



## Law Firm Management Miles B. Cooper

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# On the line

## CASH FLOW STRATEGIES FOR THE CONTINGENT-FEE FIRM

The lawyer looked at the case projections. If everything came together, the next 18 months would be the best yet for the firm. That was the upside. The downside? A couple of those cases were super expert intensive, increasing the firm's burn rate. It looked like everything would come together without a problem, and it was also time to give a heads up to the bankers.

### The fundamental problem

Building up a contingent-fee firm is inherently challenging. The firm advances costs for a long time with the idea that there will (hopefully) be a positive resolution. But every case has risk. Cases sometimes get defended or take a bad turn. Meanwhile, firm overhead is constant. Understanding this tension and building systems to manage it is mandatory for those seeking to build and run their own firms. Getting started is the hardest part. It takes capital or credit to get going. Yet most folks starting out lack both.

### Wallet and credit cards

The simplest approach is also limiting: Spend only what you have. Some firms do it successfully, particularly smaller operations with low overhead and a steady stream of quick-resolving cases. It means passing on and likely referring cases that require expensive experts or prolonged litigation. One also must keep a reserve – ideally six months to a year of operating expenses – in laddered CDs. Firms tend to operate on pure cash at two stages: infancy and maturity. They do so at infancy out of necessity. Mature successful firms sometimes decide to reduce overhead costs by relying on their own cash rather than borrowing the bank's money.

### Lines of credit

Most firms use lines of credit. Unlike a traditional loan where one receives a lump sum and begins accruing interest immediately, a line of credit lets one borrow only what one needs, when one needs it, and interest accrues only on the

drawn balance. Many banks are challenged in loaning to contingent-fee firms because the case portfolio cannot be collateralized.

If one is looking to obtain a line, the best way is to ask colleagues what banks they work with and get an introduction. The loans here are typically done through what banks call relationship banking. While the bank requests personal asset information and may require you to secure the line by a fixed asset like your house, the bank is taking a risk on a case portfolio where the portfolio value is really only known by the firm.

As a result, most banks like to start small.

Banks also want case projections with regular updates. The more detail here, the better. An Excel spreadsheet that lists the case names along with estimated value, estimated net fees after referrals, and resolution date are typically minimum requirements. Banks tend to reward firms that under-promise and over-deliver.

When making projections, recognize that most firms tend to undervalue cases but also underestimate case duration. Fine-tuning this skill makes running the firm easier and also makes the bank happier. Maintaining the credit line requires discipline and meeting annual requirements. Most early relationships require a 30-day rest (no outstanding balance of the loan) during the year. This means paying the line down to zero, which can typically be done when a larger settlement or verdict comes in. A pattern of maxing the line and slow repayment can get the line reduced or yanked at exactly the wrong moment.

### Co-counseling and litigation financing as cash flow strategies

Co-counseling is often discussed as a way to leverage expertise, but its cash flow function is equally important. A well-structured co-counsel arrangement spreads cost advancement across two or more firms. A case that would strain one firm's resources becomes manageable when costs are shared. Frequently, a large-

er trial firm will take on more of the costs (for a higher share) for a smaller firm with a great case. The fee split reflects the arrangement.

Another cash management tool is litigation financing. Litigation finance companies advance money against anticipated recoveries in exchange for a return upon resolution. The structure varies: Some take a percentage of the fee, others a multiple of the advance. The cost is real. A \$200,000 advance might cost \$80,000 on resolution. But this leverage can be better than taking a bad settlement because one cannot properly fund the case.

Litigation finance works best on high-value cases with clear liability and strong damages. Lenders typically conduct extensive due diligence. The process takes time, which must be factored in to selecting this option. And be precise about ethics rules in one's jurisdiction, particularly regarding disclosure to clients and how one handles the litigation financing cost. Some firms take this on themselves while others want to pass the financing cost on to the client.

### Outro

Back to our lawyer. The lawyer spoke with the bankers, who appreciated the advance notice that there may be a tighter period roughly six months out. Because of the long relationship and the firm's history of transparency, the bank was fine with the plan, allowing the lawyer and firm to focus on litigating the cases.



*Miles B. Cooper is a partner at Coopers LLP, where they help the seriously injured, people grieving the loss of loved ones, preventable disaster victims, and all bicyclists. Miles also consults on trial matters and associates in as trial counsel. He has served as lead counsel, co-counsel, second seat, and schlepper over his career, and is an American Board of Trial Advocates member.*