



605:Implementing Alternative Fee Structures—Real Life Experiences

Jeffrey W. Carr
Vice President, General Counsel & Secretary
FMC Technologies, Inc.

Marla S. Persky
Deputy General Counsel
Baxter Healthcare Corporation

Hans U. Stucki
Partner
Holland & Knight LLP

Faculty Biographies

Jeffrey W. Carr

Jeffrey W. Carr is FMC Technologies, Inc.'s vice president, general counsel, and secretary. Mr. Carr has extensive experience in commercial and corporate counseling, corporate governance and compliance, dispute resolution including mediation, arbitration, and litigation, negotiations involving international joint ventures, acquisitions, divestitures, privatizations, international trade law, customs, and export control. In addition, he is the corporate attorney responsible for the design and implementation of the ACES™ risk/reward law firm engagement model (patent pending), the FMC Technologies Corporate Compliance Program, an intranet legal support program, and an internet/intranet/extranet customer and law firm collaboration model know as 1st Law™.

Prior to his current position, Mr. Carr was the associate general counsel for FMC Corporation and was responsible for the legal affairs of the company's energy and airport systems business groups. He joined FMC Corporation as international counsel and then associate general counsel for the energy systems group. Prior to joining FMC, Mr. Carr practiced international trade law in Washington, DC with Willkie Farr & Gallagher and Wald Harkrader & Ross and was a judicial law clerk to the Honorable Murray M. Schwartz (USDC-Del). He also founded and managed International Advisory Services Group, Ltd., an international trade policy, investment banking, and commercial consulting firm with offices in Washington, Prague, and Manila.

Mr. Carr is a frequent contributor to legal publications and speaker at continuing education programs on issues including international joint ventures, corporate compliance, and creating new delivery systems for the delivery of in-house legal services and is an active participant in ACCA, MAPI, CLO21 and the LawPartnering Council. Mr. Carr received a Lexis-Nexis Distinguished Legal Services Award in 2002 for his innovative legal delivery services ideas.

Mr. Carr received his BA from the University of Virginia, with honors and his law degree with honors from the Georgetown University Law Center where he was an articles editor for *Georgetown Law Journal*. In addition, while at Georgetown, he completed over 30 hours of post-graduate study in the areas of international economics and foreign policy.

Marla S. Persky

Marla S. Persky is deputy general counsel for Baxter Healthcare Corporation, the principal operating subsidiary of Baxter International Inc., a global medical services and products company. Ms. Persky has held numerous positions including managing global legal services for two of the company's four major business groups, acting as general manager of an acquired company while integrating into an existing operating group, and assistant corporate secretary; and chief litigation counsel managing global mass torts and other litigation for the company. She currently is a member of the executive management team of Baxter's renal business group where she participates in business and strategic planning and development. She also leads an international team of lawyers who provide legal services for the renal business. As deputy general counsel, Ms. Persky sets strategy and helps the general counsel manage operations of the worldwide legal function. She also oversees all global litigation, regulatory law, and e-business/privacy legal issues.

Prior to joining Baxter, Ms. Persky practiced with the Chicago firm of Lurie, Sklar & Simon, Ltd. where she specialized in the representation of healthcare organizations and professionals. Before entering the practice of law, Ms. Persky worked in sales for the Colgate-Palmolive Company.

Ms. Persky has helped organize Baxter's pro bono initiative that includes support of the Illinois Prairie State Legal Foundation, teaching law and legal principles to elementary and secondary public school children for the Constitutional Rights Foundation, and staffing a naturalization clinic for the Midwest Immigrant and Human Rights Center. She has written numerous articles on legal issues affecting the health care environment published in legal journals, texts, and practice guides. She is a recipient of the Illinois State Bar Association Lincoln Memorial Writing Award.

Ms. Persky received a BS from Northwestern University and her JD from Washington University School of Law.

Hans U. Stucki

Hans U. Stucki is a partner in the firm of Holland & Knight LLC in Chicago, where he handles complex labor, employment, and general business litigation for major corporations on a nationwide basis.

Prior to returning to private practice, Mr. Stucki was in-house litigation counsel at United Air Lines and senior litigation counsel at Motorola, Inc. While at Motorola, Mr. Stucki founded and developed a staff of six attorneys who actively litigated approximately 80% of the company's cases in-house. He also pioneered in the development and institutionalization of numerous litigation quality systems benchmarked by other Fortune 100 companies, including an alternate dispute resolution system, an early case analysis process and a case cycle management system utilizing numerous imaginative alternate fee arrangements.

He served as chair of ACCA's Litigation Committee and was recipient of the ACCA Townsend Award as Member of the Year. Mr. Stucki regularly renders pro bono service for the Volunteer Lawyer's Program of Lake County Illinois and Chicago Volunteer Legal Services Foundation.

He is a graduate of Ohio State University and the University of Notre Dame School of Law.

Fixing The Relationship: Economic Models That Work

August 6, 2003

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Innovative Technologies, Creative Solutions

FMC Technologies

Zen and the Business of Law

- **If I refuse to re-use work, I am inefficient**
- **If I am inefficient, I can bill more hours**
- **If I bill more hours, I can make more money**
- **If I bill more hours to make more money, I have less time for the other things in life**
- **If I have less time for the other things in life, I am unhappy**

The Disconnect

- It's not about brochures, names or ads, it's about attitude
- It's not about golf, it's about practical solutions
- It's not about "interesting questions" or perfect memos, it's about helping us make informed business decisions
- It's not about "full-service" or doing everything for us, it's about the right tool for the job -- no more, no less
- It's not about hourly rate discounts, it's about efficiency in obtaining the desired result
- It's not about your *cost* of services, it's about the *value* of your services
- It's not about your inability to predict, it's about sharing risks and rewards

A Dysfunctional Relationship

Law Firms

Escalating costs
 Pass-through billing
 Profit maximization
 Proliferation of firms
 One-stop shopping
 Control/Autonomy
 Relationship Marketing

In-house Lawyers

Make or Buy Decisions
 Cost Containment
 Value Realization
 Convergence/Leverage
 Right Tooling
 Teaming/Staffing
 Counsel Selection Tools

In a world where in-coming associates can make significantly more than the battle-hardened in-house counsel, the delivery systems for legal services must adapt to new realities

THE BILLABLE HOUR



The Call Becomes a Clamor

- Billable hour expectations have had a deleterious effect on the profession and quality of life. ABA Commission on Billable Hours Report , 2002
- Many an hour is billed in the name of “zealous representation” when, in fact, “good enough” is what the client needs and wants
- Corporate counsel roundly despise the billable hour and demand alternative fee structures
- Fee auditing, UTMBS, and auctions arise – polarizing the parties into buyer vs. vendor positions

The Sanctity of the Billable Hour

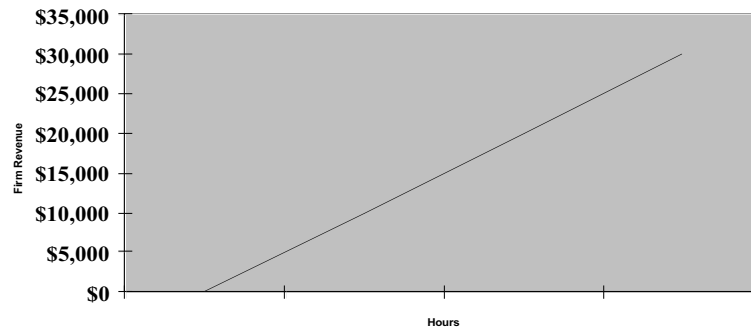
- ACCA and ABA surveys indicate that only 15%-20% of engagements utilize alternative fee structures
- Interlocking and reinforcing pressures permit the hour to reign supreme
 - Inertia, complacency & experience
 - Simplicity and consistency
 - Firm profit enhancement without risk
 - Avoids conflict over value of service
 - Permits metrics and measurement

The Problem

- *Divergence* of interests between clients and firms
- Corporations don't want to buy what a firm considers it's inventory (hours)
- Absent some overriding strategic goal/interest, corporations need lowest total disposition costs in the shortest possible time
- Corporations don't care what the law firm "cost plus" structure is – they want all suppliers to be cost effective

Divergent Interests

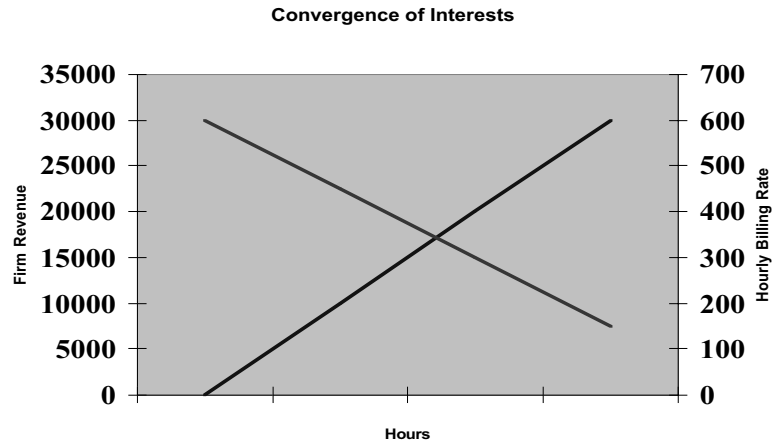
Maximization of Revenue



The Challenge

- **Convergence** -- Inside and outside objectives intersect at one point – to successfully obtain the corporate objective
- Elimination of the billable hour has proven to be unfeasible
- Can the dissonance of convergence and divergence be resolved?

Alignment of Interests



FMC Technologies

A Solution

- What law firms sell, and the way they sell it, must change
- The firm's interests should change to maximization or realization rates – not hours
- Recognize and Maintain the sanctity of the billable hour

Re-structure the engagement of counsel to make the firm a stakeholder in success, to focus on the point of convergence, and to ensure alignment of goals and objectives

Partnering with Client

- **Provide Solutions, not products or services**
- **Understand what you are selling and what the customer wants**
- **Understand your customer's problems beyond your own product**
- **Understand what your customer does with your product or service, and either change it, do it for them, or help them with it**
- **Price in terms of value rather than cost**

M Hammer "The Agenda"

Enlightened Relationships

- **A higher effective hourly rate for fewer hours**
- **Pay for success – a substantial portion of the firm's profit should be at risk**
- **No cost plus bills; include internal costs in rates -- promotes efficiency & cost control**
- **Leverage 3^d party vendors for cost control**
- **Structure should ensure law firm makes decisions aimed at prevailing efficiently**

FMC Technologies—Solution



- **“Alliance Counsel Engagement System”**
- **Proprietary – Patent pending**
- **Aligns objectives and interests**
- **Provides for flexibility in achieving success**

The ACES™ Toolbox

- **ACES – matter specific engagements – approx 20% of fees at risk – bonus of 0-300% depending upon success & efficiency**
- **ACES² – Team-enabling model to share savings below benchmarks**
- **ACES LT – for long term retainers or projects; 20% of fees at risk, 0-200% bonus based on “report card”**
- **Inside ACES – Bonus for in-house counsel; 0-20% of base salary in light of “report card”**

ACES LT (for long term)

- **If you're dissatisfied, don't just fire the firm – give them meaningful feedback on performance**
- **Performance based pay is the best communication medium**
- **For engagements on an hourly, retainer, or fix fee basis**
 - **Pay 80% of fees billed – 0-200% of the 20% retained in the “at risk” bucket is paid based on periodic performance “report card”**
 - **Criteria: knowledge; responsiveness; effectiveness; efficiency; predictive accuracy; and goals achievement**

It's simple, elegant, easy and most importantly – it works

Inside ACES

- **Teamwork-based bonus for inside counsel**
- **Continue use of individual performance criteria for annual salary reviews**
- **Teamwork bonus of 0-20% of base salary**
- **Criteria same for entire team**
- **Budget includes 100% funding for Inside ACES bonuses**

Evaluation Criteria

- **Lawfirms**
 - Quality
 - Practicality of advice
 - Reflection of business objectives
 - Leverage work product & knowledge
 - Communication
 - Timeliness
- **Inside**
 - Listen to the customer
 - Create solutions
 - Innovate continuously
 - Maximize value
 - Win with teamwork

Notice that these evaluation criteria are essentially consistent

ACES²

- Team incentive structure
- Benchmark performance target developed (e.g., 20% less than case-weighted average)
- “Ring the bell” and team members share each additional dollar of savings
- Crane “Dream Team” split is 40% to FMC Technologies, 10% to 4 lawfirms and LRC
- Incentivates fact and substance sharing, lowest cost legal research
- Note: firm may receive a bonus without handling a case that year

ACES for litigation – General Concepts

- **Used in situations where rapid resolution is the goal**
- **The model has 4 elements:**
 - **Initial Goal Setting Element**
 - **Phased Targets with incentive to only do that which materially contributes to goal achievement**
 - **Performance Bonus Element**
 - **Efficiency Bonus/Penalty Element**
- **This model stays within the hourly billing unit**
 - **Alignment occurs because the company pays for efficiency and success while the firm realizes a higher effective hourly billing rate (focus on margin, not revenue)**

1st Element - Initial Goal Setting

- **Company must decide the objective of the engagement at the front end**
 - Favorable verdict
 - Verdict below a value (above if plaintiff)
 - Settlement below a value (above if plaintiff)
 - Settlement with other non-litigation elements achieved (e.g., increased commercial sales, discount on future purchases)
 - Injunctive or other equitable relief
- **Decision or risk tree analysis are often used to help define success and where appropriate, quantify it**

2^d Element – Phased Targets

- **Matter is divided into 4-5 distinct phases**
- **Target “budgets” developed for each phase**
 - Up to target, we pay 80% of bill, remainder “at risk”
- **Incentive to only do that which materially contributes to goal achievement**
 - Over the target, we pay 20% of bill, 80% “at risk”
- **Makes the firm responsible for efficient “tactical” implementation and focuses us on the “strategic” determination of setting the objective.**
- **Covenant with the firm to adjust targets for unforeseen developments**

3^d Element -- Performance Bonus

- **If success is achieved, the “at-risk” amount is paid, plus a multiplier (100-25%)**
- **The success multiplier is higher for the early phases (100-75%) and declines over time as the “burn rate” increases (50-25%)**
- **If time is not important and rapid resolution is not an objective, the multiplier can be flat lined (e.g., 50% bonus multiplier) or the downward slope more gentle (e.g., 75%-50% bonus multiplier).**

4th Element—Efficiency Bonus/Penalty

- If underlying target assumptions change, so must the targets (e.g., unreasonable plaintiff attorney or more depositions than expected)
- Flexibility for the firm, but no blank check
- To encourage efficiency, we track the percentage of actual fees to the total matter budget, and that number (positive or negative) gets added to the success multiplier
- The result:
 - An efficient successful firm can earn what's "at risk" bucket + nearly 200%
 - An inefficient firm can recover the "at risk" amount without any additional bonus

Firms React to ACES

- | | |
|---|---|
| <ul style="list-style-type: none"> • Firms Said . . . <ul style="list-style-type: none"> – “My partners won’t accept this” – “I don’t need to do this” – “My accounting system won’t accommodate this” – “You’re crazy, other firms won’t do this” | <ul style="list-style-type: none"> • Our Response . . . <ul style="list-style-type: none"> – “I don’t care” – “You’re fired” – “I’m the client, you’re a vendor” – “You’re right, I am crazy, but I’m not alone” |
|---|---|

ACES provides a platform for true partnering. Firms accepting it are walking their marketing talk

In-House - Resistance is Futile

- **Lawyers Said . . .**
 - “This is too complicated”
 - “This won’t work for patent cases”
 - “This only works for litigation”
 - “I can’t figure how to make this work in my area”
- **Our Response . . .**
 - “Spreadsheet makes it easy”
 - “Look at the eLawForum auction”
 - “This works for anything satisfying the criteria”
 - “Finding a way is in your objectives”

Complacency and status quo is not acceptable. We addressed with the ACES for Insiders “sandbox bonus system”

The FMC Technologies ACES Excel Template

The screenshot displays the ACES Excel Template interface. At the top, there is a menu bar with options like 'Home', 'Tools', 'Setup', 'Storage', 'Page Setup/Printer', 'Close', and 'Help'. Below the menu, the main window contains several data tables and a central logo for 'ACES'. The tables include 'Project Data', 'Link-up Costs', 'Applications, Targets', and a large 'Summary' table with columns for 'Location', 'Target', 'Actual', 'Variance', 'To Target', 'Cost Base', 'A/B', 'Variance', 'Total', 'Cost Base', 'A/B', and 'Variance'. The 'Summary' table is divided into two sections: 'Summary - Total' and 'Summary - Breakdown'. The bottom of the window shows the Microsoft Excel status bar with the file name 'Microsoft PowerPoint - pt...' and the Microsoft Excel logo.



FAQ's

- **Are expenses included?**
 - Not generally, but they can be
 - Utilize other billing procedures to leverage down costs
- **What about local counsel fees?**
 - Yes -- your responsibility to find counsel who with work with you on this basis
- **Will this work for beyond litigation?**
 - Yes – ACES LT works for ANY engagement
 - Yes – ACES works where you meet design criteria:
 - Is there a definable objective?
 - Is timing important?
- **If you focus on alignment of interests and sharing of risks and rewards, you'll get the results**

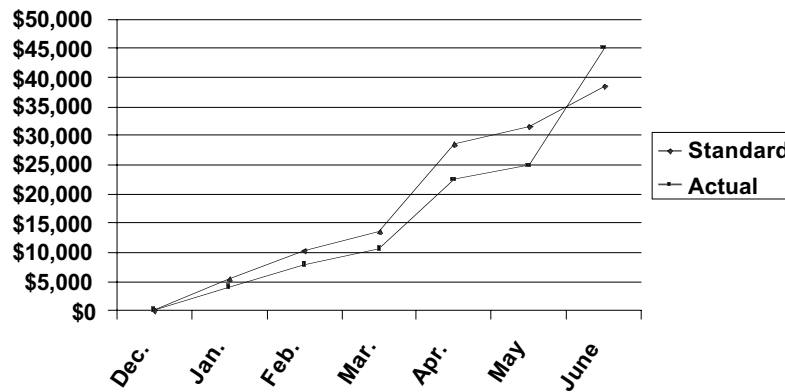
Real Life Experience

- **Virtually any relationship can be based on an ACES-like concept**
 - Litigation (commodity & complex)
 - IP (prep & prosecution)
 - Retainers & projects
 - Transactions
- **Challenges**
 - Linkage to IP value generation
 - The timing problem

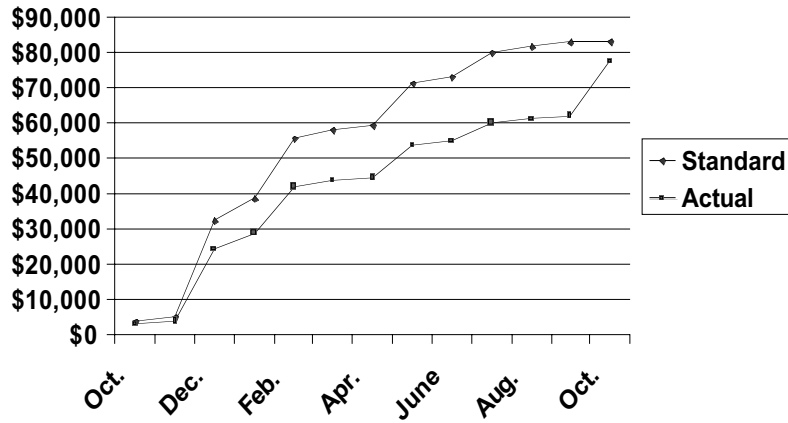
Success Markers

- With 2 years of experience, our “cycle time” for litigation is down
- In one IP litigation matter, the process forced an early assessment resulting in identification of a much lower cost alternative
- We believe over time statistics will show a reduction in total case disposition costs
- Firms, while initially reluctant, have gotten on board – those that haven't are finding other clients while we still have firms knocking on our doors
- We've even used the system in a UK arbitration with an EU firm

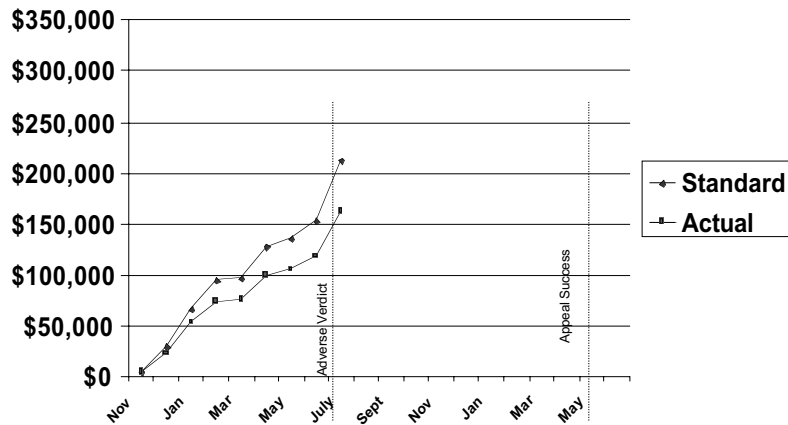
Successful - Dismissal

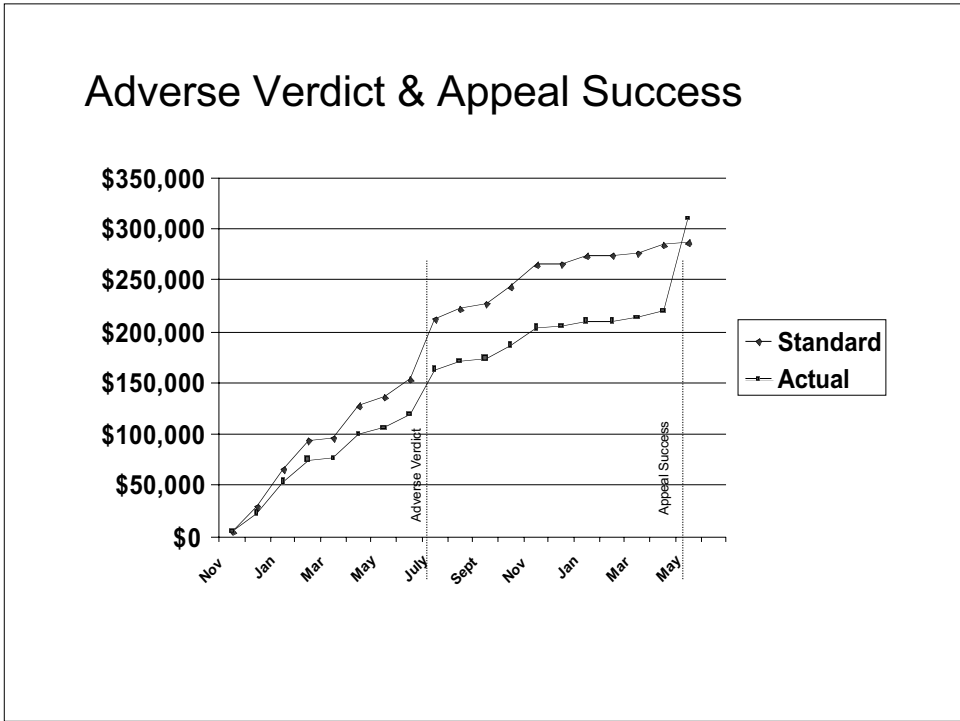


Unsuccessful/Missed Valuation



Adverse Verdict





Conclusion

- We believe the ACES model aligns the objectives of the company and the firms
- We intend to pay firms a higher effective hourly rate – we just want to buy fewer hours and achieve success
- We are committed to using the ACES model wherever feasible (it's not just for litigation)
- We will treat the firms fairly within the ACES model

Resistance is Futile

- You can catch and ride the wave
- You can miss the wave
- You can drown in the riptide
- The choice is yours
- The time is now

“If you dislike Change, you’re going to dislike Irrelevance even More.”

US Army Chief of Staff, Gen. Eric Shinseki

August 6, 2003

An Open Letter to the Law Firms Contemplating Announcement of
their Annual Billable Hour Rate Increases

Dear Managing Partner:

You will probably soon turn to the issue of your firm's billing rates and whether or not to send those cheerful letters extolling the virtues of your firm, committing to being our strategic partner, and expressing how pleased the firm is to be working for clients such FMC Technologies. Those letters usually then progress to a discussion of how you're sure that we understand the compelling need to increase your hourly billing rates. If you haven't yet drafted that letter, I'd ask you to consider the points below. If you have already sent me that letter, please consider these thoughts as you prepare for the discussion we may soon be having

As you may know, we've had a relationship with your firm for some time. Generally speaking, those in your firm working on our matters are committed to customer service and are performing well for us. If that were not the case, you would have heard from us already.

As you may also know, FMC Technologies is firmly committed to partnering with our preferred law firms and implementing cutting edge techniques to foster that relationship. These techniques include our 1^o LawTM program, our ACESTM fee model ("Alliance Counsel Engagement System"), and full integration of the Serengeti Tracker matter/budget/information management ASP platform. Above all, we are committed to giving our outside counsel meaningful direction about expectations and feedback about performance.

We are also committed to finding ways to deliver appropriate legal services better, faster and more cost-effectively to our common customer, FMC Technologies, Inc. Firms that share that commitment and are willing to engage in true partnering relationships will prosper. Those that are not will be culled from our Alliance Counsel portfolio. To that end, all FMC Technologies in-house counsel have been directed to enter into new engagements only under some form of the

ACES™ model and to convert all existing relationships to that system by the end of this year.

In case you are not fully familiar with our ACES™ program, I've attached a short brochure describing the system. It would be impossible for me to understate the importance that your firm generally and particularly those attorneys and staff working on our matters fully embrace these systems. This is all part of our 1^o Law™ system – a system designed to eliminate barriers to collaboration, knowledge and to focus on the cost-efficient delivery of appropriate legal services to the business units of FMC Technologies.

Before you send that letter, I've given some thought as to what your firm can do to serve us better:

- Please reread your promotional material and create internal controls and momentum for cultural change to ensure that the firm “walks” its marketing “talk;”
- Designate one customer care partner to serve as our relationship manager – without charging time to this function;
- Don't cross sell to us unless you make a value proposition where there are true cost reductions and performance gains that accrue to our mutual benefit;
- Implement internal engagement controls so that clients do not need to have separate engagement/relationship discussions. We use frame agreements and master service agreements with our customers and suppliers, and encourage you to do the same in your business;
- Find ways to communicate to us efficiently, cost-effectively and in a format that is user-friendly, as opposed to firm-friendly. For example, a law firm's extra-net provides little, if any, value to us – rather, we need you to push information to our extranet. Similarly, permitting our spider to search your site and perhaps even your server for previous work product is an efficient and effective way to actually start realizing the promise of Knowledge Management.
- Find ways to reduce your costs of providing services to us. You must cut your associate infrastructure and overhead costs. Please understand that, to us, size is not a benefit. Due to increased overhead, this is a valueless cost unless you can demonstrate true efficiencies by re-use of knowledge, prior work product and leveraged buying, and you are willing to share those savings with your customers;

- Eliminate cost-plus pricing. Don't bill us for things that are truly overhead – build those costs into your hourly rates or project costs;
- Don't pass the costs for training your new associates to your clients. Again, this provides little, if any, value to us. We are willing to help you in this regard – for example, we would gladly host young associates in an intern/apprenticeship program;
- Create and propose innovative fee arrangements to your customers. A start might be to embrace and implement our ACES™ program, but we recognize that we do not have a monopoly on creative thought in this area.

In closing, Howell, congratulations on your new position and best of luck in steering you ship. I have often offered to speak to firms at any level: management, practice group, marketing, or young associates. I would make the same offer to you. If you are interested in exploring creative partnering relationships and listening to your customer, let's find a mutually convenient time, place and format.

All the best,

Jeffrey W. Carr
Vice President, General Counsel and Secretary

JWC:yh

cc: David Whitestone
Rick Stevens
Hans Stucki

Enclosures

1. ACES™ Brochure
2. Retention Letter
3. Billing Procedures
4. bcc: All in-house lawyers



INNOVATIVE TECHNOLOGIES, CREATIVE SOLUTIONS

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TM



Alliance Counsel Engagement System

Summary, Availability and Service Package

FMC Technologies, Inc.
Alliance Counsel Engagement System

The ACES™ Model

FMC Technologies has developed a fee structuring model which seeks to align the client's interest in rapid, successful, and cost effective delivery of legal services with a fair compensation model for the outside law firm or legal services provider. This proprietary system, known as the Alliance Counsel Engagement System or the ACES™ Model (*patent pending*), is now available to Law Departments and to Law Firms. In 2002, the ACES™ model received the Lexis-Nexis Distinguished Legal Service Award and has been featured in:

- Corporate Legal Times
- Legal Thought Leader
- ACCA Docket
- Lawyers Weekly USA

The ACES model consists of the following elements

- ACES – This base case is used for matter specific engagements such as litigation or projects – approx 20% of fees at risk – bonus of 0-300% depending upon success & efficiency
- ACES LT – for long term retainers or projects; 20% of fees at risk, 0-200% bonus based on “report card”
- ACES² – Team-enabling model to share savings below benchmarks
- Inside ACES – Bonus for in-house counsel; 0-20% of base salary in light of “report card”

For further information, please contact:

Jeffrey W. Carr
Vice President, General Counsel & Secretary
Legal Team Headquarters
1803 Gears Road
Houston, TX 77067
Tel 281-591-4585
Fax 281-591-4102
jeffrey.carr@fmcti.com



(Litigation and Project Base Case)

This base case model is used for litigation or engagements where there is a definable outcome and where time is of the essence. This model seeks rewards the firm for efficiency and for success achievement of the client's engagement objectives

- Client must define the success criteria – if success is achieved, a bonus is paid to the firm. Decision tree analysis and/or software may be used to assist in the definition of the success criteria for the engagement.
- Client and the firm develop a case/matter budget where the activities in the matter are grouped into four to five major activity categories (e.g., initial pleadings, discovery, mediation/settlement, pre-trial prep, trial; for a transaction, these stages may be initial discussions/MOU; buyer selection; due diligence; contract execution; closing). For each activity a “target budget” is developed.
- The aggregate of the activity targets is the total matter target
- Within each activity grouping, the law firm bills client at its normal hourly rates. Until the target is reached for any particular activity group, FMC pays the firm a percentage (normally 75%) of the billed fees. The unpaid fees (normally 25%) are placed in a success “bucket”.
- Once a target is reached for an activity, the proportion of payment to “bucket” is reversed. As such, the law firm will recover those fees if success is achieved, and will forfeit these fees if success is not achieved. In the normal model, 25% of the fees are paid to the firm and 75% of the fees are placed in the bucket. Some firms may wish to place a greater amount at risk.

- If success is reached, a bonus is paid. The bonus consists of the amount in the bucket **plus** a multiplier. The amount of the multiplier depends upon the point in time when success is achieved and normally is 100% (early stages before substantial expenses incurred), 50% (dispositive motions or ADR) or 25% (trial). This declining multiplier has the effect of paying higher effective hourly rates for early success and lower rates as a matter drags on before resolution. If rapid resolution is not an objective of the engagement, the success fee multiplier can be kept constant at any level from 25%-100%.
- A second level bonus is paid by adding 1% to the bucket multiplier for each 1% of total matter target saving. In other words, if the firm had expended only 40% of the total matter target, there would be an additional 60 percentage points added to the applicable bonus multiplier. Conversely, if the total matter target is exceeded, this becomes a point-for-point penalty, reducing the bucket multiplier by 1% for each percentage point of total matter excess.
- Budget targets are flexible and will be revised to reflect unanticipated events; however, the firm must identify its baseline assumptions and these must be agreed in advance. In the case of litigation, should a matter be resolved at a value higher than the established success criteria (and thus failing to qualify for the success bonus), since the decision to resolve the matter is made by the corporation and not the law firm, the success bonus will be reduced by the percentage amount that the resolution exceeds the defined success criteria.
- ***A Microsoft Excel spreadsheet contains the model for the firm's use and experimentation. The variable values are comprised of the following: targets for each activity; the billing/basket percentage split; and the point-in-time bucket multipliers. These variables will be subject to revision and refinement.***



LT (Long Term)

- Used for retainers or projects where a task-specific objective may be difficult to define or where the primary objective is high quality service in a specific subject matter area or over several projects
- Recognizes that acceleration of resolution may not be appropriate
- Billable hour rate, fixed project fee or retainer amount agreed between the firm and client at outset
- Firm bills in accordance with agreement, however, client pays 80% of bills, and withholds 20%. This withheld amount is the amount placed "at risk"
- The firm may earn a performance-based bonus of 0-200% of "at risk" amount based on the "report card" provided by the client on a periodic basis.
- Evaluation periods agreed with firm (e.g., quarterly, semi-annually, annually, project mid-point, project end)
- Evaluation criteria agreed with firm (e.g., quality, practicality of advice, reflection of business objective, communication, knowledge leveraging and sharing, timeliness, efficiency). Performance "graded" for each criteria as Needs Improvement, Acceptable, Outstanding, Exceptional. The grade

for each criteria can be used in a strictly formulaic fashion to provide an overall score or grade which is then translated into a bonus level.

- This system may be incorporated with an on-line, electronic billing system to ensure contemporaneous assessment as well as capture time-based performance data. For example, in-house counsel might be required to provide the performance assessment before any approved invoice is paid.

2 (a.k.a. ACES for ACES)

Multiple law firm team incentive structure for use in multiple cases of a similar type or a project where several lawfirms are engaged for delivery of various substantive capabilities

- Permits inclusion of other legal service providers (e.g., legal research providers, temporary attorney providers, graphics and presentation experts). Use of these providers encouraged as a way to reduce overall cost of team provided service
- Benchmark performance target developed (e.g., 20% less than matter-weighted average for a portfolio of matters, successful conclusion of a matter below a specified level)
- “Ring the bell” by achieving the target and team members share each additional dollar of savings (e.g., 60% of the savings to the client, 40% percent split among the law firm team members).
- Incentivates fact and substance sharing, lowest cost legal research, etc.
- Note: firm may receive a bonus without handling a case that year

Inside

- Teamwork-based bonus for inside counsel
- May continue use of individual performance criteria for annual salary reviews
- Specific teamwork-driven bonus of 0-20% of base salary based on “report card” to the in-house counsel
- Criteria same for all team members (e.g., communication/teamwork; practicality of advice/reflection of business objectives; innovation; achievement of team goals; removal of barriers/creation of solutions)
- Performance “graded” for each criteria as Needs Improvement, Acceptable, Outstanding, Exceptional. The grade for each criteria can be used in a strictly formulaic fashion to provide an overall score or grade which is then translated into a bonus level..
- Budget should be based on assumption of paying 100% of Inside ACES bonuses to ensure funds “available”



License Terms and Conditions

FMC Technologies to Provide:

- ACES Model
 - Non-transferable, non-assignable license to use the ACES model. Law firm licensees may use the model for any client of the firm. Corporate law department licensees may use the model for the engagement of any firm for the corporate parent, as well as subsidiaries and controlled affiliates.
 - Excel templates for ACES model
 - All updates and revisions for term of license free of charge
- ACES Model User Manual
- In person or webcast training session with interactive workshop
- Telephone, e-mail and internet user group customer support throughout term of license

Pricing

- OPTION 1: Consulting/Training/Upfront License fee of \$5000 (plus expenses) payable upon execution plus running royalty based on 2% of success fees paid by or received by licensee under the ACES model
- OPTION 2: Consulting/Training/Upfront License fee of \$10,000 (plus expenses) payable upon execution plus running royalty based on 0.5% of success fees paid by or received by licensee under the ACES model
- Royalty paid quarterly by Licensee with report of success fees paid
- FMC Technologies shall have rights to audit invoicing or payment records of Licensee to verify success fee report used to calculate the running royalty

Term

- 5 years, renewed on the same terms and conditions automatically unless party seeking to terminate provides 6 months notice
- Terminable automatically by FMC Technologies for non-payment of royalties or facilitation of use by unauthorized third parties
- Terminable by either party with notice of 6 months

Additional Terms

- Licensee acknowledges that this is an FMC Technologies proprietary model and that Licensee will not transfer, sub license, or otherwise assign the model to third parties without the consent of FMC Technologies
- This limited use license will include any improvements to the model devised by FMC Technologies and FMC Technologies will promptly advise Licensee any such improvements.
- Licensee will promptly disclose any improvements to the model devised by Licensee which shall be the property of FMC Technologies but shall be included in the limited use license
- Licensee, its partners, employees, consultant and affiliates, shall be bound by this limited use license and Licensee shall be responsible for any unauthorized use of the ACES model by such parties.

FIRM NAME
MANAGING PARTNER NAME
RELATIONSHIP PARTNER NAME
ADDRESS

Date

Re: Alternative Fee Agreement

Dear MANAGING PARTNER/RELATIONSHIP PARTNER:

Tom and I enjoyed meeting with you to iron out some final aspects of the alternative billing arrangement between FIRM NAME and Baxter as part of the Preferred Provider Program. This letter will memorialize the terms we discussed.

First, FIRM NAME agree that Baxter will receive charges comparable to other clients for which FIRM NAME does comparable volumes of work and has comparable billing arrangements. This "most favored nations" arrangement will be in place and updated as necessary during the term of our relationship. The current base hourly rates charged by FIRM NAME to Baxter will be fixed for each class of attorney (e.g. – 2nd year associate, 3rd year associate, etc.) working on Baxter matters and for those individual attorneys listed on the attached Schedule A for the next two-year period of time.

Litigation

FIRM NAME will submit budgets for all litigation cases currently being handled by your firm. These budgets will include all cases transferred to you, including currently pending non-mass tort P.L. litigation, as well as commercial and patent suits. For product liability cases, the budget will be for the "book" of cases currently pending, although each case's own budget will be particularized. Patent and commercial cases will be aggregated together and form a separate "book" of cases for budgeting purposes. Attachment B to this letter is the budget for all lawsuits subject to this program currently pending at FIRM NAME for the fourth quarter of YEAR. By DATE you will submit the finalized budget for calendar year XXXX. The preliminary budget for the year XXXX should be submitted by September 1, XXXX. That budget will be finalized by December 31, XXXX. The purpose of the preliminary budget is to assist Baxter's attorneys during our annual budgeting cycle with a preliminary view of what should be budgeted for the subsequent year. We do understand, however, that those preliminary budget assumptions will change during the last quarter. Therefore, the final budget for XXXX must be in place by December 31, XXXX.

For cases assigned during the course of a year, you will submit a final budget to the responsible in-house counsel within 90 days of the case assignment. The final budget must be approved by the responsible in-house counsel before submission to me. I will use this budget for tracking and trending purposes.

Litigation budgets will cover all material and reasonably foreseeable costs, fees and expenses associated with the cases including, but not limited to FIRM NAME fees and "soft costs" such as in-house duplication ("FIRM NAME fees") and local fees, court reporter costs, travel expenses, docket fees, etc. ("Outside Costs"). The budgets will also include an estimate of expert witness fees and expenses, the cost of duplication and computerized retrieval systems in connection with large document productions ("Third Party Costs"), but such Third Party Costs shall be separated from the rest of the budget and shall not be subject to the "band of protection", risk sharing, or bonus described below. Rather, Baxter shall be responsible for the full amount of any Third Party Costs incurred..

There will be a 10% "band of protection" for each budgeted matter/book of cases. If, the actual billings (FIRM NAME fees and Outside Costs) exceed the band of protection (110% of budget) as determined at the end of the year true up, FIRM NAME will reimburse Baxter for 25% of all payments made above the band. An alternative which we did not discuss, but which is certainly possible is that once fees and costs exceed the 110% of budget level, all future billings (until the end of the calendar year) will be reduced by 25% thereby, avoiding a payback at year end.

Similarly, should the FIRM NAME fees and expenses and Outside Costs for budgeted matters be below the band of protection (less than 90% of budget), FIRM NAME will receive a 15% bonus of the difference between the actual amount billed Baxter and the bottom of the band of protection (90% of budget).*

We all understand that during the course of litigation untoward events may occur. Therefore, should there be a material change in the assumptions underlying the budget, it will be incumbent upon Baxter and FIRM NAME to negotiate an adjustment (up or down) to the already established budget. In order for this to work, however, it is necessary that when FIRM NAME negotiates its budget with Baxter's attorneys, the underlying assumptions of those budgets must be enumerated in order to avoid confusion later should those assumptions prove to be materially incorrect.

Transactions

FIRM NAME will charge Baxter the hourly rates described in Schedule A less a 10% discount for all transactions. If, however, the transaction fails to close (busted deal) Baxter will pay FIRM NAME only 75% of the attorneys fees incurred. Similarly, for those deals that are completed, FIRM NAME will receive a 10% bonus on its attorney's fees.

We anticipate that certain aspects of a transaction may be subjected to a fixed fee arrangement. On completed deals, the bonus will be paid on non-fixed as well as fixed fees. If a deal is busted the fixed fee component will revert to actual hourly fees billed and Baxter will pay 75% of the non-fixed fees. For ease of understanding the following calculations apply:

* Bonus amounts on litigation can be paid only to the extent that such bonus payments will not jeopardize Baxter's insurance recovery, if any.

Completed deals

No fixed fees: (Actual fees x 110%) + costs

With fixed fees: (Fixed fees + actual fees) x 110% + costs

Busted deals

(Actual fee x 75%) + costs

We discussed that FIRM NAME will bill transactions at the conclusion of the deal, unless the transaction is expected to occur over a prolonged period of time in which case billing will occur monthly or as negotiated between FIRM NAME and the Baxter responsible attorney.

Baxter will pay all non-contested portions of each bill no later than 30 days from receipt of the bill. Baxter will receive payment terms of 4% ten, net 30 days.

If this accurately reflects our agreement, please sign below and return one copy to me.

Tom and I are very excited about what is in store for both FIRM NAME and Baxter as partners in the Preferred Provider process. Thus far things seem to be going quite well and we urge you to continually raise any issues or ideas that will further improve our relationship, as well as the interactions among all the Preferred Providers.

Very truly yours,

BAXTER HEALTHCARE CORPORATION

Marla S. Persky
Deputy General Counsel

Signator for Firm

Date

RELATIONSHIP PARTNERS
 FIRM NAME
 FIRM ADDRESS

Date

Re: Updated Fee Agreement

Dear RELATIONSHIP PARTNERS:

This will set forth the terms of the billing arrangement between Baxter and FIRM NAME as part of the Preferred Provider Program. This letter will memorialize the terms we discussed.

Hourly Rates

First, FIRM NAME agrees that it will not charge Baxter a higher rate than it charges similar clients for work equivalent to the work FIRM NAME performs for Baxter. This "most favored nations" arrangement will be in place and updated as necessary during the term of our relationship. The current base hourly rates charged by FIRM NAME to Baxter will be fixed for each class of attorney (e.g. – 2nd year associate, 3rd year associate, etc.) working on Baxter matters and for those individual attorneys listed on the attached Schedule A effective January 1, 2002 and continuing through December 31, 2003.

Litigation - Budgets

FIRM NAME will charge Baxter the hourly rates described in Schedule A less a 10% discount for all non-budgeted matters. FIRM NAME will submit budgets for all litigation cases handled by your firm where the expected annual attorneys fees will exceed \$50,000 during the budget period. No budget will be required for individual cases or groups of cases where the fees will not exceed \$50,000 (including local counsel fees) for the budget period. These budgets will include all non-mass tort product liability litigation, as well as commercial and patent suits. For product liability cases, the budget will be for the "book" of cases, although each case's own budget will be particularized. Patent and commercial cases will be aggregated together and form a separate "book" of cases for budgeting purposes. The preliminary budget for each calendar year will be submitted by September 1 of the previous year and will be finalized by December 31. The purpose of the preliminary budget is to assist Baxter's attorneys during our annual budgeting cycle with a preliminary view of what should be budgeted for the subsequent year. We do understand, however, that those preliminary budget assumptions may change during the last quarter. In addition, budgets will be updated at least once during the course of the year (no later than August) to reflect changes in assumptions and other circumstances that occur during the year.

For cases assigned during the course of a year, you will submit a final budget to the responsible Baxter attorney within 90 days of the case assignment. The final budget must be approved by the responsible in-house counsel before submission to me. I will use this budget for tracking and trending purposes.

Litigation budgets will cover all material and reasonably foreseeable costs, fees and expenses associated with the cases including, but not limited to FIRM NAME fees and "soft costs" such as in-house duplication ("FIRM NAME fees") and local counsel fees, court reporter costs, travel expenses, docket fees, etc. ("Outside Costs"). The budgets will also include an estimate of expert witness fees and costs and the costs of duplication and computerized retrieval systems in connection with large document productions ("Third Party Costs"), but such Third Party Costs shall be separated from the rest of the budget and shall not be subject to the "band of protection", risk sharing, or bonus described below. Rather, Baxter shall be responsible for the full amount of any Third Party Costs incurred.

There will be a 10% "band of protection" for each budgeted matter/book of cases. If, the actual billings (FIRM NAME fees and Outside Costs) exceed the band of protection (110% of budget) as determined at the end of the year true up, FIRM NAME will reimburse Baxter for 25% of all payments made above the band.

Similarly, should the FIRM NAME fees and Outside Costs for budgeted matters be below the band of protection (less than 90% of budget), FIRM NAME will receive a 20% bonus of the difference between the actual amount billed Baxter and the bottom of the band of protection (90% of budget).*

We all understand that during the course of litigation untoward events may occur. Therefore, should there be a material change in the assumptions underlying the budget, it will be incumbent upon Baxter and FIRM NAME to negotiate an adjustment (up or down) to the already established budget. In order for this to work, however, it is important that when FIRM NAME negotiates its budget with Baxter's attorneys, the underlying assumptions of those budgets be enumerated in order to avoid confusion later should those assumptions prove to be materially incorrect.

Transactions

FIRM NAME will charge Baxter the hourly rates described in Schedule A less a 10% discount for all non-budgeted matters. If such a transaction fails to close (busted deal) Baxter will be entitled to an additional discount equal to 25% of the FIRM NAME attorneys fees billed. Similarly, for those deals that are completed, FIRM NAME will receive a 10% bonus on its attorney's fees. In the event that any aspect of a transaction is subjected to a fixed fee arrangement, the bonus on completed deals will be paid on non-fixed as well as fixed fees. If a deal is busted the fixed fee component will revert to actual hourly fees incurred and the additional discount received by Baxter will be based on the non-fixed fees. At the end of the

* Bonus amounts on litigation can be paid only to the extent that such bonus payments will not jeopardize Baxter's insurance recovery, if any.

contract period, Baxter and FIRM NAME will calculate the total busted deal and bonus payments made to ascertain any imbalance. Should there be a significant imbalance, the parties will make appropriate adjustments.

We discussed that FIRM NAME will bill transactions at the conclusion of the deal, unless the transaction is expected to occur over a prolonged period of time in which case billing will occur monthly or as negotiated between FIRM NAME and the Baxter responsible attorney.

Baxter will pay all non-contested portions of each bill no later than 30 days from receipt of the bill. Baxter will receive payment terms of 4% ten, net 30 days.

If this accurately reflects our agreement, please sign below and return one copy to me.

Very truly yours,

BAXTER HEALTHCARE CORPORATION

FIRM NAME

Marla S. Persky
Deputy General Counsel

Firm Signator

MSP:pds

Attachments

EXHIBIT A

DOMESTIC BILLING RATES

ASSOCIATES							
	OFFICE 1	OFFICE 2	OFFICE 3				
Prior to Bar							
First Year							
Second Year							
Third Year							
Fourth Year							
Fifth Year							
Sixth Year							
Seventh Year							
Eighth Year							
Ninth Year+							

PARTNER RANGES							
	OFFICE 1	OFFICE 2	OFFICE 3				
High							
Low							

SPECIFIC COMMITTED RATES	
George Washington	
Martha Washinton	
John Addams	
Abigal Addams	
Thomas Jefferson	
Aaron Burr	
Marie Antoinette	
Booker T. Washington	
Oprah Winfrey	

MEMO TO ENTIRE LAW FUNCTION ABOUT RFP FIRMS AND PROCESS

I am pleased to announce that the RFP team has completed the process of selecting firms to be Baxter's Preferred Providers (PPFs) in the United States. Additionally, we have selected a few firms to provide specialized legal services in niche areas. The process of now defining and implementing the RFP relationships and how they mesh with the specialty providers is our next goal.

We will be meeting with the PPF's both individually and as a group in the next 30 days. In the individual meetings, the RFP team will define the areas of practice for which we will use each firm, as well as cement Baxter's expectations for fee agreements, value adds and relationship definition. Some of you will be invited to attend these individual meets so we can make sure that your specialized areas of practice are addressed (ex – environmental, labor & employment, general healthcare). After the individual meetings take place, all PPF relationship partners will meet together as a group with the RFP team to begin creating a virtual law firm that will work seamlessly across the US in a variety of legal areas.

The following firms are our PPFs:

<u>Firm</u>	<u>Relationship Partners</u>
Butler, Snow, O'Mara Cannada	, Stevens & Lee Davis Thames, Christie Jones
Dechert, Price & Rhoads	Bob Limbacher, Jim Lawless
Sidley & Austin	John O'Hare, Maja Eaton

The following firms have been selected as Specialty Providers:

<u>Firm/attorney</u>	<u>Area of Specialty</u>
Bell, Boyd & Lloyd (Mike Sennett) Prosecution/litigation	Antitrust, FDA, Patent
Cook, McFarron & Manzo-- Chicago, Illinois (Gary McFarren)	Patent Prosecution
Dickstein, Shapiro, Morin & Oshinsky (Merle Delancey)	Medicare/Medicaid & Trade Compliance

Ryan Kromholz & Manion--
Milwaukee, Wisconsin (Dan Ryan)

Patent Prosecution

Seyfarth, Shaw, Fairweather &
Geraldson (Ellen McLaughlin)

Labor & Employment general & litig.

Senniger, Powers, Leavitt & Roedel-- Patent Prosecution
St. Louis, Missouri (Kathleen Petrillo)

Skadden, Arps, Slate, Meagher &
Flom (Mike Rogan)

Complex securities issues

Townsend & Townsend
(Jim Gilliland)

General Biotech IP & Biotech IP litig.

Again, exactly when to use a PPF vs. a Specialty Provider has not been completely defined. Moreover, we still need to ascertain whether our PPFs are eligible for all areas of practice in which they are experienced or only certain defined areas. These questions, as well as others, will be answered in the next several weeks.

In the interim, any new legal work that requires the assistance of outside counsel should be directed to one of the PPFs, or if appropriate, one of the Specialty Providers. The Transaction Committee (David, Jan and me) is still in existence; therefore, any transactions valued at over \$5,000,000 or requiring outside counsel expenditures of over \$100,000 must be brought to the Committee BEFORE outside counsel is hired (including PPFs).

Finally, the PPF relationship is forward looking. We do not anticipate pulling any existing projects from currently retained outside counsel.

For those of you who have assisted the RFP team and me on this project, thank you very much. Your input was invaluable. We may end up slightly reconstituting the RFP team, so if you are interested in participating, please let me know. I will keep you informed as things proceed.

Litigation Process Model

The Litigation Process Model is the product of one of our partner's many years of in-house experience and years of our own partnering with our clients. This Model represents a conscious and systematic effort to closely align ours and the clients' interests in such a way as to maximize the potential for an early and cost effective resolution of a particular dispute or litigation. While a more detailed discussion is required to understand all of its aspects, the components of the Model are as follows:

- STEP 1: Application of the Early Case Analysis Process**
- STEP 2: Application of the Early ADR Screen Process**
- STEP 3: Business/Legal Consultation (The "Wise Business Counselor")**
- STEP 4: Joint Development of the Case Management Plan**
- STEP 5: Attorney Fee Arrangements**
 - a. **Single-tiered fee structures**
 - 1. **Traditional/discount hourly rate arrangements**
 - 2. **Per case Flat Fee arrangements**
 - b. **Dual/Multi-tiered fee structures**
 - 1. **Segmented Fee arrangements**
 - 2. **"Reverse Contingency" arrangements**
 - 3. **"Closed Cost Fee Matrix" arrangements**
 - 4. **"Reverse Sliding Scale" arrangements**
- STEP 6: Periodic Fee Review ("Instant Replay")**
- STEP 7: Metrics and Performance Measures**
 - a. **Outcome-based metrics**
 - b. **Customer Satisfaction-based metrics**
 - c. **Case Cycle Time-based metrics**
 - 1. **The Case Cost/Resolution Matrix**
 - 2. **Year-to-year Cycle Time metrics**

When carried out in the context of a partnership that aligns legal, business and financial goals of H&K and our clients, the Process Model provides a truly unique and innovative method of effectively handling today's burgeoning litigation explosion.

STEP 5: Alternate Fee Arrangements

We have often discussed the fact that the traditional hourly-rate fee structure, while pretty neat for outside counsel, is not in the least consistent with the alignment of the client's and the firm's interests. Obviously, you and ***** have been making efforts to find ways of more effectively aligning these interests as they relate to fee issues. What follows is my own series of approaches, which seek, in one way or another, to more properly align these interests. Naturally, I've developed most of these since leaving in-house, since our litigation group did most of its litigation in-house, but some I had used previously and others since. The list is not meant to be exhaustive and if, as we discussed, you are willing to share your info on what other firms have proposed, we can think about others which might make sense. The alignment in this section of the Model, of course, is primarily directed at **financial** goals.

a) Single-Tiered Fee Structures (Where fees remain constant or fixed throughout)

1) Discounted Hourly rate Arrangements

This is probably the most used (and least creative) alternative to the hourly rate. In fact, it isn't really an alternative *per se*, since it is just a reduction in these rates. Nonetheless, we have made such arrangements for particular clients, given certain case volumes and are willing to do so again. Additionally, arrangements for even greater fee reductions are frequently negotiated where the possibility of sharing reward (as well as risk) in the form of "bonus" fee payments exists.

2) Per-Case Flat Fee Arrangements

In appropriate cases we have entered into a per-case flat fee arrangement. This arrangement works best where the cases are most predictable, e.g. employment cases. We have previously agreed, for instance, to do state agency Charge responses in employment cases on a fixed fee basis. Similarly, we've given fixed fees for handling the mediation (as client advocate) of a particular case or category of cases. As an example, I have agreed to do mediations of consumer-related claims for a Fortune-100 company nationally for a fixed fee, per case.

b) Dual/Multi-Tiered Fee Structures (Where fees may vary during the course)

1) Segmented Fixed Fee Arrangements

What this means, essentially, is breaking the case into pieces and agreeing on certain fee arrangements for certain portions. In our ***** case, for instance, we did expert depositions in the case for a fixed amount. Similarly, the per-day fixed fee arrangement, which we sometimes use for Early Case Analyses is an example of a segmented fixed fee arrangement. Not all aspects of a case necessarily warrant the same dedication of resources or related costs. That's the assumption that underlies this approach.

The whole more recent phenomenon of the "unbundling" of legal services has also contributed in this area. We have, with great confidence and success, used contract professionals for certain aspects of discovery processes, used a particular third-party legal research network for substantial research projects and certain other third party providers. I'm quite sure that you have used these new services to your advantage as well.

2) Reverse Contingency Fee Arrangements

While in-house, we entered into arrangements like this on a number of occasions. Simplistically, what they consist of is an arrangement where a judgment or settlement under one figure would merit a particular fee, whereas, settlement or judgment at a higher figure would justify a higher fee etc. Allowance can be made for differences related to case cycle time, type of resolution (settlement or judgment) or any other number of factors.

3) Closed Cost Fee Matrix Arrangements

This is probably the most effective interest alignment arrangement I've used to date. Enclosed is a partial sample of such an arrangement I had with a small firm when I was at Motorola. We used it on our small "radio system" cases, where, for varying reasons, a customer was looking to get out of the purchase of, say, a communications base station and 3-5 mobiles. On these cases, we had long and pretty well established data that these cases cost us about \$25,000 one way or the other, in fees, settlements or a combination. Thus, we developed the attached grid, which sets fees on such cases. (see attachment "A")

The top horizontal axis reflects the cost of settlement, while the sideline vertical axis represents time to resolution (cycle time). The vertical axis

contemplates that each case costs the company about \$2,000 internal cycle time cost per every 6 months (based on then internal cost estimates given me by the accounting folks).

Counsel fees are represented by the numbers inside the boxes of the matrix. As an example, where counsel resolved a case in less than 6 months for \$1,000 or less, counsel was “rewarded” by receiving the entire \$25,000 as a fee. Where the same result took 18 months, counsel’s fee was \$25,000, less \$4,000 cycle time cost, less \$2,000 settlement cost or a fee of \$19,000. And so it goes. This model was so effective at aligning our financial interests that I could, literally, hand off the case and walk away...virtually no oversight was needed, given the incentives.

This particular model contemplates a closed cost system with very predictable costs. In the right situation, one can also negotiate such a grid in a more “open cost” situation. One need only be open to do that which traditional outside counsel have been so unwilling to hazard....to share the risk of the resolution; we are.

4) Reverse Sliding Scale Fee Arrangements

I think we’ve discussed this one in the past. You’ll recall that it’s based roughly on the Case Cost Resolution Matrix, a copy of which I’ve attached as attachment “B”. The foundational assumption on these types of cases is that they are not likely to go to trial, nor is it particularly desirable that they do. This assumed, the emphasis is on early and cost-effective resolution. The prototypical arrangement of this type assumes that the firm would get their regular or perhaps “bonus” hourly rates at stage 1 of the case (before formal discovery), that if it proceeds to formal discovery, counsel will “share” in the cost by reducing the fee and, if it gets to the pretrial stage, yet a further hourly reduction would apply. This shares the “pain” of the discovery mountain and, even more so, when we get to pretrial process. Hence, counsel’s interests align with those of the company, towards an early and cost effective resolution.

All of the above arrangements are efforts to align our interests with those of our clients. As mentioned before, the list is not, in any wise, exclusive. There are surely other ways, based on the nature of the case and other factors which would allow us to be creative and effectively align the **financial** interests of the company with its firms.

Closed Cost Fee Matrix (Partial Sample)

	0-1K	1-2K	2-3K	3-4K	4-5K	5K (cont'd)→
6 months	\$25,000	\$23,000	\$22,000	\$21,000	\$20,000	\$19,000
12 months	\$23,000	\$21,000	\$20,000	\$19,000	\$18,000	\$17,000
18 months	\$21,000	\$19,000	\$18,000	\$17,000	\$16,000	\$15,000
24 months	\$19,000	\$17,000	\$16,000	\$15,000	\$14,000	\$13,000
30 months	\$17,000	\$15,000	\$14,000	\$13,000	\$12,000	\$11,000
36 months	\$15,000	\$13,000	\$12,000	\$11,000	\$10,000	\$9,000

(CONTINUED)↓

EXHIBIT A

**ASSUMPTIONS AND STATISTICAL CALCULATIONS: THE TYPICAL BUSINESS CASE
(1994 Data)**

EXHIBIT B

