



705 Effective Budgeting for the Law Department

Hanna Hasl-Kelchner
Associate General Counsel
Lorillard Tobacco Company

Carl C. Straub Jr.
General Counsel
Photon Dynamics, Inc.

Robert J. Thomas
Vice President, Strategic Development
Serengeti Law

Faculty Biographies

Hanna Hasl-Kelchner

Hanna Hasl-Kelchner is currently associate general counsel at Lorillard Tobacco Company in Greensboro, North Carolina, where she serves as a member of its brand integrity group and is national counsel for Lorillard's trademark infringement litigation.

She is also a former adjunct professor at the Duke University Fuqua School of Management. Ms. Hasl-Kelchner began her legal career in Washington, DC, spanning private government practice, including the U.S. International Trade Commission where President Reagan decided one of her cases. After, she moved to in-house practice developing a diverse portfolio of increasing responsibility at Degussa Corporation, a subsidiary of Frankfurt based Degussa AG, and at Reichhold, Inc., a subsidiary of Tokyo based Dainippon Ink and Chemicals.

She serves on the advisory board of WeComply, Inc., and the editorial board of the Journal of Business Ethics Education. Her new book, *The Business Guide To Legal Literacy: What Every Manager Should Know About the Law* (Jossey-Bass, 2006), has been featured in Newsweek, the Chicago Tribune, Dallas Morning News, 800-CEO-READ, Investor's Business Daily, Crain's Chicago Business, and by ABC News columnist Rob Rosner in his Working Wounded column. It's designed to help clients understand the role of law as a strategic business tool and to earn counsel a seat at the table.

She earned her undergraduate degree from Duke University, an MBA from Cornell University, and her law degree from the Rutgers University School of Law - Camden, where she won awards for her advocacy skills.

Carl C. Straub Jr.
General Counsel
Photon Dynamics, Inc.

Robert J. Thomas

Robert J. Thomas is vice president, strategic development for Serengeti Law in Bellevue, Washington. He was an architect of Serengeti's online matter management system, which includes electronic bill processing, budget tracking, contract management, and reporting. Serengeti Tracker is the top-ranked system for both e-billing and matter management in recent law department technology surveys, and is currently used by over 8,000 in-house counsel to work with their law firms in more than 125 countries.

Prior to joining Serengeti, Mr. Thomas had many years of diverse experiences as a practicing attorney. He worked on complex litigation and corporate finance transactions for the largest commercial law firm in Seattle, after which he handled international transactions with a Japanese law firm in Tokyo. He also managed complex litigation and acquisitions for large corporate clients of the Seattle law firm of Stokes Lawrence. He served as managing partner of the firm, and coordinated national projects involving teams of both in-house and outside counsel.

Mr. Thomas created the ACC/Serengeti Managing Outside Counsel Survey, and is the author of the 150+ page annual survey report. The report analyzes the latest statistics regarding the techniques used by hundreds of law departments to manage their work with outside counsel. He is a widely published author and frequent speaker on the use of technology by in-house counsel. His articles have appeared in the ABA Law Practice Management, ACC Docket, ILTA's Peer-to-Peer, and Risk Management.

Mr. Thomas received his undergraduate degree with honors from Princeton University, and his law degree from Stanford Law School, where he was a member of the Stanford Law Review.



What is “effective” budgeting?

- **Accurate forecast**
- **Accepted and approved by management**
- **Dynamic process**



Greater Expectations

The Good Old Days:

Just add 15% to last year's budget

Brave New World:

Everyone, including legal is being cut by 10%

Bottom Line:

Law departments must “sell” their budgets



Old Excuses Wearing Thin

“We can’t control who sues us, what the regulators will do, etc.”

“Other Departments cause our legal spending to change.”

“On legal projects, you have to spend whatever it takes to get the job done.”



Forecast vs. Reality

Legal Bill = f(actual work performed)

Budget Forecast = f(business needs)

Disconnects = f (changing needs + failure to communicate and document changes)



Nailing Down Jell-o

Predicting the Unknowable:

- Core work
- New work driven by strategic business decisions
- Extraordinary “one-off” projects

Engaging management in the process:

- Communicate



Building Blocks of the Future

- Historical spending/ law firm project budgets
- Identifiable trends
- Foreseeable areas of change
- Legal literacy and knowledge management



Staying on Track

- Tracking actual spending/ role of metrics
- Reforecasts – frequency/ scope
- Adjustments within categories
- Transferring among categories
- Alternate fee arrangements



Conclusion

Effective budgeting operates on a macro and a micro level:

- Micro level – nitty gritty cost containment
- Macro level – as a cost center it provides an opportunity for touting the value of the legal department.

Focusing on Legal's strategic role in protecting the long-term success of the business transforms the legal budget from a "cost" into an investment in sustainability and make it easier for management to accept the budget.

Controlling Litigation Costs

Carl C. Straub Jr.
General Counsel
Photon Dynamics, Inc.

Managing Litigation Costs

- Key is to manage not control
- Starts with early cost and risk analysis
- Evolves through day to day decisions
- Ends with favorable decision
- Staged process (see Template)

Basics

- Develop Budget
 - Staged budget with decision points
 - Essential to evaluating decision to litigate
 - Bad budget drives bad decisions in risk analysis
- Understand case theme
- Difficult in evaluating what tact opposing counsel will take an impact on costs and budget
- Impose your risk management theories for case on outside counsel.
- Formulate strategy for case management and costs with Outside counsel

In House Role

- Control records
- Vent witness statements
- Identify witnesses
- Interface with the business unit
- Be a skeptic until it is time to be an advocate
- Witness preparation
- Trial support

Managing outside Counsel

- If no existing counsel conduct interviews
 - right horse for the course
- Trial experience in your venue
- Negotiate the engagement letter
- Review team mix and rates
- Your role as second or third chair?
- Review update and evaluate strategy often
- look for decision points

Tips for managing Costs

- Discovery can be a runaway train with out control by in house counsel
- Attorney communications eliminate the barbs
- No extensions of time
 - it is my commitment to outside counsel and their commitment to me
- Be prepared only disrupt business units once
- Summary Judgments
- Court participation

Prepare for Unknown

- Discovery team
- Litigation Hold letter
- Accounting issues
- Responses to Auditor Letters
- Insurance reimbursement & coverage issues
- Trial costs usually underestimated
 - Budget for 12 hours per day and weekends with increase in personnel by 25%
 - Pocket briefing other research costs.

Law Department Budget Template

Core Work	FY02	FY03	FY04	FY05	FY06	FY07 (Budget)
Collections						
Contracts						
Human Resources						
Lobbying						
Product Liability Litigation						
Real Estate						
Regulatory						
Other						
Subtotal: Core Work	\$0	\$0	\$0	\$0	\$0	\$0
Strategic Trends						
Mergers & Acquisitions						
Non-compete Issues						
Subtotal: Strategic Trends	\$0	\$0	\$0	\$0	\$0	\$0
Base Business (Core Work & Strategic Trends)	\$0	\$0	\$0	\$0	\$0	\$0
Extraordinary Projects						
Antitrust Litigation						
Bank Financing						
Consumer Class Action						
Bank financing						
Major Customer Bankruptcy						
Subtotal: Extraordinary Projects	\$0	\$0	\$0	\$0	\$0	\$0
Total Legal Spending (Base Business & Extraordinary Projects)	\$0	\$0	\$0	\$0	\$0	\$0

Law Department Budget Template

Core Work	FY02	FY03	FY04	FY05	FY06	FY07 (Budget)
Collections						
Contracts						
Human Resources						
Lobbying						
Product Liability Litigation						
Real Estate						
Regulatory						
Other						
Subtotal: Core Work	\$0	\$0	\$0	\$0	\$0	\$0
Strategic Trends						
Mergers & Acquisitions						
Non-compete Issues						
Subtotal: Strategic Trends	\$0	\$0	\$0	\$0	\$0	\$0
Base Business (Core Work & Strategic Trends)	\$0	\$0	\$0	\$0	\$0	\$0
Extraordinary Projects						
Antitrust Litigation						
Bank Financing						
Consumer Class Action						
Bank financing						
Major Customer Bankruptcy						
Subtotal: Extraordinary Projects	\$0	\$0	\$0	\$0	\$0	\$0
Total Legal Spending (Base Business & Extraordinary Projects)	\$0	\$0	\$0	\$0	\$0	\$0

Description	Estimated per Unit External Fees/Costs	Estimated Hours	Rate per Hour	Multiplier	Per Unit Out of Pocket Costs	Total External Out of Pocket Fees & Costs	Internal Costs	Total Fees and Costs
Pre-discovery								\$84,000.00
Discovery								\$272,500.00
Pretrial								\$242,600.00
Trial								\$514,600.00
Post-Trial								\$92,000.00
Appeals								
Total								\$1,205,700.00

Budgeting in litigation is of necessity an exercise requiring assumptions and, in some cases, sheer speculation, especially at the outset of the case. A pro forma budget tool will be of little use unless: 1) It is tailored to the specific case; 2) It is revised as new information develops during the course of the case; and 3) It is used as a tool for discussing rough risk assessment, not as a hammer for second-guessing. Just as competent representation cannot ignore the realities of cost projections, successful litigation management will be measured by more than cost control. To the extent a good working budget has taken some of the surprise out of the process, client and counsel will both be well served.

Nossaman Template for Litigation Budget Analysis
(EXAMPLE ONLY)
PRE-DISCOVERY
(Moderately Complex Case)

Nossaman Template for Litigation Budget Analysis
(EXAMPLE ONLY)
PRE-DISCOVERY
(Moderately Complex Case)

	A	B	C	D	E	F	G	H	I	J
	Description	Estimated per Unit External Fees/Costs	Estimated Hours	Rate per Hour	Multiplier	Per Unit Out of Pocket Costs	Total External Out of Pocket Fees & Costs	Internal Costs		Total Fees and Costs
1										
2										
3	Initial Meetings / Discussions	\$2,250	5	\$450	2		\$4,500			\$4,500
4	Review Complaint	\$700	2	\$350	1		\$700			\$700
5	Client Interviews	\$3,500	10	\$350	1		\$3,500			\$3,500
6	Witness Interviews	\$600	2	\$300	5		\$3,000			\$3,000
7	Senior Management Time									\$0
8	Legal Hold Team									
9	Record locators									
10										
11	Responsive Motions									
12	Denumer	\$26,750	75	\$350	1	\$500	\$26,750			\$26,750
13	Motion to Dismiss / Strike	\$0					\$0			\$0
14	Answer/Cross-Complaint	\$4,500	15	\$300	1		\$4,500			\$4,500
15										
16	Early Case Plan and Evaluation									
17	Draft Matrix of Legal Claims, Defenses and Elements, and Research for same	\$8,750	25	\$350	1		\$8,750			\$8,750
18	Develop Initial Discovery Plan	\$1,750	5	\$350	1		\$1,750			\$1,750
19	Initial IT Issues	\$2,000	5	\$400	1		\$2,000			\$2,000
20	Internal Document Gathering	\$3,000	10	\$300	1		\$3,000			\$3,000
21										
22	Documents									
23	Identify sources of documents	\$1,750	5	\$350	1		\$1,750			\$1,750
24	Legal Hold letter	\$0					\$0			\$0
25	Secure documents to produce	\$12,000	40	\$300	1		\$12,000			\$12,000
26										
27	Internal Documents	\$0					\$0			\$0
28	Initial Case Evaluation	\$7,000	20	\$350	1		\$7,000			\$7,000
29										
30	COSTS	\$800				\$4,800	\$4,800			\$4,800
31										
32	TOTAL - Pre-Discovery									\$84,000

Cell: B1
Comment: (e.g. Witness)

Cell: D1
Comment: (Blended Partner/Associate)

Cell: E1
Comment: (Blended Partner/Associate)

Cell: F1
Comment: (e.g., Vendors)

Cell: H1
Comment: (e.g., Management)

Cell: J1
Comment: (Blended Partner/Associate)

Cell: A30
Comment: (e.g. e-discovery, preserve hard drives for e-doc vendor)

Cell: B30
Comment: (per hard drive)



Nossaman Template for Litigation Budget Analysis
(EXAMPLE ONLY)
DISCOVERY
(Moderately Complex Case)

Nossaman Template for Litigation Budget Analysis
(EXAMPLE ONLY)
DISCOVERY
(Moderately Complex Case)

	A	B	C	D	E	F	G	H	I
	Description	Estimated per Unit External Fees/Costs	Estimated Hours	Rate per Hour	Multiplier	Per Unit of Out Pocket Costs	Total Out of Pocket Fees & Costs	Internal Costs	Total Fees and Costs
1									
2									
3	External Time								
4	Initial Written Discovery								
5	Propounded	\$6,000	20	\$300	1		\$6,000		\$6,000
6	Responding	\$12,000	40	\$300	1		\$12,000		\$12,000
7	Depositions	\$10,750	25	\$350	5	\$2,000	\$53,750		\$53,750
	Discovery								
	Disputes/Motions/Meet and Confer (Ongoing revisions to budget)	\$60,000	200	\$300	1		\$60,000		\$60,000
8									
9	Further Written Discovery	\$6,000	20	\$300	1		\$6,000		\$6,000
10	Further Depositions	\$7,250	15	\$350	5	\$2,000	\$36,250		\$36,250
11	Document Review	\$10,000	50	\$200	5		\$50,000		\$50,000
12									
13	Internal Time								
14	Lead lawyer	\$0			1		\$0	\$0	\$0
15	Support	\$0			1		\$0	\$0	\$0
16	Business Unit Record Keeper	\$0			1		\$0	\$0	\$0
17									
18	COSTS	\$2,500			5	\$12,500	\$12,500		\$12,500
19	Discovery vendor fees	\$1,000			36		\$36,000		\$36,000
20	TOTAL - Discovery								\$272,500

- Cell: B1
Comment: (e.g., per Witness)
- Cell: D1
Comment: (Blended Partner/Associate)
- Cell: E1
Comment: (Blended Partner /Associates)
- Cell: F1
Comment: (e.g., vendors)
- Cell: H1
Comment: (e.g., management)
- Cell: I1
Comment: (Blended Partner/Associate)
- Cell: A7
Comment: (Includes prep to take and single day of testimony.)
- Cell: D7
Comment: (increase for more important/difficult witnesses, e.g., party or technical expertise)
- Cell: A11
Comment: 10,000 pages @ 200 page decisions per hour
- Cell: A18
Comment: (prepare and produce e-docs)
- Cell: B18
Comment: 10,000 pages per unit
- Cell: F18
Comment: + prepare, process and produce @ \$.25 per page

Photon, Litigation Budget.XLS



Photon, Litigation Budget.XLS



Nossaman Template for Litigation Budget Analysis
(EXAMPLE ONLY)
OTHER PRE-TRIAL COSTS
(Moderately Complex Case)

	A	B	C	D	E	F	G	H	I
	Description	Estimated per Unit External Fees/Costs	Estimated Hours	Rate per Hour	Multiplier	Per Unit of Out of Pocket Costs	Total Out of Pocket Fees & Costs	Internal Costs	Total Fees and Costs
1									
2									
3	Further Client Interviews	\$1,200	3	\$400	3		\$3,600		\$3,600
4	Further Document Review	\$14,000	40	\$350	1		\$14,000		\$14,000
5									
6	Revised Case Evaluation	\$8,500	20	\$425	1		\$8,500		\$8,500
7									
8	Pre-Trial Motions								
9	Summary Judgment / Adjudication	\$48,000	120	\$375	1	\$3,000	\$48,000		\$48,000
10	Misc Motions	\$10,500	30	\$350	1		\$10,500		\$10,500
11	Misc Tasks	\$14,000	40	\$350	1		\$14,000		\$14,000
12									
13	Experts								
14	Interview/Select/Disclose	\$12,000	20	\$400	1	\$4,000	\$12,000		\$12,000
15	Prepare for Deposition	\$12,000	20	\$400	3	\$4,000	\$36,000		\$36,000
16	Attend Deposition	\$5,000	10	\$400	3	\$4,000	\$24,000		\$24,000
17	Opponent's Experts	\$24,000	50	\$400	3	\$4,000	\$72,000		\$72,000
18									
19	COSTS								
20	TOTAL - Pretrial								\$242,600
21									
22									

Nossaman Template for Litigation Budget Analysis
(EXAMPLE ONLY)
OTHER PRE-TRIAL COSTS
(Moderately Complex Case)

Cell: B1
Comment: (e.g., per Witness)

Cell: D1
Comment: (Blended Partner/Associate)

Cell: E1
Comment: (Blended Partner/Associate)

Cell: F1
Comment: (e.g., vendors)

Cell: H1
Comment: (e.g., Management)

Cell: I1
Comment: (Blended Partner /Associates)

Cell: A4
Comment: (highly variable)

Cell: A10
Comment: (Bifurcation)

Cell: A11
Comment: (e.g. mediation)

Cell: A17
Comment: (Prep and Take)

Cell: A19
Comment: (e.g. e-doc Vendor)



Nossaman Template for Litigation Budge Analysis
(EXAMPLE ONLY)
TRIAL
(Moderately Complex Case)

	A	B	C	D	E	F	G	H	I
	Description	Estimated per Unit External Fees/Costs	Estimated Hours	Rate per Hour	Multiplier	Per Unit Out of Pocket	Total Out of Pocket Fees & Costs	Internal Costs	Total Fees and Costs
1									
2									
3	In Limine Motions	\$35,000	100	\$350	1		\$35,000		\$35,000
4									
5									
6	Trial Brief	\$17,500	50	\$350	1		\$17,500		\$17,500
7									
8	Jury Instructions/Related Briefs	\$30,000	80	\$375	1		\$30,000		\$30,000
9	Responsive Motions								
10	Case Management Conference/ADR	\$4,500	10	\$450	1		\$4,500		\$4,500
11									
12	Witness Preparation	\$3,200	8	\$400	8		\$25,600		\$25,600
13	Opposing/Cross per witness	\$10,500	30	\$350	1		\$10,500		\$10,500
14									
15	Deposition/Discovery Review	\$17,500	50	\$350	1		\$17,500		\$17,500
16									
17	Exhibit Review/Preparation	\$30,000	100	\$300	1		\$30,000		\$30,000
18									
19	Experts								
20	Prepare Cross-Examination	\$10,000	25	\$400	3		\$30,000		\$30,000
21	Prepare Direct	\$6,000	15	\$400	3		\$18,000		\$18,000
22	Animation/Exhibit Vendor Costs	\$80,000			1	\$80,000	\$80,000		\$80,000
23									
24	Trial	\$4,800	12	\$400	45		\$216,000		\$216,000
25	COSTS						\$0		\$0
26	court costs			450	15		\$6,750		\$6,750
27	Expert Witness Fees								
28	TOTAL - Trial								\$514,600
29									

Nossaman Template for Litigation Budge Analysis
(EXAMPLE ONLY)
TRIAL
(Moderately Complex Case)

Cell: B1
Comment: (e.g., per Witness)

Cell: D1
Comment: (Blended Attorney/Associate)

Cell: E1
Comment: (Blended Partner/Associate)

Cell: F1
Comment: (e.g., vendors)

Cell: H1
Comment: (e.g., management)

Cell: I1
Comment: (Blended Partner/Associate)

Cell: C3
Comment: (total)

Cell: A12
Comment: per Witness

Cell: C12
Comment: (per witness)

Cell: A24
Comment: (2 lawyers at 15 days, 1 in office)

Cell: C24
Comment: (per day per lawyer)

Cell: E24
Comment: (3 lawyers x 15 days)

Cell: A25
Comment: (e.g. e-doc Vendor)



Nossaman Template for Litigation Budget Analysis
(EXAMPLE ONLY)
POST TRIAL
(Moderately Complex Case)

	A	B	C	D	E	F	G	H	I
	Description	Estimated per Unit External Fees/Costs	Estimated Hours	Rate per Hour	Multiplier	Per Unit of Out of Pocket Costs	Total Out of Pocket Fees & Costs	Internal Costs	Total Fees and Costs
1									
2									
3	Fee Motion	\$24,000	80	\$300	1		\$24,000		\$24,000.00
4									
5	Motion for New Trial	\$28,000	80	\$350	1		\$28,000		\$28,000.00
6	Responsive Motions								
7	Motion for Verdict Notwithstanding the Jury	\$18,000	60	\$300	1		\$18,000		\$18,000.00
8									
9	Appeal								
10									
11	COSTS								
12	Trial Transcripts					8000			\$8,000.00
13	Continued Discovery Costs	1000			14	10,000	\$14,000		\$14,000.00
14	TOTAL - Post Trial								\$92,000.00
15									
16									
17									
18									

Nossaman Template for Litigation Budget Analysis
(EXAMPLE ONLY)
POST TRIAL
(Moderately Complex Case)

Cell: B1
Comment: (e.g., per Witness)

Cell: D1
Comment: (Blended Partner/Associate)

Cell: E1
Comment: (Blended Partner /Associate)

Cell: F1
Comment: (e.g., vendors)

Cell: H1
Comment: (e.g., Management)

Cell: I1
Comment: (Blended Partner /Associate)

Cell: A11
Comment: (e.g. e-doc Vendor)

