

Legal Service Management

Brave New World Group Fee Exercise #3

YOUR SITUATION

The Nifty Tech acquisition has been completed and all the attendant litigation has been resolved. Nifty Tech has been integrated and these results are consolidated Omnivore data.

You are the Law Department of publicly traded Omnivore Corporation. The CFO told you that a variety of economic factors have resulted in a prediction of a severe drop in FY2014 revenues for all business units and lines. You have resisted the urge to liquidate your stock holdings based on this information. The CFO also told you that your FY2014 Legal Budget will be cut by 25% which means you cannot exceed \$24.75M in total legal spend (internal and external).

Based on the CFO's forecasts, the Legal Budget will not be increased for at least the next three fiscal years so your changes to create savings must be sustainable. Nevertheless, you will be expected to handle and maintain the quality of legal support for the full breadth of Omnivore's legal needs.

Over the last two quarters, the Law Department's estimates of quarterly legal expenses varied from actual expenses by about 7%. The CEO has "challenged" the Law Department to improve the predictability of legal spend in conjunction with the Law Department budgeting for FY 2014 which begins October 1, 2014. The Law Department budget worksheet is due July 1, 2014.

The CFO is giving similar edicts to operating business units and shared services departments which pay for settlements and judgments for their matters, so it will not be acceptable to cut legal fees only to incur increased liability or settlement payments.

Omnivore's outside counsel are chosen by the inside counsel with responsibility for the file. Inside counsel tend to default to a few favored firms upon which they rely. Inside counsel do not typically seek engagement proposals from even others within the small group of favored firms. Omnivore's counsel, inside and outside, seem to be engaged in similar and repetitive tasks across the spectrum of engagements, but the Law Department has not seen improvements in quality that would be expected based in this repetition. Omnivore Co. is expanding operations to Europe and the Pacific Rim, areas where the current Law Department staff lacks experience.

The Omnivore Law Department handles all transactional, regulatory, tax, contract, and policy administration legal matters internally. It manages outside counsel to exclusively conduct litigation, employment and labor guidance and issues, patent and trademark prosecution work, major IT contract negotiation and documentation, and M&A counseling (including, on average, one transaction per year).

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YOUR ASSIGNMENT

Your group now has to prepare an action plan that you will present at the end of the exercise and to advise the CEO & CFO how you will meet the budget reduction of 25%, while increasing predictability and efficiency of spend. The purpose of this plan is to communicate specific action steps and affected budget items.

Any solution you achieve must allow your outside legal vendors to operate with some profit margin. Therefore, you will not be able to implement an across-the-board 25% rate cut on your existing firms.

To focus on the tools you have used in this workshop, you will not be permitted to use any fee arrangements based on hourly billing (e.g., blended rates). Certainly, hourly billing is still a viable alternative for some clients and some future matters – just not in this exercise.

Be prepared to present your specific plan at the end of the exercise and to advise the CEO & CFO as to the project plan for pursuing the changes you will propose.

For purposes of this exercise, the presentation will be oral, but feel free to use the flip charts if that will aid your presentation.

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DISCUSSION

In developing your action plan, you may wish to think about these questions, as well as ideas you have on reducing spend, increasing predictability and increasing efficiency. Do not get bogged down in one area; you need to present an outline of the whole plan.

- 1) What is the goal? What will success look like? What is value for us?
- 2) Do we have enough data? What sort of data do we need to collect to make decisions about structure? To maintain the program once we develop it? What would be involved in creating that knowledge base? Maintaining it? What impediments are there to creating the knowledge base?
- 3) Do we have the right law firms? Do we have too many law firms? Do our law firms understand how we define success for each engagement? Are our law firms aligned with the law department's objectives? Do we have enough in-house lawyers? How would we change it? Should we create a(n) (in)formal preferred counsel program? What would it look like? What impediments are there to creating a preferred counsel program? Is there work we are doing, but shouldn't be? Is there a way to meet client expectations for that work that does not distract in-house staff from more important work?
- 4) What value-based fee engagements might make sense here? What impediments are there to implementing a program of value-based fee engagements? What can we do to reduce cost, improve predictability and improve efficiency in those matters that remain hourly based fee engagements? Before we retain a firm are we getting the right sorts of data from them about how the engagement will proceed? Are we getting the right sorts of data about how engagements are proceeding during the engagement?
- 5) Does our in-house staff have the right skill sets? The right substantive legal skills? The right expertise across the various jurisdictions where we do business? Adequate project management skills? Are there areas ancillary to providing legal advice which can/should be outsourced?
- 6) How would we start the shift to the new structure? How do we maintain the momentum?

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Internal Staffing & Budget

- [1] All Law Department personnel are based in Kansas City.
- [2] The Law Department staffing is:

General Counsel	
Deputy General Counsel/Litigation	Administrative Assistant
Assistant General Counsel/Litigation	Records Administrator
Assistant General Counsel/Litigation	Billing Clerk
Assistant General Counsel/Litigation	Deputy General Counsel/Transactional & Corporate
Counsel/Litigation	Assistant General Counsel/Securities & Corporate
Counsel/Litigation	Assistant General Counsel/Labor & Employment
Legal Assistant	Assistant General Counsel/IP & International
Legal Assistant	Counsel/Transactional & Corporate
	Legal Assistant
	Legal Assistant
	Legal Assistant

[3] Law Department Budget for Internal Spend:

\$\$Millions	FY2011	FY2012	FY2013
Lawyers	\$4.5M	\$4.5M	\$4.5M
Non-Lawyers/Staff	\$.5M	\$.5M	\$.5M
TOTAL Internal	\$5M	\$5M	\$5M

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Omnivore Nature of Work

Company-wide – Corporate & Transactional

Omnivore uses outside counsel for the following non-litigation work: employment and labor guidance and issues, patent and trademark prosecution work, major IT contract negotiation and documentation, and M&A counseling (including, on average, one transaction per year).

Company-wide – Major Litigation Matters

Omnivore is involved in significant litigation and arbitrations in the following areas:

- Putative class actions regarding alleged violations of COPPA and common law privacy claims
- Shareholder derivative actions
- Litigation against directors and officers, asserting violations of the Securities Act of 1933
- Multiple stated contract claims with realistic adverse exposure of \$1M or more
- Demands for punitive, extra-contractual or other exemplary damages
- Other claims involving significant reputational risk
- Claims involving a pattern or practice that could give rise to a significant number of claims
- Environmental claims
- An investigation which relates to public corruption overseas which could result in criminal liability for the Company or a Company officer
- Allegations of a breach of ERISA or a common law fiduciary obligation
- Anticipatory breach of a major contract
- Collection matters in excess of \$3 million
- Major trademark, copyright of IP matters threatening loss of >\$3 million

Company-wide – Non-Routine Litigation Matters

Omnivore is involved litigation and arbitrations related to its Outdoor Power Equipment, Marine Products, Consumer Products and Aviation Products businesses. While the large majority of Marine Products and Consumer Products cases are considered routine litigation and are covered in a separate statement of work, the cases considered to be Non-Routine involve more complex issues related to construction, distribution, intellectual property, and manufacturing provided by these businesses.

Company-wide – Routine Litigation Matters

Omnivore's routine litigation and arbitration matters are related to its Outdoor Power Equipment, Marine Products, Consumer Product and Aviation Products businesses. Omnivore is also involved other "typical" litigation, e.g., employment, general business contract disputes.

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Omnivore TOTAL LEGAL SPEND

All \$ Amounts in Millions	FY2011			FY2012			FY2013 (ann)		
	Open Cases	Total Billings	NOW SubTotal	Open Cases	Total Billings	NOW SubTotal	Open Cases	Total Billings	NOW SubTotal
Corporate & Transactional									
Employment					0.175			0.225	
Patent & Trademark Preparation & Prosecution					0.300			0.325	
Major IT Contracts					0.075			0.170	
M&A					0.750	1.300		0.700	1.420
Company Wide Major Litigation Matters									
Defensive Litigation	122	16.200		107	12.500		90	10.500	
Affirmative (Plaintiff) Litigation	6	8.000		3	5.000	17.500	1	4.000	14.500
Company Wide Non-Routine Litigation									
Marine Products				14	0.721		22	1.200	
Consumer Products				5	0.484		7	0.539	
Aviation Products				0	0.000		1	0.026	
Outdoor Power Equipment				3	0.102	1.307	3	0.091	1.856
Company Wide Routine Litigation									
Marine Products				60	2.601		58	1.842	
Consumer Products				104	1.760		120	1.200	
Aviation Products				3	0.350		3	0.325	
Outdoor Power Equipment				7	0.200		8	0.160	
Employment				30	5.700		25	4.000	
Contract Disputes				50	4.800	15.411	40	2.700	10.227

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Omnivore TOTAL LEGAL SPEND

All \$ Amounts in Millions	FY2011		FY2012		FY2013 (ann)		NOW SubTotal
	Open Cases	Total Billings	Open Cases	Total Billings	Open Cases	Total Billings	
Total Outside Spend			386	35.517	378	28.003	
Law Department Internal Costs							
Lawyers				4.500		4.500	
Non-Lawyer Staff				0.500		0.500	
Total Inside Spend				5.000		5.000	
TOTAL LEGAL BUDGET				40.517		33.003	

In FY 2013 Q1, Q2, Q3(est) Omnivore spent a total of \$1,500,000 for document review across all matters and law firms. That spend is consistent with the first three quarters of FY2012. Total document review costs for FY2012 were \$1,925,500.

External Law Firm Data

- Law firm engagement letters have not been updated since FY2009.
- Omnivore does not use electronic billing. Initial case budgets are mandatory only for company-wide major litigation matters
- Omnivore currently uses 20 outside law firms, all of which are full service firms: 5 national firms, 10 regional firms and 5 local firms. Average partner compensation for the different firms:

FIRM	\$-AVERAGE PARTNER COMPENSATION
National 1	2,800,000
National 2	2,410,000
National 3	2,255,000
National 4	2,190,000
National 5	1,675,000
Regional 1	1,335,000
Regional 2	915,000
Regional 3	805,000
Regional 4	780,000
Regional 5	780,000
Regional 6	675,000
Regional 7	665,000
Regional 8	605,000
Regional 9	540,000
Regional 10	490,000
Local 1	525,000
Local 2	495,000
Local 3	435,000
Local 4	395,000
Local 5	350,000

Legal Service Management

Action Plan

Spend Category	Current Spend	Action Item	Expected Savings

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Action Plan

Spend Category	Current Spend	Action Item	Expected Savings

Tools For The " Brave New World"

Fees	
Explore risk-sharing with law firms (to permit them to reduce fees for indemnity against malpractice claims).	Risk-Sharing
Institute a policy of requiring hard budgets from law firms and allowing no payment for law firm budget overruns.	Hard Budgets
“Lifting and shifting” all work from firms to other firms, or letting matters run off, assigning new matters only under new fee arrangements.	Lifting & Shifting
Contingency fees (defense and plaintiff).	Contingency Fees
Flat/Fixed Fees.	Flat/Fixed Fees
Hourly fees.	Hourly Fees
Discounted hourly fees.	Discounted Rates
Blended rates.	Blended Rates
Volume discounts.	Volume Discounts
Aggregating matters into portfolios and getting value fee arrangements.	Portfolio Fees

Process & Project Management	
Implement legal project management	Project Management
Re-engineer certain processes	Process Management
Institute early case assessment discipline for all litigation matters.	Early Case Assessments
Assistance from your Procurement Department.	Procurement Assistance
Routine post-matter reviews for business process improvement	Leverage Data
Improved use of e-billing to carefully analyze, monitor, manage and track legal spend.	Leverage Data

Tools For The " Brave New World"

Staffing

Move work to "alternative" law firms, e.g., virtual firms, that don't have law firm overhead.
Move work to lower-cost geographic regions for reduced fees.
Analyze and unbundling all legal work into levels of importance and risk, and then using the most appropriate legal vendors for each level.
Outsource entire internal legal function, as well as the handling of legal matters for a fixed fee.
Legal Process Outsourcing.
Hire additional paralegals and/or lawyers in-house to contain and control spend.
Convergence program (reducing the number of legal vendors you use to concentrate spend and increase leverage).
RFPs to find firms that can meet your budget requirements
Change the mix of law firms to include those who know how to manage to specific fee levels.

"Alternative" Firms
Geographic Redistribution
Unbundling/Strategic Staffing
Outsource-Fixed Fee
Legal Process Outsourcing
In-Sourcing
Convergence
RFPs
Change Firm Mix

Litigation Risk Profile

Actively pursuing mediation
Arbitration Clauses in All Agreements

Mediation
Arbitration