people are generally uninterested in recession plans, so your pitch will be to slowly create a plan for “if and when another recession happens.” During actual recessions, these issues are at the forefront of peoples’ minds, so your pitch will be to coordinate between all of the different business functions and departments, and to research innovative and/or counterintuitive solutions that have worked for other companies.

## **Cater the medium of your pitch based on your target and organizational culture**

The method of your pitch will vary, depending on the culture of your organization. Some may create a presentation deck that explains what an ERP is and the process of creating one. Others may simply choose to have a conversation. Though this should be catered to the presenter and audience, it is recommended to err on the side of formality and create a presentation deck. An ERP is often not an urgent project, so the added seriousness of a presentation deck will help to inspire action.

## **How to form an ERP team**

### **Recruit a team that covers all business functions**

Hopefully your ERP was well received and approved. During your pitch, you should have also explained that you would be forming a team comprised of leaders from a wide breadth of business functions. Your team should include one of the top managers from both HR and Accounting/Finance. Then, you should add top managers from the core business function. The amount and titles of these managers will depend on your business, but you want to make sure that you get as wide a purview of the company as possible.

Ideally, your team will have four to eight members. You do not want too many members because you are going to need to manage your team and make members accountable for specific assignments. Also, the meetings will require all members to attend and participate, which gets difficult as more members are added.

### **Manage your team with one-on-one meetings and strong initial commitment**

Most importantly, it is critical to recruit members who actively want to be involved. Ideally, you have gotten per-mission from your company’s leadership to make participation on this team optional. When you have selected your team members, you should arrange a one-on-one meeting with each one, where you explain the ERP concept, the time and work commitment, and the optional nature of participation. Give each member some time to consider whether they want to participate, and if they can commit to being on the team. You should sell the ERP concept to them, but don’t sell it too hard; you want self-motivated members who are going to keep deadlines and actively work on the project.

## **How to write and structure your ERP**

Generally, the ERP should have the following organization:

- I. Executive Summary: A brief summary of the ERP’s purpose and key conclusions.
- II. Recession Definition, Indicators: A definition of what will constitute a “recession” for your

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particular business.

- III. Organization-specific Recession Scenarios: A description of the potential problems or crises that your organization is likely to face in the event of a significant economic recession.
- IV. Recession Strategies (By Department): A list of recession strategies, organized by business department.
  - Each strategy should have a clear description of the general concept and the mechanisms for helping the company during a recession.
- V. Conclusion: A reiteration of the key conclusions of the ERP. Some key conclusions may be a discussion of the business departments that may be the most affected by a recession, or the ones that will need to make the most changes in order to adapt and survive in a more difficult economic environment.

## **The ERP is a “menu” or “playbook” of options**

The ERP should not seek to prescribe any particular actions. Instead, the ERP should be a “menu” of options that, in the event of a recession, executives and other key personnel can browse in order to find the key maneuvers that will have the best impact on the business. The ERP will be packed with information, but it should also be “skimmable” by executives who do not want to dig through it for what they need.

## **The ERP covers a wide breadth at a high level**

The ERP should not describe the mechanisms by which each strategy will be deployed. For example, if one strategy is “Reduce HR costs by offering voluntary early retirement packages,” the ERP should explain what this strategy means and why it could help, but the ERP should not explain how this strategy should be implemented. If and when the executives want to implement this strategy, then this will turn into a project for the HR Department.

## **Consider including a timing descriptor for each menu option**

Thriving during a recession is all about timing. Which companies were prepared? Which ones reacted quickly and decisively? Which ones were patient? Consider including indicators that mark each menu item’s ideal timing as “pre-recession,” “early recession,” “mid-recession,” “late recession,” or “post-recession.”

## **The ERP should highlight top recommendations**

The ERP “menu,” if done correctly, should be a large repository of strategies. It is helpful to have all options available, but as an executive plan, the ERP also needs to be highly useable and accessible. To that end, the ERP should include highlights of top recommended strategies. Be aware that, for practical purposes, it is these highlighted recommendations that are most likely to be implemented. These top strategies should begin each department’s section with a formatting change, color change, and accompanying legend that explains the highlighting. Another option is to include top recommendations in a graphic within the Executive Summary section.

## **Presenting the plan**

**INSIST ON AN ACTUAL PRESENTATION.**

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When your plan is fully written and carefully edited, it is ready to present. Initially, the plan should be accompanied by a presentation deck; if you simply send the actual plan to executives or board directors, it will probably not be read.

### **LEVERAGE TECHNOLOGY IF YOU ARE PRESENTING REMOTELY.**

For a variety of reasons, you may find yourself presenting the plan remotely. If this is the case, use technology to make your presentation as clear as possible. You should still use a presentation deck and share the screen with your audience. Try to use video, and ideally, ask your audience to use video as well, which will help with engagement. Follow up with an informative email, attaching your presentation deck, the ERP, and other materials.

### **REMIND EVERYONE OF THE PURPOSE OF THE PLAN.**

The presentation should begin by reminding everyone what the plan is and what it is not. As a reminder: the ERP is a “menu” or “playbook” of options, not a one-size-fits-all prescriptive plan. Also, the ERP covers a wide breadth and is high-level; it is intended to describe the “what” and “why” of each menu option, but not the “how.” The “how” happens when the executives choose to initiate the option and the relevant department takes on the project.

### **PRESENT TO MANAGEMENT, AND THEN THE BOARD OF DIRECTORS.**

Ideally, you should first present the plan to executive management. After receiving and incorporating feedback from executive management, the plan should also be presented to the board of directors, as it related to long-term corporate strategy. The directors’ feedback should also be taken and incorporated.

### **MAINTAIN THE PLAN.**

**The ERP is a living document, to be periodically reassessed and updated (consider updating it every six months). Make sure to actually hold a few meetings with your team to re-read, discuss, and update the ERP.**

**During a recession, cash is king. For companies that are negatively impacted by the recession, the objective is to survive until global economics stabilize and the business can return to normal operating status.**

## **Examples of ERP Recommendations**

Below are some examples of recommended policies or actions that could be included in the plan. Note that your actual “menu” will have many more.

### **HR**

Human resources will potentially be the largest concern of your company during a recession. Your

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plan should get your HR managers thinking about what they would do in a recession climate, and it should also be an opportunity to research and educate on alternative employment solutions. Some recommendations may include:

- Offering voluntary early retirement plans
- Voluntary across-the-board salary cuts to avoid layoffs
- Furloughs
- Work-share programs
- Government assistance and/or loan programs
- Cross-training and/or skill matrices
- Improved and consistent internal and external communications plans

## **Finance/Accounting/Cash Flow**

During a recession, cash is king. For companies that are negatively impacted by the recession, the objective is to survive until global economics stabilize and the business can return to normal operating status.

Although the company's fundamental financials may suffer during a recession, it's important to understand that the most basic and common failure mode is simply running out of cash. In dire situations, the company may take on "unhealthy" levels of debt, but if the alternative is bankruptcy or simply closing the business, then increased debt is typically preferable.

Of course, this depends on your company's specific situation. It is possible for companies to go bankrupt with positive cash flow if they have debt that will mature, as an example. There are also many complications for publicly-traded companies. But for many companies, cash is what will sustain them through difficult times.

You may need to convince people to pursue debt, because cash is expensive to hold. If your finance or accounting team is used to employing techniques that minimize cash-on-hand, this may be a difficult paradigm shift. But this is a way to reduce risk. In many situations, it is worth the cost.

Even in healthy companies, or companies that benefit from the recession, debt may be advantageous. Many healthy companies wisely pursue aggressive M&A strategies during recessions because there are ample inexpensive M&A targets. This aggressive strategy may also require financing.

Your ERP should outline strategies related to borrowing, accounts payable and receivable, costs, inventory, etc. It should recommend the best tools for maximizing cash flow (if your company is experiencing difficult times) or for taking advantage of expansionary strategies (if your company is healthy).

Some recommendations may include:

- Proactive and aggressive long-term financing: If this is done early, you may be able to secure financing that other companies are unable to get later. But be aware that some people in your organization may view this as overly conservative risk reduction.
- Converting revocable lines of credit into secure financing: Depending on your financial situation and relationship with your bank, this may be a quick and easy maneuver.
- Improving accounts receivable and inventory practices: It might be time to get strict with your



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customers about accounts receivable. You might get some pushback from sales managers or relationship managers, but if a significant recession is really occurring or on the horizon, then it is not the time to be lenient about accounts receivable. If your customer is having trouble paying, it's better that you know about this as soon as possible.

- Improving inventory practices: If your company holds inventory, improving your inventory practice can be a way to free up cash. If you have recent auditor reports, they often will include an assessment of your inventory practices, which you can review and improve.
- Renegotiating accounts payable: You can look into renegotiating accounts payable to obtain lenient payment plans that allow increased flexibility and time for your company. This may be especially feasible if you are ahead of the game and if your counterparties do not fully grasp the seriousness of the economic situation.

## **The product (non-administrative business departments)**

This will be your largest section and will probably comprise of multiple departments. It completely depends on the business model. Can your company change your product or the strategies surrounding your product in order to better survive or take advantage of a recession?

**Business runs at breakneck speed. Law, on the other hand, is often slow and deliberate. As in-house counsel, you have the ability to slow down business leaders and ensure that they are considering long-term outlook and strategy.**

## **Conclusion**

Business runs at breakneck speed. Law, on the other hand, is often slow and deliberate. As in-house counsel, you have the ability to slow down business leaders and ensure that they are considering long-term outlook and strategy.

The ERP is a great tool for encouraging your company's business leaders to come together and strategize as a team. While the ERP may, on its face, appear to be a simple contingency plan, you may find that it catalyzes strategic communications between business leaders that otherwise never would have occurred. You will also learn a lot more about your business, as you take a deeper dive into different department managers' approach to solving recession problems.

If a recession does occur, hopefully you will be one of the first employees on call to step in and help. If not, as long as you have done a good job of creating the ERP and pitching it to your business partners, your company will appreciate that your forethought in considering recession issues before the actual downturn.

**Visit ACC Docket's website for an exclusive interview on how Whirlpool's prepared for and responded to the pandemic: [accdocket.com/articles/how-whirlpool-adapted-to-covid.cfm](https://accdocket.com/articles/how-whirlpool-adapted-to-covid.cfm)**

## **ACC EXTRAS ON... Strategic planning**

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## **ACC Docket**

Career Path: Develop a “Slurp” (Oct. 2019). [accdocket.com/articles/resource.cfm?show=1505107](http://accdocket.com/articles/resource.cfm?show=1505107)

### **Sample Forms, Policies, and Contracts**

ACC Legal Operations Maturity Model Strategic Planning: Sample Plan Template (April 2018). [acc.com/resource-library/acc-legal-operations-maturity-model-strategic-planning-sample-plan-template](http://acc.com/resource-library/acc-legal-operations-maturity-model-strategic-planning-sample-plan-template)

### **Checklists**

Tips for Successful Strategic Planning (March 2018). [acc.com/resource-library/tips-successful-strategic-planning](http://acc.com/resource-library/tips-successful-strategic-planning)

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