

YES, 'SMALL LAW' CAN: ALTERNATIVE FEE/VALUE-BASED ARRANGEMENTS AT WOLVERINE WORLD WIDE, INC.

Insights from Ken Grady, General Counsel and Secretary for Wolverine World Wide, Inc.

Wolverine World Wide, Inc.'s law department has four lawyers (including the General Counsel) plus four paralegals, and is successfully implementing a number of alternative fee/value based arrangements with outside counsel. The company celebrated its 125th year in business in 2008, is publicly traded on the New York Stock Exchange and has products in more than 180 countries and territories around the world. The company's footwear brands include Wolverine, Hush Puppies, Merrell, Patagonia Footwear, Cushe, Harley-Davidson Footwear, Caterpillar Footwear, Sebago, Bates and more.

To those CLOs of smaller law departments who may feel like they don't have the leverage or ability to discuss structuring value-based arrangements with outside counsel: Ken Grady, General Counsel and Secretary for Wolverine, says "yes we can!"

This CLO Perspectives piece highlights three types of value-based practices Grady is implementing at Wolverine:

- **Fixed fees for Securities Portfolio legal work** — includes filings and related counseling
- **'Unbundling' and fixed fees for retail tenant leasing work in the UK**
- **Global process redesign for trademark services**

SECURITIES PORTFOLIO- ONE FIRM; FIXED FEE FOR PORTFOLIO

The law department's securities work is now handled by a single firm, on a fixed fee basis. Prior to moving to this arrangement, the work was handled by two firms (the current firm was one of the two prior firms and therefore had some history and experience with the company's work) on an hourly basis.

Key components include:

- **Portfolio of services-** includes review and assistance with quarterly filings, drafting the proxy statement, Section 16 compliance work, 8Ks and counseling;
- **One-year engagement-** includes a short engagement agreement and six-month 'looks' to confirm value and costs;
- **Flat fee for portfolio of work-** paid in two installments: one larger payment towards the beginning of the year consistent with larger service workload during first part of the year, and one payment later in the year; schedule set to conclude payments prior to the company's fiscal year;

- ***Understanding on ‘unexpected’ matters-*** if unexpected matters arise, fees would be handled for those matters following a discussion; both sides are comfortable because of mutual trust;
- ***Law department provides input on staffing-*** law firm proposes staffing and sends resumes for review; law department provides input on legal team; and
- ***Shadow bills-*** to benchmark.

Valuing the Portfolio

How did they ‘value’ the portfolio? Grady shares that they reviewed the historical scope of work performed by all firms previously performing securities-related work, determined aggregated historical costs and then proposed that amount for consolidating the work to one firm.

Structuring the Relationship- Getting Started

Steps to take include:

- ***Identify and describe level of work:*** identify the work that has been performed for this portfolio during the most recent two years (e.g., ‘x’ filings of ‘x’ complexity); prepare a summary of the work and what the law department needs in terms of related service (e.g., here is what we want on our filings, etc.)
- ***Determine which components might be performed by in-house counsel and which services will be performed by outside counsel:*** in-house counsel may not add most value by being primary drafters of documents; instead, may add more value by contributing knowledge of business
- ***In selecting the firm, consider effectiveness:*** may need to look beyond historical relationships and take an objective look at efficiency and effectiveness
- ***Be honest and communicate expectations:*** very important to define who is doing what and what expectations are for value and success.

Keys to Success

“Having an open and strong working relationship with outside counsel is key,” explains Grady. He also shares that General Counsel need to “recognize what ‘value’ means for them and their departments and to think through how to perform services efficiently and effectively.”

Benefits

Grady shares that value—rather than cost savings—was the driver for these practices. Benefits for the company include consolidating work to one firm with level of expertise that Grady describes as ‘high and valued,’ efficient processes and ‘freed-up’ internal resources. Benefits to the firm include increased volume of work, certainty in terms of fee arrangements and staffing, greater likelihood of handling future related matters.

UNBUNDLING LEGAL SERVICES- RETAIL LEASE WORK IN THE UK

Another practice Grady highlights as adding value is ‘unbundling’ legal services—breaking projects down into manageable components and assigning fixed fees to each component.

“Ideally, the components in at least some instances, are ones that could be performed in-house or by outside counsel. At the beginning of the project, it may be clear that certain of the

components will best be performed by outside counsel, some by inside counsel, and some could go either way depending on how the project progresses, other demands on in-house counsel time, etc. The client then chooses from the un-bundled list with the final fee dependent on the combination of components handled by outside counsel,” explains Grady.

In specific, Grady has ‘unbundled’ some retail tenant leasing work in the United Kingdom. By unbundling the process of doing a retail lease into many components and assigning a fixed fee to each component, Grady shares that “the law department has the ability to flex from lease to lease and to flex within a lease project, as time and complexity permit. On one lease, we may have our outside counsel do most of the components, but on the next lease our time may permit doing many of the components in-house.”

Valuing Services

How does it work? The fee for each component is set based on a combination of:

- experience with many leases
- efficiency
- significance to the overall project, etc.

“As our experience evolves, we can reset the fees for each component (up or down). You can also reset the level of individual handling the work (partner for some, associate for other, paralegal for some) depending on the importance, comfort level, complexity, etc.,” shares Grady.

GLOBAL TRADEMARK PORTFOLIO WORK- SEEKING TO MAXIMIZE EFFICIENCIES AND ‘DO THINGS BETTER WITH EXISTING RESOURCES

Described by Grady as an ‘evolving process,’ the law department is currently exploring ways to redesign the company’s global trademark work leveraging existing resources (e.g., no new staff, software or technology—use existing resources and find better ways to handle the work). Grady shares that the company currently has around 3600 trademarks worldwide, and that tracking, managing and supporting these marks is currently a ‘high touch’ activity that can be handled more efficiently and cost effectively.

Accordingly, using an RFP process, Grady hopes to select a firm to help the law department ‘re-think’ its global trademark processes by defining a set of solutions and efficient mechanisms for handling routine work. Some key features of the process and hoped-for solution:

- **Untraditional RFP process**-seeks to provide an opportunity to develop a more forward-looking model for handling a global trademark portfolio
- **Solution won’t be proprietary to Wolverine**- a benefit for the firm selected to conduct the study will be the ability to take the solutions to other clients
- **Goal: tell us how to do things better using existing technology and staffing**

Grady anticipates that the process will take up to two years (including RFP process, selecting the firm, implementing solutions within Wolverine’s law department). He sees training, use of wikis and podcasts as part of the possible solution package. Stay tuned for more...

CLOSING INSIGHTS

“Breaking through the perceived small law barrier is very possible. Working with small law departments can be a tactical advantage for law firms because we’re not a huge risk and not a huge chunk of their revenues. Our work is manageable and can be flexed and adapted,” explains Grady. “I use the fact that we’re smaller spend and that our portfolios of work may be smaller tactically to my advantage in discussions with firms—our group is small and easy to work with and the firms can pilot new things with us because the resources they need to commit are not as big,” he shares. “Most firms, even the very largest, are open to trying new things. For relatively low risk, we have the opportunity to create a much stronger tie between legal fees and service value.”