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ACC's CLO THINKTANK EXECUTIVE REPORT

“TAKING CHARGE OF ESCALATING LAW FIRM COSTS- CONNECTING COSTS WITH VALUE”

This Executive Report provides an overview of discussion results from ACC's CLO ThinkTank session titled "Taking Charge of Escalating Law Firm Costs- Connecting Costs with Value" held in San Francisco on February 25, 2008. ACC's CLO ThinkTank sessions are designed to provide a forum for CLOs who wish to exert greater leadership in their companies, at the bar, in the courts, and in the halls of government on emerging issues of greatest concern. Following is summary information on key topics and takeaways and discussion point highlights identified by these CLO thought leaders.

ThinkTank participants included the following legal leaders:

- Michael Dillon, Executive Vice President, General Counsel and Corporate Secretary, Sun Microsystems
- Cornell Boggs, Chief Legal Officer & Group Vice President, Public Affairs, Coors Brewing Company
- Lon Bouknight, Executive Vice President, Edison International
- Christian Campbell, Senior Vice President, General Counsel, Secretary and Chief Franchise Policy Officer, Yum! Brands, Inc.
- Mark Chandler, Senior Vice President, General Counsel & Secretary, Cisco Systems, Inc.
- Tom Mars, Executive Vice President and General Counsel, Wal-Mart
- James Potter, Senior Vice President, General Counsel and Secretary, Del Monte Foods Company
- William A. Von Hoene, Jr., Senior Vice President & General Counsel, Exelon Corporation

KEY TOPICS

Below is a list of key topics selected by the CLOs present as most interesting and discussed during this CLO ThinkTank session:

- **Value- how it's defined and measured**
- **Challenges -for law firms & law departments**

- **Law firm engagement process & creative strategies**
- **Staffing Legal Work**
- **Outsourcing**
- **Law department structure for managing outside counsel**

KEY TAKEAWAYS

Thought leaders participating in this session described a number of ideas and practices. Listed below are some top themes and takeaways. Ideas on additional issues are described in the Discussion Highlights section below.

- **Current legal service delivery models work well in some firms and companies, but are fundamentally flawed as models for overall efficient, value-driven dependable legal service provision.** Participants described challenges associated with the current general law firm legal service delivery model designed around billable hours and which uses profit-per-partner as a key metric.
- **The legal service delivery model needs to focus on value (for both law departments and law firms) and be respectful of what law departments need and the challenges they face.** Participants described views on what ‘value’ means and ways to integrate a focus on value in engagement expectations and law firm relationship management. They also discussed concerns about the challenges faced by law firms: how the firms can continue to attract and retain legal talent to ‘grow’ the partners of tomorrow that provide the expertise that law departments need. In addition, they discussed practices for law firm engagements that include tying value and achievements to requests for rate structure changes (e.g., one law department implemented a practice of only entertaining fee increase requests from firms following a successful fundamental demonstration of value).
- **Value requires alignment and the ability to leverage success.** Participants described how law firms must be better aligned with the goals and objectives of law departments—much like the General Counsel needs to be aligned with the goals of the senior executive team to which they belong—in order to maximize value. In addition, to the extent law departments and law firms can find innovative ways to work together to enhance efficiencies and leverage success, everyone will experience an enhanced sense of value in delivery and receipt of legal services.
- **Match type of legal work to ‘tier’ of law firm (or provider within or outside of the firm) to find the most appropriate model for service delivery.** Participants discussed how stratifications and layers of firms may exist—how some law departments have ‘go-to’ firms for certain types of complex work that requires a specific level of sophistication and expertise. In addition, they discussed the need to assess the type of legal work and skill requirements and how efficiencies can be gained by properly matching service providers to the level of work. They also described arrangements that included having certain tiers of firms team with other firms to most efficiently and effectively perform legal services (e.g., having a smaller firm perform services under the strategic direction of select partners within a larger firm).
- **Create opportunities to enable the firms to best manage their profitability and value.** An example is fixed fee arrangements that allow firms to decide how they value the work and how to best staff and utilize internal resources to provide the services law departments need.
- **Reward innovation.** Participants discussed how innovation and creative service models should be rewarded—both via metrics and support from the General Counsel within the law department and by acknowledging and leveraging success stories of law firms who are moving beyond the traditional billable hour model to provide valued legal services.

- **Technology and tools are powerful ways to enhance value and the model for legal services.** Participants described how technology is changing the way law departments work and legal services can be delivered, resulting in enhanced efficiencies and tools and services that can be leveraged across law departments and companies. This is ‘win-win’ for law firms and for law departments and can enable knowledge to be leveraged more broadly. They also discussed how law departments may need tools to help focus and train in-house lawyers on how to be better managers and on ways to be creative in seeking and implementing outside legal service delivery.

DISCUSSION HIGHLIGHTS

VALUE

Value/Attributes: Participants discussed what value means to them and the apparent disconnect in the perspectives and respective definitions of value from the law department and law firm perspectives. They also discussed how value means different things to different companies, and the importance of communicating to law firms what value means to your law department. Views/attributes for delivering value include:

- Be ‘super-responsive’
- Have a sense of urgency in performing services
- Understand the company’s business and culture and give advice that confirms this understanding
- Partner with the company
- Share the company’s risk and passion
- Don’t confuse efforts with results
- Learn to budget and assess cases earlier in the process
- Focus on the sustainability and relationship over the longer term, rather than in any one billing cycle

Value/Law Firm’s Relationship Should be Similar to GC’s with the C-Suite: One participant expressed that the law firm relationship with its client law departments should be the same as the GC’s relationship with the rest of the corporate executives: law firms need to be as responsive as in house counsel, interested in the company’s business, results-oriented and aligned with the GC’s goals and objectives.

Value/Client Evaluation: One participant described a practice that includes sending an evaluation form to all internal clients. The form includes 17 questions evaluating outside counsel, and 17 questions evaluating performance of in-house counsel. The rating scale is 1 to 5. The law department is able to view trends in performance and identify performance efficiencies. The law department communicates to outside law firms how they rank relative to the other firms and how their performance compares year-to-year. In addition, the law department is able to evaluate how ratings on internal services compare to external services.

Value/Using Information on Outside Legal Costs to Enhance Internal Staffing: One participant described gathering data on outside legal costs and using that data to help make the business case for hiring additional in-house lawyers to perform the work and reduce outside legal costs.

CHALLENGES

Challenges/Law Firms- Liability: One participant described a view that law firms may be concerned that what happened to accounting firms may happen to them. In addition, the participant noted that the ability to be a ‘great partner’ may be cooled by fear of liability/responsibility.

Challenges/Law Firms- Associates & Attracting Talent: Participants also discussed challenges for law firms in competing for the best talent out of law school and the need to take a long-term view: students out of law school expect to be well-paid, yet corporate law departments may not want to be billed for first

or second-year associate work. GCs want great lawyers and great results: How will talent get developed so that the law graduates of today can become the experienced partners of tomorrow?

Challenges/Law Firms- ‘Most-Favored Nation’: Participants discussed how ‘favored nation’-type clauses in engagement agreements could have collateral impacts across the business and present pressures for law firms.

Challenges/Law Firms-Partner Attrition: Participants discussed challenges of partner attrition: if law firms are squeezed, they may lose their best/most productive partners. Participants also discussed how an in-house approach that’s modeled on squeezing and jumping around from firm-to-firm to get the best short-term deal doesn’t sound like an attractive road. One participant described a situation where partners from a firm moved to another firm and were able to bring their overall rates down; the benefit for the law department: the law department was able to keep the same expertise.

LAW FIRM ENGAGEMENT PROCESS; CREATIVE PRACTICES

Law Firm Engagement Process & Creative Practices/Demonstrate Value & Exceptional Service to Request Increase: One participant described a practice that essentially put a ‘freeze’ on any rate increases unless the firm makes a specific request and can demonstrate that the firm is providing exceptional service and adding value. As part of this ‘engagement dialogue,’ the law department requested historical rate information (from firms requesting a rate increase and from firms who weren’t—to help build a baseline of data).

Law Firm Engagement Process & Creative Practices/No Additional Timekeepers: One participant described a practice/policy that restricts law firms from adding additional ‘timekeepers’ on the law department’s work unless that action is preceded by a dialogue with the law department.

Law Firm Engagement Process & Creative Practices/Take Profitability as a Starting Point: One participant described taking the law firm’s profitability as a starting point and enabling the law firm to best manage its resources and profitability. The method for implementing this approach: fixed cost arrangement that enabled the firm to best manage how to allocate resources to provide services. The firm decided to use contractors to help lower internal costs.

Law Firm Engagement Process & Creative Practices /Identify Alternate Vendors for Portions of Services: One participant described building into the RFP process a statement encouraging the law firm to identify vendors who can do the work more efficiently (but this rarely happens). Another participant described practices that include requiring the law firm to use certain services from alternative service providers (e.g., legal research vendor, printer, etc.). One participant described issuing an RFP for a large pre-acquisition merger review—the RFP required the responding firm to use contractors for the document review.

Law Firm Engagement Process & Creative Practices/Using Seconded Partners: One participant described having a minimalist in-house approach to legal staffing and implementing practices that include having seconded law firm partners located on site with the law department to perform legal work in certain substantive areas.

Law Firm Engagement Process & Creative Practices/Corporate Secretarial Tools: Another participant described teaming with a law firm to produce a set of tools to enhance efficiencies in performing corporate secretarial services traditionally handled by the law department. The vision for these tools is that they may be scalable across corporate law departments and may also help others implement new and enhanced efficiencies in providing legal support in this area.

Law Firm Engagement Process & Creative Practices/ CLO to Set-the-Tone: One participant described the importance of having the CLO set-the-tone and send a clear message to junior people within the law

department that they will be supported and ‘covered’ if they take steps to be innovative and creative in styling engagements with legal service providers and move beyond solely going to a ‘premium’ firm.

Law Firm Engagement Process & Creative Practices/Technology Will Change the Service Delivery Model: One participant described a belief that the law firm model will dramatically change in the next ten years—in large part driven by access to information. The participant noted a view that global law firms will be used for particular needs such as global transactions and class actions—and that other law firms with lower overhead may be more heavily utilized for other work.

Law Firm Engagement Process & Creative Practices/Law Firm Structure: Participants described different approaches within firms for negotiating engagements. One participant described an outside firm approach that includes escalation to a management committee for review of ‘deals’ at a certain level or for limiting/hand-selecting who will (and won’t) work on a project (e.g., if a law department only wants the senior litigator but not the litigation team).

STAFFING LEGAL WORK

Staffing Legal Work/Continuum of Legal Services: One participant noted that, in the past, the model for legal services was monolithic: the law department wanted ‘the best.’ But, today, the law department recognizes that there is a continuum of types of legal services. There may be only a handful of ‘go-to’ firms for certain types of services; but there is a whole range of levels of service below that.

Staffing Legal Work/Stratification in the Industry: Participants described stratification in the industry—with some firms at the ‘top,’ most in the middle; and others doing ‘lower value/more routine’ work. One participant described the importance of using the ‘right tier’ of resource—‘no need to use a sledge hammer to kill an ant.’ If incentives are aligned so that appropriate tiers of resources are used, then law departments can achieve better value alignment.

Staffing Legal Work/Firms Partnering with Each Other: One participant described a practice that involved having a ‘premium’ firm team with a smaller firm for some aspects of the work so that the premium firm provided the services most appropriate to that tier and the smaller firm provided portions of services that were appropriate for that firm—all resulting in value in services received by the client.

Staffing Legal Work/GC Expertise & Relationship with Executives is Important: Participants discussed how the General Counsel’s expertise and confidence placed in the General Counsel by corporate executives should be more important than the name of the firm that is hired to perform the outside legal work.

Staffing Legal Work/Branding: Participants discussed how ‘branding’ of a firm can become synonymous with a given partner, and whether law departments/in-house lawyers hire individuals or law firms.

OUTSOURCING/OFF-SHORING

Outsourcing/Document Review: One participant described using a company in India to perform document review. As a preliminary test and quality check, the law department is having a U.S. firm review the documents and is comparing the services and results (and as a preliminary trial run, the services of the firm in India are being provided for free during the trial run). The participant described a comfort level with this approach and how this may be a creative way to test alternative service providers.

Outsourcing/Privilege Considerations: One participant asked about privilege considerations/concerns of having document review/certain legal services outsourced. One participant suggested having a law firm retain an outside/off-shore document service provider if that provider would be used in connection with litigation, and that this approach may benefit from work product protections.

Outsourcing/Due Diligence: Participants asked whether law departments perform on-site due diligence checks before off-shoring work. One participant described going to India to visit a site.

Outsourcing/Challenges: One participant described challenges associated with working with an off-shore service provider in outsourcing export control work. In that case, the staffing turnover within the outsource service provider was quite high, and this impacted responsiveness and resulted in slowing business initiatives.

LAW DEPARTMENT STRUCTURE FOR MANAGING OUTSIDE COUNSEL

Law Department Structure/Approaches: Participants described a broad range of approaches and structures for managing outside counsel, including:

- Team of In-House Lawyers on Point for Managing Outside Counsel: the team is dispersed throughout the global law department
- Dedicated Senior Lawyers On Point: 2-3 senior lawyers who focus full-time on setting strategy and implementing outside law firm engagement processes and managing the firms and relationships
- Client Services Group: the senior lawyers within the law department ultimately manage the relationships with outside counsel for all matters within their group—however the day-to-day management is handled by the person in charge (PIC) for each matter—want lawyers in the trenches on point for managing these relationships (including budgeting)
- Law Firms Selected by AGCs: law firms are selected at the top level by the AGCs; once the firms are selected—as matters arise, the person responsible for the matter is responsible to monitor the law firm’s performance

Law Department Structure/Pre-Screen & Select Every 3 Years: One participant with a Client Services Group on point for high-level strategic outside counsel selection and PICs on point for day-to-day management described a process that includes evaluating and ‘pre-screening’ firms. Every three years, the law department selects 32 firms; on average, about 25-30% of the list changes each cycle. This high-level approach helps provide some level of confidence regarding whether the PICs are getting the ‘best deal.’

Law Department Structure/Skills for In-House Lawyers to Manage Outside Counsel: Participants described how some in-house lawyers are better equipped and more skilled at managing outside counsel than others. They also discussed how some in-house lawyers may feel overworked with their own portfolios and may feel that they don’t have time or the right technology tools to help manage outside counsel. One participant plans to identify a role for an in-house person to be on point to address these skills/training issues.

Law Department Structure/Corporate Procurement: Participants discussed pros and cons/experiences working with corporate procurement functions in connection with the outside counsel engagement process. One participant noted working with corporate procurement in setting up dynamic bidding events for outside legal services. Another noted an internal requirement to involve the supply group in the process but that the law department drives the strategic decisions and ultimately runs the process. Another participant described involving the corporate procurement function in connection with large RFPs for legal services.