

**April 2009**

## **ACC's Law Department Executive Leadership Management Report**

### **“LAW DEPARTMENTS ADDING VALUE: STRUCTURING AND MANAGING OUTSIDE COUNSEL RELATIONSHIPS AND BEYOND”**

This Management Report provides an overview of discussion results from ACC's Law Department Executive Leadership session entitled, “Law Departments Adding Value: Structuring and Managing Outside Counsel Relationships and Beyond,” held in New York City on March 12, 2009. ACC's Law Department Executive Leadership sessions are designed to provide a discussion and benchmarking forum for executive lawyers responsible for managing their large law department's operations. Following is summary information on key topics and takeaways, and discussion point highlights identified by these law department executive thought leaders.

Session participants included the following law department executives:

- Brain Benjet, Vice President and Chief Counsel, Litigation, CIGNA
- Connie Brenton, Senior Director and Chief of Staff, Sun Microsystems, Inc.
- Janine Dascenzo, Associate General Counsel, General Electric Company
- Lynn Easterling, Senior Director- Worldwide Legal Operations Legal Services, Cisco Systems, Inc.
- Amy Gallent, Senior Vice President, Associate General Counsel and Chief of Staff, Hartford Financial Services
- Helen Gillcrist, Vice President and Manager of Enterprise Legal Services, Liberty Mutual Insurance
- Bruce Goldberg, Managing counsel- Law Administration, The Allstate Corporation
- Elizabeth Gorman, Executive Director & Associate General Counsel, Schering-Plough Corporation
- David Grimes, Senior Vice President and Director of Administration- Legal Department, Bank of America
- Ed Holmes, Deputy General Counsel- Managing Director, American International Group
- Jeff Isaacs, Chief Operations Officer for Law Compliance & Business Ethics, Prudential
- Keith Isgett, Managing Attorney, Global External Legal, GlaxoSmithKline
- Jeffrey Meaney, Senior Vice President Legal Operations, Fidelity Investments
- Torey Riso, Senior Counsel, CIT Corporate Finance
- An Trotter, Director-Legal Administration, Viacom Inc
- Gordana Vujanovich, Legal Administration Manager, McDonald's Corporation

## KEY TOPICS

Below is a list of key topics discussed during this Law Department Executive Leadership session:

- **Alternate Sourcing of Legal Work/Off-shoring, In-sourcing**
- **Alternative Fee Structures**
- **Staffing Mix**
- **Budgets- Training and Tracking**
- **Metrics**
- **Values and Pro Bono**

## 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.

- **Alternate sourcing (off-shoring, in-sourcing, farm-shoring) can save costs and enhance efficiencies; training, process definition and up-front scope efforts are key.** Whether off-shoring to India, in-sourcing to handle first-level document review in-house, or involving a national discovery firm to provide strategic direction on in-house document review efforts using contract personnel, alternative sourcing helps to move work to lower cost providers and enhance efficiencies. Law departments are moving law firms ‘out of the middle’ of these arrangements and into more strategic oversight roles, where necessary, and engaging legal service providers directly.
- **Scope of services provided using alternate sourcing extends beyond document review.** Participants are using alternative legal service providers (contract personnel, legal service vendors, and off-shore captive or third party entities) to handle a broad range of ‘process-oriented work’ (e.g., any work for which a process to handle it can be clearly defined). Examples of work handled by alternate providers includes: contract review, document review, mergers and acquisitions due diligence, first level review of Non-Disclosure Agreements, medical claims review, court stenography services and more.
- **Law departments are moving toward alternative fee structures; many use fixed fees with valves, soft caps with collars and broader monthly fixed fee retainer work with incentive payments to handle a broad range of legal work.** Almost all of the participants noted that the billable hour model does not focus on value or results, but may be appropriate in limited circumstances. Almost all of the participants are implementing some form of alternative fee structure arrangements, with some participants using these arrangements exclusively (goal or current workload in 2009 at 100% non-hourly fee basis) and others moving in that direction. Fee structures are designed to provide incentives to achieve desired results, drive efficiencies within the firm (as their interest, not just the clients’) and to share risks and rewards.
- **Quality, expertise and trust are important aspects of structuring relationships.** Participants discussed the importance of nurturing relationships with and communicating expectations to firms to establish trust and define flexibility in setting alternative fee structures. They discussed providing guidelines on work that doesn’t need to be done to minimize potential risks to law firms. Quality assessments of law firm performance and reciprocal performance assessments of in-house and outside lawyers (e.g., allow law firms to assess in-house counsel performance) are good practices that help focus on quality, relationships and results.

- **Having the right staffing mix is important.** Participants discussed wanting the right level of partner expertise and paralegal expertise on their matters-- it's about expertise and results, not just costs. Participants track staffing mix and provide feedback to firms on how they compare with others and any correlations with quality and results.
- **In-house lawyers need training on setting and managing budgets; set internal department performance objectives and assess performance on these skills to drive desired behaviors.** Participants discussed the need to train in-house lawyers on how to set and manage budgets. One participant's law department has created training called 'Nailing the Basics,' and builds performance in creating and managing budgets into KPOs. Another participant created a survey that allows outside counsel to evaluate the performance of in-house lawyers on a number of skill set areas, including managing budgets.

## DISCUSSION HIGHLIGHTS

### ALTERNATE SOURCING

Alternate Sourcing/ Off-shoring: A number of participants send certain types of legal work to India—many to outside providers (including Pangea3, CPA Global, Mindcrest, QuisLex, Clutch Group); some to 'captive' providers.

- *Types of Work being outsourced:* process-oriented and/or routine, repeatable work, including: (1) first level document review; (2) contract review; (3) mergers and acquisitions due diligence (law firm works with offshore entity); (4) Nondisclosure agreements; and (5) larger spend non-professional service tasks such as reprographics.
- *Challenges:* control of documents, conflicts of interest, security of information.
- *Captive Providers:* One participant described using a 'hub' in India that includes six seconded attorneys. To help train lawyers on the ground, an in-house attorney from the company's law department was sent for around nine months. Participant is using these services for work described as repeatable that can be defined as a process. Another participant built its own organization (currently includes four people) in India and hired employees locally to perform services for that organization.
- *Describe Process, Train, Create 'PlayBook':* Participants described various practices to help define work that will be performed and to provide guidance on law department expectations and needs. One participant's law department created a 'playbook' for non-disclosure agreement reviews. Using the playbook, the offshore provider performs first level review of NDAs, marks suggested changes and sends to the company with a cover note listing issues to consider.

Alternate Sourcing/In-sourcing First Level E-Discovery: One participant described 'in-sourcing' legal services by bringing first level e-discovery in-house prior to sending it outside for further processing. That company uses contract lawyers to help perform first level review. Another participant described performing all litigation review in-house.

Alternate Sourcing/On-shore Document Review: One participant described using an outside law firm to perform on-site document review in an unused building on the company's corporate campus. The law firm uses temporary legal service providers to help bring hourly rates down for performing these services.

Alternate Sourcing/Law Department Contracts Directly with Legal Service Providers: One participant described eliminating law firms as 'middle-men.' This law department now contracts directly with any outside legal service providers unless there is a need to include a law firm within the work process to address specific privilege concerns. Types of services the law department is regularly using outside legal service providers for include: document review, court reporting (uses regional and national firms), reprographics, coding and medical records collection.

Alternate Sourcing/ Perform Discovery In-house Under Supervision of National Discovery Counsel; Limit Scope Up-front: One participant described costs savings and efficiencies by limiting the population of documents subject to review and using national discovery counsel to help provide strategic direction on scope of documents. This law department internally hosts produced documents, which are reviewed by a team of discovery professionals that includes former SEC enforcement professionals and internal auditors. Benefits are that the in-house team knows the business and where to go for documents. The team works with outside counsel and national discovery counsel to set parameters and manage the data. A team of lawyers in Columbia, South Carolina also helps to review documents.

#### ALTERNATIVE FEE STRUCTURES

Alternative Fee Structures/Relationships are Important: Participants discussed how relationships are important in setting alternative fee structures. Law departments are not trying to drive law firms out of business; need to interact reasonably and align incentives.

Alternative Fee Structures/Monthly Fees for Services with ‘Valves’: One participant described using alternative fee structures for handling intellectual property claims. A monthly fee is paid to handle this work. Scaling components and ‘valves’ are included to allow for adjustments when certain events occur and to give comfort. The ‘valve’ varies depending upon the type of legal work. Examples of valves include: matter doesn’t settle but instead goes to litigation, exceed a certain volume of work, etc.

Alternative Fee Structures/ Fixed Fees Only: One participant described a law department policy that requires that all work be performed on a fixed fee basis (law department has been implementing fixed fees only for three years). Fixed fees can be structured on a project-by-project basis or on a portfolio basis. For litigation-related work: a firm may receive a fixed monthly fee to handle a given type of litigation matters. The fee structure may also include additional incentives for early settlement. Another participant described an upcoming shift that will move that law department to using only alternative/fixed fee structures.

Alternative Fee Structures/Fixed Fees for Product Litigation and Mass Torts Using Task-Based Codes to Set Fee Structures plus Annual Reviews: One law department has moved to fixed fees for this type of work. Process used to help set fees included review of historical hourly e-billing and task codes—however the participant notes inherent inefficiencies with setting structures this way since it is all still based on hourly rates. The law department strives to continuously improve and looks annually at costs based on phase of litigation. Fee structures include build in assumptions and parameters (e.g., fee is set for ‘x’ number of cases; if break the barrier/material changes, come to the table to discuss and adjust).

Alternative Fee Structures/Soft Cap with Collars and Sharing: One participant described implementing ‘soft caps’: if matters come in within 10% of budget, then stick with fixed fees. If matters come in more than 10% under budget, then share in the cost savings. If matters come in more than 10% over budget, then assess a penalty by imposing a structure that allows for reimbursement of only a portion (maybe only 30%). This type of structure is described as creating incentives and align goals.

Alternative Fee Structures/Smaller Matters with Local Counsel; 50/50 Sharing Below Cap: One participant described implementing a practice on some smaller matters using local counsel: the law department and firm negotiate fee caps and they share 50/50 in any savings below the cap.

Alternative Fee Structures/Use of Procurement as ‘Bad Cop’: One participant described including procurement professionals in the negotiations process. Pros are that procurement professionals bring experience in negotiating master service agreements across a broad spectrum of services. Law firms may be concerned about involving procurement because of a view that they may ‘commoditize’ legal services and employ a ‘widget mentality.’

Alternative Fee Structures/ Fixed Monthly and True-up for Labor Work: One law department described implementing practices for labor and employment matters that include fixed monthly fees and a true up. Fees cover up to a certain volume and type of cases up to summary judgment, and are ‘all-in’ (e.g., law firm pays any local counsel fees directly). An important component of this type of structure is defining up front expectations and acceptable risk (e.g., law department won’t require no stones unturned or

exhausting every avenue; law department controls up front strategic plan and agrees that law firm may follow this defined approach and won't get sued if it does).

Alternative Fee Structures/Task-Based Codes Help Focus on Results: Participants discussed how task-based codes can be helpful to mine data and evaluate where costs can be saved by moving from one provider to the next. Results can be surprising—may find that law firms perform certain tasks better/more efficiently than outside legal service providers; may also find that higher 'cost' providers are more efficient so that all-in costs are less; may also find that certain law firms are more efficient and effective than others.

Alternative Fee Structures/ 'All Time keepers to the Table': One participant described a practice that includes meeting with key firms and requiring all timekeepers to come to the table and train on how to use task-based codes. While this still requires tracking hours—it's used as a tool to help the law department gain comfort that it is setting the right value on fixed fee numbers.

Alternative Fee Structures/Audits and Discussions with 'Outliers': One participant described auditing law firm providers and creating charts that show data on service components such as resource level, and time by phase and task. The law department performs 'quality' audits of law firm services and communicates results to the firms—can share whether they are outliers in certain areas and look across the system.

#### STAFFING MIX

Staffing Mix/Buying Judgment and Attention to Matters: Participants discussed notion of what law departments are buying. Sentiment expressed that in-house lawyers are buying judgment and expertise in providing legal service on matters. Challenges include: how to provide incentives to have the right level or person doing legal work—especially in alternative fee structure context.

Staffing Mix/Tracking Expertise Levels: Several participants described tracking who is performing services—paralegals, associates, partners. They discussed how expertise and partner attention to matters is important, and the need to pay particular attention to this in the alternative fee structure context.

Staffing/Requests to Change Partner Percentage; Ask for Rebates: One participant described performing quality audits of law firm service providers that include tracking percent paralegal and partner time (including level of partner) and having conversations with firms about outliers—if firms are too heavy in any one type of staffing mix—plus viewing results and how staffing mix may impact efficiencies and outcomes. Another participant described conducting after-the-fact litigation assessments and calculating blended rates and percentage partner hours—asking for rebates if actuals didn't track pre-engagement expectations.

#### BUDGETS

Budgets/Relationship Manager: One participant recently implemented a practice to assign in-house relationship managers to help provide an in-house holistic view of the law department's relationship with the firm. In-house lawyers on point for matters still have responsibility for managing outside counsel working on their matters; relationship managers serve as a back-up and can look across the system to view all in-house lawyers working with a given firm and assess relationships and results.

Budgets/Performance Metrics: One participant described setting key performance objectives for in-house lawyers on management to budget and quality of data in the system. These practices help provide incentives for lawyers to manage their costs and to drive the importance of these behaviors to firms. As part of the assessment process, the law department views payment cycles and adjustments to bills to help review quality of data and to provide incentives for in-house lawyers to manage matters on the front end and not just get data in and then discount at the back end. Want to see in-house lawyers managing throughout the case.

Budgets/Training- 'Nailing the Basics': One law department has developed a training program for in-house lawyers called 'nailing the basics.' The goal of the program is to provide training on accurate budget forecasting and timely data input.



## METRICS

Metrics/Review of In-house Engagement Choices: One law department describes a process that includes assessing why in-house lawyers are selecting certain firms within their preferred network. In specific, the law department has around 13 firms that perform around 90% of the company's legal work. The law department invited some of these firms in to meet with in-house practice groups. The in-house groups described their work and challenges and the firms were asked to provide ideas on how they could better serve the corporate client and to share why their firm was best suited to handle this work. The law department executive then tracked usage of firms that had these meetings—if they weren't receiving a higher percentage of work, what was the reason for this? Is it because in-house lawyers are comfortable with what they know or another reason?

Metrics/Surveys of Outside Counsel: One law department described a process for rating its premier law firm service providers that includes having in-house lawyers complete a survey. Among the criteria in-house lawyers rate firms on are: adherence to premier law firm billing guidelines, managing resources to staff matters appropriately, timely response, communication, accurate and meaningful advice, cost consciousness, knowledge of company business process, knowledge of laws and regulations, fostering collaboration, achieving desired outcomes, anticipating issues outside of assigned tasks, diversity and overall quality of work.

Metrics/Surveys of In-House Counsel by Premier Law Firms: One participant described asking premier law firms to complete surveys on performance of in-house lawyers. In-house lawyers were rated as a group, and surveys were conducted on an anonymous basis with results of all firm assessments compiled so that the law department could not view what lawyer or firm was rating its in-house lawyers. Criteria included in the survey include ratings on: fostering collaboration, knowledge of company business, knowledge of laws and regulations, being actively engaged in assigned matters, leadership, judgment, analytical skills, legal instinct, communications, encouraging diversity, managing expenses and more.

Metrics/Law Department Time Keeping: Participants discussed whether they require in-house staff to keep timesheets. One participant noted viewing a survey that shows that only about 20% of in-house law departments track time. One participant noted that his law department tracks time but that it isn't very helpful. Some participants noted that tracking time can be positive to help demonstrate comparative costs of in-house counsel and to help build a business case for allocating resources.

Metrics/Law Department's Value: Participants described interest in metrics to show that the law department adds value. Among the ideas shared are: number of matters handled by the law department, cost of legal support per revenue of the business client, outside counsel spend/business unit, bills/legislative initiatives defeated, percent of spend compared to previous years internal client surveys.

## VALUES IN VALUE: PRO BONO

Values/Pro Bono: Several participants discussed importance of pro bono and law department's commitment to pro bono even during difficult economic times. Concept is that it is important to stay uplifted, create meaningful work that energizes staff and keeps them connected to the community, and develops new skill sets. The focus on value and values, and pro bono is an important part of this.