Value Practice:
Alternative Billing by Paying for Performance: Focus on FMC Technologies' ACES (Alliance Counsel Engagement System) Program

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Interviewed while: Vice President, General Counsel & Secretary, FMC Technologies

Key attributes of the FMC Technologies legal team's approach to delivering legal services to its clients (FMC Technologies business units) are:

- Acting as trusted, strategic advisor
- Managing risks and protecting assets while maintaining the company's ethical compass
- Delivering cost-effective legal services to the appropriate business

1° LAW™
To implement this approach, the legal team has developed an approach called **1° LAW™** –-- where internal and external lawyers, paraprofessionals, staff and preferred service providers work together in a seamless, technologically enabled environment to leverage systems, knowledge and human resources to deliver legal services to the corporate client.

Two key elements comprise the backbone of the system:

- Integrated and holistic matter management and financial management ASP delivered software package (Serengeti Tracker) used as the information and collaboration platform
- Performance based pay alternative billing system (ACES™ stands for Alliance Counsel Engagement System).

All external counsel interface with the law department via the matter management system; and all agree to the company's "Covenant with Counsel".

This ACC Value Practice piece focuses on FMC Technologies' ACES performance based pay alternative billing system.

ACES™ MODEL
Underlying principle: achieve service relationships based on partnering and sharing risks and rewards.

Two versions: ACES (for non-litigation legal services) and ACES LT (for litigation services)

Key features of ACES:

- Aligns interests of firms with the FMC Technologies legal team's interests
- Creates a system that allows the firms to make more money per hour while having FMC Technologies buy fewer hours (e.g., increases both the firm's per hour profitability and frees up their inventory of hours to sell to another customer)
- This win-win solution is based on effectiveness and efficiency

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ACES LT – Non-litigation model

- Model can be used for any type of engagement: normal hourly rates, blended rates, capped rates, retainer, fixed price or any other compensation system.
- Law firms are paid 80% of their invoice for their services, with the remaining 20% being placed in an 'at-risk' bucket for potential payment with bonuses depending upon performance
- Evaluation matrix integrated with the law department's matter management system
- Law firms are rated on performance in key metrics areas that track the law department's core values: Responsiveness; Goals Achievement; Effectiveness; Knowledge; Predictive Accuracy; and Efficiency; responsible in-house lawyer performs the rating
- Depending upon performance, law firms may receive 0 to 200% of the at-risk fees (i.e., 80%-120% of the face amount of the firm's invoice)

ACES™ Litigation Model

- Goal: resolve matters expeditiously and avoid the big-ticket expenditures of discovery and trial. Pay law firms for success, reward efficiency, and align interests by focusing law firms on success and total disposition costs.
- Law firms provide an initial assessment of the case, including defining objectives, target budgets by each phase, work plans, and success
- Evaluation matrix integrated with matter management system
- Law firms are paid 80 cents on the dollar up to the matter target level
- Up to the phase target, 20% of the overall fees are placed in an 'at-risk' bucket
- If the firm determines that additional work is required above the phase budget target, they are free to do that work, but now 80% of those fees are placed in the 'at-risk' bucket (this avoids the 'stop-work' problem when a phase target is exceeded, but encourages the firm to do only that work which will materially contribute to success)
- If success as agreed is reached, the 'at-risk' amount is paid out using various multipliers depending on at what phase of the litigation process success is achieved
- The multiplier is higher for resolving cases earlier
- "Second level adjustment" which increases the multiplier for resolving matters for less than the total target budget (or reduces it if the total budget is exceeded)
- "Third level adjustment" increases or reduces the success multiplier for differences in resolution from the "expected value"

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