

News Release

ACC CONTACTS:

Robin Scullin (Office: 202.349.1509; Cell: 202.374.1169)
scullin@acc.com

Marthea Davis (Office: 202.349.1519; Cell: 202.290.5699)
davis@acc.com

SERENGETI LAW CONTACTS:

Rob Thomas (Office: 425.748.5518; Cell: 206.817.2430)
rob.thomas@serengetilaw.com

Bernadette Bulacan (Office: 425.732.5546; Cell: 206.779.2376)
bernadette.bulacan@serengetilaw.com

CONTROLLING OUTSIDE LEGAL SPEND SURPASSES COMPLIANCE REQUIREMENTS AS TOP CONCERN FOR IN-HOUSE COUNSEL

Ninth Annual ACC/Serengeti ‘Managing Outside Counsel Survey’ Reveals In-House Counsel are Looking for Innovative, Value-Driven Solutions

OCTOBER 19, 2009 (Boston, MA/Washington, D.C.) — For the first time in three years, controlling spending on outside counsel has returned as the top priority for in-house counsel, topping compliance concerns, according to the results of the *2009 ACC/Serengeti Managing Outside Counsel Survey*, a collaboration between the [Association of Corporate Counsel](#) (ACC) and [Serengeti Law](#), released at ACC’s Annual Meeting, October 19 in Boston, MA. While compliance issues had reigned for three years, economic factors from the past year have altered the key focus for in-house counsel. The need to drive efficiency is leading to more value-based policies to reduce overall legal spend. Such policies include requiring minimum levels of associate experience, discounts for early payment of bills, engaging in RFPs, and reducing the number of law firms representing the company. For those firms they retain, clients are looking to negotiate more flexible value-based fee and service models.

Responsiveness is the key deliverable now expected of outside counsel. With new data this year related to the [ACC Value Challenge](#), an initiative to reconnect the cost of legal services with value, it is important to note that the majority of in-house counsel (69.9%) provided specific suggestions to their outside counsel to increase the value of their services. While hourly rates are still the norm, use of alternative fee structures rose to 61% of in-house counsel. In particular, fixed fees (38.0% of in-house counsel), project retainers (15.4%) and contingency fees (10.5%) are increasingly popular alternatives. Furthermore, for next year, in-house counsel predict no increase in hourly rates – a first ever in the nine years of the survey.

“The tough economic times have added urgency to the continuing client push for better value from their firms,” says ACC President Frederick J. Krebs. He adds, “In-house counsel and law firms must communicate about how to improve service and explore new ways to efficiently managing legal costs.”

- MORE-

A final trend worth highlighting this year is the continued movement to Internet-based systems to help clients manage and predict costs more accurately. More than half (51.3%) of in-house counsel this year report they are planning to adopt Internet-based systems to work directly with their outside counsel. These systems, which are hosted by vendors and run by law departments, are quickly replacing the previous movement towards law firm extranets (down to 8.7% of in-house counsel having used any extranets this year, compared to 10.4% last year).

“In-house counsel want a single online system where they can manage all of their legal work directly with all of their outside counsel worldwide, not a maze of different law firm extranets or internal systems that don’t connect with outside counsel,” says Serengeti’s Rob Thomas, the author of the survey report. Thomas adds, “The latest online matter management/e-billing systems give in-house counsel a practical way not only to track their spending and results, but also to evaluate the relative value provided by their outside counsel. With this new information, in-house counsel are assigning more work to outside counsel who are offering the most value. They are also creating alternative fee arrangements that align the interests of both in-house and outside counsel by rewarding more efficient, more effective performance.”

Since its inception nine years ago, more than 2,000 law departments have completed the *ACC/Serengeti* survey, describing their experiences working with outside counsel. Each year, hundreds of law departments provide new information, making the survey report a true living document. Although new information comes from different law departments each year, in-house counsel have generally been very consistent across different time periods, with clear trends over multiple years. This year, a series of questions was added related to the ACC Value Challenge. The following general conclusions represent some of the more significant areas of change, as well as some of the constants, since 2000.

Controlling outside counsel spending moved back into the position as the top concern of in-house counsel for the first time in three years, topping concerns over legal compliance.

When asked the top five most pressing issues facing their law departments, “reducing outside legal spending” was the top concern, cited by 80.5% of this year’s respondents. Sarbanes-Oxley and other legal compliance requirements fell to a close second (78.2%), while concerns about reduced legal budgets/having too much work for fewer resources came in third (60.3%). Rounding out the top five were “keeping management apprised of legal developments” (60.0%) and “staying apprised of changes in the law” (54.1%).

In-house counsel have shown unprecedented success in containing increases in outside legal spending, as well as increases to hourly rates. They predict even more success during the coming year.

With the focus on reducing outside counsel spending, the median change in aggregate outside legal spending this past year was no change, the smallest in the history of the survey. Similarly, the actual increase in hourly rates this past year was for the first time lower than had been predicted the prior year (an increase of 4.76% after a prediction of 5.02%). This is also the smallest annual increase in the history of the survey. For both aggregate outside counsel spending and hourly rates, in-house counsel predict that there will be no change during the coming year. This is also an historic shift compared with increases predicted in all previous years.

A larger percentage of the legal budget is going to law departments, less to outside counsel.

During the first five years of this survey, spending on outside counsel was generally double the spending on law departments. The past four years, the ratio of legal spending has shifted in favor of law

departments, reflecting the increasing recognition of the value of in-house counsel and the relatively lower cost of legal work that is done in-house due to process and staffing efficiencies. Specifically, the ratio of spending on outside counsel to spending on company law departments has declined from 2.0 in 2004 to 1.29 in 2007, up a bit to 1.6 in 2008.

Given this budgetary climate, in-house counsel are becoming bolder each year, requiring more from their outside counsel. This was a breakout year in which record numbers of in-house counsel took new actions to improve management of outside counsel and to reduce their legal spending.

Record numbers of in-house counsel reported that they engaged in more activities to get better control over outside legal spending. Examples of high and unprecedented levels of cost containment methods include:

- | | |
|--|--------|
| • <i>Requiring Minimum Levels of Associate Experience</i> | 62.0%* |
| • <i>Implementing Convergence (reducing the number of outside firms engaged)</i> | 32.8%* |
| • <i>Receiving Discounts for Early Payment of Legal Bills</i> | 18.7%* |
| • <i>Competitive Bidding and RFPs</i> | 20.0% |
| • <i>Value-Based Suggestions for Law Firms</i> | 69.9% |
| • <i>Termination of Outside Counsel</i> | 50.3% |
| • <i>Use of Alternative Fee Structures</i> | 61.0% |
| • <i>No resistance within Companies to Alternative fees</i> | 62.3% |

*a record high

One aspect the survey addressed was the ACC Value Challenge, an initiative that seeks to reconnect the cost of legal service with value and better align the interests of clients and the firms that represent them. Overall, many respondents who sought value and responsiveness from their law firm relationships were disappointed this year.

This year, the survey for the first time collected data relating the [ACC Value Challenge](#). Responses indicate that a majority (57.0%) of in-house counsel believe that the value of the work performed by at least some of their outside counsel, taking into account the cost of their services, *declined* during the past year. More than two-thirds of in-house counsel (69.9%) provided specific suggestions to their outside counsel for increasing the value of their services. Response from outside counsel was mixed: approximately 37.5% of in-house counsel said that 10% or fewer of their firms implemented their suggestions, and 22.9% reported that 76–100% of their outside counsel implemented their suggestions.

Value-based suggestions to outside counsel included the use of case plans, tracking budgets, periodic status updates, more efficient staffing levels, better training of associates, more use of technology, and improved management of other vendors.

As part of this movement to deliver value, in-house counsel are using more sophisticated technology to track the activities of outside counsel, and have plans to do more.

Although many in-house counsel reported this year that they still use home-grown spreadsheets or other internal management software (40.0%), a growing number are moving toward Internet-based systems that help them collaborate directly with outside counsel. Such systems collect and process not only bills and budgets, but also documents, deadlines, status updates, and other key information (exposure estimates, opposing counsel, settlement amounts, etc.) directly from outside counsel who are working in the same system. This year, 51.3% of in-house counsel reported they are planning to adopt Internet-based systems on a regular basis with their outside counsel, while at the same time, the use of law firm extranets has significantly declined in recent years (with only 8.7% of in-house counsel now using them, compared to 10.4% in 2007). Types of Internet-based systems in-house counsel reported using this year include:

- Combined Matter Management/E-billing 13.6%
- Separate E-billing 5.9%
- Separate Matter Management 2.3%

Even with these advances in collaborative technologies, most law firms are still neglecting to implement client-centric, value-based solutions and suggestions. Therefore, in-house counsel are setting more rules governing their relationships with outside counsel.

Over the past nine years, more in-house counsel have required specific terms of retention that dictate what they expect from their outside counsel. The most common terms required of outside counsel are:

- Required Monthly/Periodic Bills 95.6%
- Billing Formats/Details 66.2%
- Discounts from Standard Hourly Rates 66.2%
- Preparation of Budgets 61.3%
- No Change of Hourly Rates Without Approval 58.0%
- Preparation of Early Case Assessment (Risks and Resolution Strategies) 54.6%
- Periodic Written Matter Updates 53.3%
- Limits on Internal Charges (e.g. copies, faxes, phone, online research) 52.3%
- No Change of Assigned Attorneys Without Approval 51.5%

Across the board, the use of each retention requirement has generally increased over time. It is likely that this trend will continue, as many in-house counsel state that they are planning to require even more of their firms in the future.

Survey Methodology & Respondent Demographics:

The survey was conducted online in two parts: one survey to collect hourly rate data, and another for the rest of the survey questions. The responses to the non-hourly rate survey were provided during May and June, and the responses to the hourly rate survey were provided in July and August.

- There were 390 law departments that completed the non-hourly rate portion of the survey; hourly rate tables were provided by 189 law departments.
- Respondents who are General Counsel constitute 66% of the respondents, and “assistant general counsel/staff attorney” constitute 19%. The remaining respondents include law department administrators and other in-house counsel titles.
- The breakdown of respondents by company size is: “small” companies (less than \$100 million in annual revenues)—34.6%; “medium” companies (\$100 million to \$1 billion in annual revenues)—32.3%; and “large” companies (over \$1 billion in annual revenues)—33.1%.
- The breakdown of respondents by law department size is: “small” (one attorney or no attorneys)- 29.2%; “medium” (two to ten attorneys)--54.4%; and “large” (more than ten attorneys)--16.4%.
- It is important to note that although large law departments capture much of the media attention, small law departments make up the majority of the in-house profession, with over 83% of the respondents coming from law departments having one to ten lawyers.

About ACC

The Association of Corporate Counsel (ACC) is the world’s largest organization serving the professional and business interests of attorneys who practice in the legal departments of corporations, associations and other private-sector organizations around the globe. ACC promotes the common interests of its members,

provides resources to help save, time money and effort, contributes to their continuing education and provides a voice on issues of global importance. With more than 25,000 members in over 70 countries, employed by over 10,000 organizations, [ACC's community](#) connects its members to the people and resources necessary for both personal and professional growth. *By in-house counsel, for in-house counsel.*[®]

About Serengeti Law

With more than 100,000 users in 160 countries worldwide, Serengeti is the most widely used system for legal project management and electronic billing. In recent surveys of both law departments and law firms it is also the highest rated system for the collaborative management of legal work. Serengeti includes online bill review/auditing, legal project collaboration (including documents, contacts, deadlines, and status updates), automated budget management, and contract management. In-house counsel also use Serengeti to generate reports which analyze trends in project inventory, monitor spending, track budgets, assess developing areas of exposure, and compare results across similar projects. With only an Internet connection and an hour of training, hundreds of law departments (from the Fortune 100 to companies with solo GC's) save both time and money by working online with all of their outside counsel worldwide. More information is available at: www.serengetilaw.com.

#

EDITOR'S NOTE:

For more information or to interview [ACC President Fred Krebs](#) or [ACC Deputy General Counsel and Vice President – Legal Resources James Merklinger](#), please contact Robin Scullin on-site at the ACC 2009 Annual Meeting at scullin@acc.com or 202.374.1169 or Marthea Davis at davis@acc.com or 202.290.5699; copies of the Executive Summary are available upon request to members of the press. To speak with the report's author, please contact Rob Thomas at rob.thomas@serengetilaw.com; 425-732-5518. The full Survey Report is available on CD from Serengeti (order form available at: www.serengetilaw.com).