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‘Constantly on the First Date’: Kobre & Kim’s Michael Kim on Life in the Referral Business

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Yesterday we brought you the first part of our recent conversation with **Michael Kim**, the co-founder of disputes and investigations law firm **Kobre & Kim**, about the firm’s “conflict-free” business model.

For those who might have missed yesterday’s installment, you can find it here. But let me attempt to summarize it briefly. Kobre & Kim eschews repeat, ongoing representations in favor of pursuing one-off assignments, primarily through referrals. Their matters often center on scandal or insolvency and typically have some sort of cross-border element.

Kim told me that the model means that the firm has more client feedback loops built into any assignment. “We’re kind of constantly on the first date,” he said by way of analogy. “If you’re on a first date and you are not being pleasant, you can bet they’re not going to meet you for a second date.”

The model also eschews the concept of origination credit for finding and retaining business. “There’s no economic incentive to create repeat books of business and to hold on to it,” he said. “I think this is essential to make the firm behave in the way we want, which is kind of like a friendly tool for other law firms or clients to use in conflict situations.”

Courtesy photo

Kobre & Kim's office in Sao Paulo, Brazil

If you’re like me, that description raises as many questions as it answers. We’ll pick up the conversation there.

Lit Daily: How do you make the call on whether or not to take on an individual matter? If you get multiple referrals at the same time from different perspectives on the same matter, does that set off any internal alarms that say, “Hey, this is something maybe we should be involved in”?

Michael Kim: I think in most big bankruptcies and big scandals, over the first few weeks of the situation, we get multiple requests for representation in different aspects of it. They would mostly be incompatible with each other. So the ability to take the most premium assignment,

I think, starts before that situation arises with our discipline to shrink our conflict footprint.

So when we finish a case, we end the relationship with the client. We don't linger around to try to get more work unless there's another specialized situation that they have, which is very rare. If we have a case with a client who has no activity, we close the case. We don't try to get on their panels, unless they have a special issue.

So, essentially, that means we have a small conflict footprint when that kind of scandal or bankruptcy arises. So, we have maximum freedom of action as to what aspect to take on. Now, there's a little bit of game theory that comes into play, because not all opportunities come in at the same time. You don't get to do a beauty contest to see which case you want to get, which representation you want. So it may be that if you reject a case, a different representation never comes. That was all you were going to see from that situation. So I think that ultimately, if it's a situation where we think we will have a number of opportunities, we have to choose the best one.

Ultimately, all the different partners that are involved in seeing those opportunities will all talk with each other, **Steve Kobre** and me, and we make a commercial decision about what is the best representation. I find that at least within our firm, it›s a very intellectually honest discussion, because nobody has financial incentives to make "their" case be the one that wins. They›re actually just thinking of what›s the best thing for the firm to get into. Then, ultimately, if it›s a situation where there are a number of different business sensitivity or conflict issues, Steve Kobre and I make the calls as to what risk we'll take. I mean, either we're not going to take it or we're going to take it and forego other representations. But again, I think because people do not have selfish financial incentives, they essentially accept the decisions and then they try to do the best job possible. Since we have no internal origination credit—no internal repeat books of business owned by individual partners—that means when a case comes in, it doesn't matter who got the call. There's an honest discussion about who are the best people to work on that case.

So, in a situation like the one I just described, people know if their skill sets are the right fit, they'll actually get to work on the case. So they're not sitting there trying to advocate for something where they'll get to work on it and somebody else won't. It takes massive effort to maintain a system like this, because it goes against the impulses and instincts of the rest of the industry.

Has your definition of "conflict-free" changed over time? Correct me if I'm wrong, but I get the impression that at the outset of the firm, it had the implied meaning of "we can sue banks," right?

That's right. When we started in 2003, there were very few firms that could sue banks. That was because there are very few suits against banks. So, if there was a big suit against a bank, it was very hard to find competent counsel. But this was not a productive market for law firms to build businesses in, because suits against banks were so infrequent.

Again, what is the reason something is a niche market? It's because there isn't a constant flow of business in that market. Otherwise, it would become its own market, and there would be regular players in it. So, when we play in the niche market, we know we have to be in a part of the market where there is no reliable, frequent need for services. We have to find it. It's like a treasure hunt. So suing banks used to be part of that. And then in 2007, after the financial crisis, you'll recall, for a variety of reasons, a number of litigation boutiques formed in a lot of cities and there were a lot of cases involving suits against banks afterwards. So, being able to sue banks, while it still lingers on as a way to be conflict-free, it's really no longer the big conflict-free badge it used to be.

Over time, it's evolved into a few different things based on who you can sue and who you

can represent. So, based on who we can sue, it's really expanded to being adverse to the big accounting firms, being able to be adverse to the big tech companies like Apple, Google, et cetera. And, in highly concentrated industries, it's being able to be adverse to the big giants in any industry, because we don't go and try and represent them all. Even if we do work for one in whatever sector—mining, oil and gas, et cetera—we don't go and attach ourselves just to one to try to do all their cases.

But, over time, conflict-free has also started developing in terms of who you can represent. I would not have foreseen this in 2003 when we started. It used to be, back 20 years ago, there weren't a lot of big businesses where big law firms were saying, "Well, this is a big case, but we can't do it because we don't want to represent this client." It didn't happen a lot. But over time, I would say, it's happened a lot more with international criminal cases and a lot more politicized cases worldwide. With Russia, China, Israel, there are so many more of these cases than there were 20 years ago.

So, because we don't have a set of regular corporate clients to keep happy, we have the freedom of action that, in the right circumstances, if we think a client has a legitimate case, we can take on a client that would be unpopular. There's a whole spate of law firms that abandoned Russian clients just because that was the thing to do at the time. We can pick and choose, and if it's the right case, we can get into that. I think something similar has started happening with Western firms abandoning Chinese clients. So conflict-free, for us, has started having these two dimensions.

So how big is the firm? And is there a limit, size-wise, on the model?

You should do my job, because you actually picked the exact core issue. So, right now the firm's total headcount is about 450 to 500 people. Of that, about a third are lawyers, a third are non-legal professionals such as financial analysts and other types of specialists, including digital currency specialists, and then another third are in operations, finance, et cetera.

Now, as I said earlier, in almost every major bankruptcy or scandal, we get at least two or more referrals. From that, I infer we have probably at least 10%, maybe 20%, of this niche market we're playing in. So, this niche market is maybe only $1 billion to $2 billion a year of these unusual cases that have lots of conflict issues, that might be international or require real specialized expertise that we have. So, growing the number of people we have and growing the number of cases we do is not a viable long-term strategy. I think that the best long-term strategy we're following is to do more with the same number of people by making ourselves more efficient. That is possible for us because we do a lot of the same specialized cases all the time, like international judgment enforcement and asset recovery.

So, for a lot of our work, it would be immensely difficult for someone trying to figure it out for the first time. We've actually routinized a lot of the things that we do. We have product names for it. For example, we have a product name for doing a public records and semi-public record search on a target. If you just use the slang within the firm, everybody knows all the 50 different components that have to go into that product. So I think that the strategy is to not grow headcount unless we're forced to, to grow revenue by upskilling all of our workforce into higher and higher expertise, so that the clients are willing to pay more because the client doesn't see a substitute. And then we also try to get premium fixed fees, as opposed to trying to get paid on an hourly basis. Then, if you have that as the model, you're not just trying to add people to generate more hours and more revenue. We want to generate value and get paid for it. Again, we're trying to make a law firm behave as one organism–selflessly, not selfishly—one that plays well with other law

firms. This requires immense amounts of effort, and it's not easy.

So, when you sit down to do your post-op in a big multi-party dispute, is whether you took on the right client part of what you're looking at?

Yeah, we actually often do that in what's called the after-action report. We reflect on how it turned out, both in terms of the conflict footprint we took on, as well as the outcome. I think if I had to pick the single most important variable that determines the outcome of a dispute or investigation that's controllable, I would say it's the sophistication of the client. The facts are kind of the facts. Yes, you can argue about them, but the quality of lawyering—once you're talking about clients with a certain amount of resources—is going to be roughly similar. So the only thing that really materially influences the outcome is the client's sophistication in terms of knowing what their goals are and being realistic about what will achieve those goals. The client needs to be confident enough to give a lawyer who has unconventional ideas the ability to take risks while the client takes responsibility for the choices the client makes. In a lot of cases, people are just focused on how not to take responsibility, how not to get blamed. Or clients are just mad. They think of the litigation as a real fight. They say a lawyer should be aggressive and be mean to the other side—as if then they're going to win because they were meaner.

I always tell clients who are willing to listen to me that foxes win litigation, not lions. It's the ability to be sophisticated and know where the pressure points are, while appearing nice—that's really the way to do it. In these after-action reviews, we always ask whether, based on the behavior of the client, we took on the right client. When we're figuring out which case to take, it's not always about money, about the fees. It's really about which representation is going to let us actually achieve the client's goal. Is it going to be a successful representation? It's very hard to know all the facts in the beginning. So you can't be like, "Oh yeah, this person is going to win. So let's go represent them." The reason there's litigation is that it's ambiguous. If it was so clear one person was right, there would be no litigation. So by definition, it's an ambiguous situation. So you can't pick based on who is "right" on the facts.

I think in a choice between a client who is unrealistic—one who is willing to pay a lot of money, but ultimately we're not going to be able to satisfy them—and a client who is not willing to pay as much money, but we can satisfy them, I would always rather work for the second.

I would have thought it would be a purely economic exercise:

"Did we choose the most profitable of these routes?" Why is it that client satisfaction is central to deciding whether you took on the right representation?

Because the market of people who are hiring for first cases is fairly defined. Every time we get a good feedback loop—where the client goes back to the person who referred them to us and says, "That was a great decision. I had a great, satisfying experience with them"—that is really what causes more referrals to come. And so even with a client who has a huge case, spends a lot of money, but ultimately is dissatisfied, we'll lose all the referrals from the referral source and anybody they tell that to. That's why we're so focused on client satisfaction–not because we want that client to come back and hire us for more cases, but because we want referral sources to hear about it.