

ACC Value Challenge

SESSION SUMMARY REPORT Phoenix, AZ – February 4, 2010

PART A – Introduction to the ACC Value Challenge / It’s All About Value. Michael Roster, Chair of ACC’s Value Challenge Steering Committee (former Managing Partner of Morrison & Foerster - Los Angeles and then General Counsel of Stanford University / Stanford Medical Center and Golden West Financial), introduced the program.

Key Points From Mr. Roster’s Presentation:

- **The Need for Change.** At meetings of ACC members, consistent themes emphasized the need for change and gave birth to ACC’s Value Challenge. An eye-opening reality: over the past 10 years, general costs to U.S. companies rose 20% . . .but legal costs increased 75%.
- **The Challenge of Change.** Change is needed on both sides but difficult for both. Need to overcome long-time habits of thinking and action, existing methodologies, legacy systems and structures, established cultures and income expectations.

For success, there needs to be trust and a true dialogue. Among other things, in-house and outside counsel need to learn how to think like managers, not lawyers (focusing on outcomes versus process); how to define and measure value; how to involve the next generations and how to get desired results.

- **Advances in Aligning Value and Costs.** There has been progress and innovation on both sides. Finding that additional skills and resources are needed – e.g., finance, project management, procurement, marketing, etc. See, www.acc.com/valuechallenge. Metrics are very important – consider law firm leverage ratios, lawyer turnover and revenue per lawyer, rather than measures such as average profits per partner which may actually undercut delivering high value at reasonable costs.
- **Things Law Firms Can Do.** Consider taking on whole portfolios of work for a fixed fee. Propose other alternative billing approaches and relationships. Get skilled at setting budgets and holding to them. Re-evaluate staffing for greater efficiency. Provide better training and mentoring, focus on efficiency and deliver value as defined by the clients. Implement knowledge management – don’t reinvent the wheel; pass along your savings to clients.

- **Things Clients Can Do.** Stop saying, “We hire the lawyer, not the firm.” Stop focusing on discounts. Develop manager skills among in-house team members. Examine your own methods and thinking, with a focus on value and outcomes, not process. Work towards longer-term, trusted relationships with outside counsel (versus RFP’s for every matter, third-party audits, etc.). Be receptive to firms’ proposals. Stop rejecting involvement of associates. Communicate expectations clearly and ask for budgets up-front.
- **Examples of What is Working.** Among numerous things, in addition to those outlined above, clients and firms have found varying degrees of success in training lawyers in Six Sigma / Lean principles, consultation retainers, fixing prices by stage of work or type of matters, setting maximum staffing ratios, creating knowledge banks shared by preferred outside counsel (see, DuPont Legal Model), unbundling and outsourcing support services, and having law firm attorneys work on the client’s site.
- **Bottom Line.** Continue the dialogue. Meet-Talk-Act. Talk candidly about working together. Ask, “How do we improve the value of legal services?” Try something new to achieve better value-cost alignment, even on a small scale. Periodically assess the efforts; and expand what works. Share both failures and successes with others. Remember, “In the end, it’s all about value.”

PART B – Case Studies: This portion of the session was co-moderated by Michael Roster and Mark Rogers, President of the Arizona ACC Chapter and Associate General Counsel of Insight Enterprises, Inc.

Stanford University. Mr. Roster reviewed the key elements contributing to the marked success of the Stanford University Law Department’s preferred law firm partnering project (1993-2000). See, Mr. Roster’s article, “Re-engineering the Legal Function,” posted online at: <http://pilf.usc.edu/centers/scip/participants/documents/ReengineeringtheLegalFunction.pdf>

- **In the Beginning.** The legal department at Stanford for years was "a model" department drawing upon very bright, highly skilled professionals with a broad range of substantive talents such that it could do virtually everything in-house. Reductions in budget, increasing complex litigation and the perceived need for higher-level expertise, however, dictated the need for change.
- **Restructuring and the Operative Goal.** The ultimate restructuring resulted in a department consisting of 7 full-time professionals compared to the previous total of 26 and consisted of a highly efficient in-house team that focused on the core functions of the client's business and a strategic alliance with three major law firms providing work at fixed or budgeted fees. The law firms' attorneys functioned on a regular basis on site as if they were in-house, with university telephone extensions, voicemail and email addresses and attending weekly internal staff meetings. The goal for all attorneys - whether in-house or outside - was to function as part of a single unified department.

- **Key Elements Contributing to Success.** There were multiple factors that contributed to success, including: Careful selection of our partner law firms through a competitive bidding process. The in-house and outside counsel worked together as partners, juggling work loads among themselves and across law firm lines and practice areas as needed. Everyone shared a common goal of managing and reducing the university's and medical center's overall legal costs and exposures. Setting clear goals and benchmarking progress in achieving those goals. Establishing a budgeting process based upon a matrix of internal clients and the types of legal services they are likely to need, estimated on an annual basis and taking into account the overall legal budgets for the university and medical center; and including a reserve to cover some of the extraordinary (off budget) matters encountered each year. Plus, tracking against the budgets monthly and sharing the numbers quarterly with the clients, which assists the clients in making more educated use of legal resources. Periodic evaluations of the quality and delivery of legal services by the client.
- **Demanding Change – Yet Being Patient.** Being patient with outside counsel in making changes demanded of them was also critical to success. The system forced the partner law firms into getting better at preventive law - which was necessary in order to meet budgets. Law firms must learn that they can no longer manage themselves solely on billable hours. Rather, they need to address the same issues as other industries quality of services, efficiency of service delivery, profit margins, risks, incentives, etc. To help in the process, the Stanford law department held monthly meetings with representatives of each partner firm to go over the numbers and discuss quality of services. It became apparent in the process that industry familiarity was very important in managing the client's risk and delivering cost efficiencies. In the end, to achieve success, outside counsel needed to learn to be strategic, to manage results, to be self-initiating in assisting clients, to leverage their knowledge and expertise, to deconstruct processes and budget effectively, to share responsibility and to be more trusting of their clients.

Fennemore Craig. Douglas Northup, Director, Fennemore Craig, PC, and Chair of firm's Commercial Litigation Practice Group, summarized the perspective of Fennemore's senior management regarding the ACC Value Challenge and the firm's response. Highlights of Mr. Northup's presentation included:

- **General Reaction to ACC Value Challenge.** Even clients that haven't heard of ACC's Value Challenge are expressing concerns re value of services and cost. The Value Challenge has heightened our sensitivity even more to client wants and needs. Our tight economy, plus ACC's Value Challenge, are driving us to look hard at all our means for providing high value services to our clients at reasonable costs. Our clients and our firm are benefitting in the process.
- **What We See as "Law Department Hot Points."** Increasing demands from management for greater efficiency, lower costs, more value from legal spend. Limited time, dollars and legal resources. Concern re escalating cost of litigation (discovery).

Critical importance of predictable costs. Tough challenge of being “legal generalists.” Need for state-of-art technology to facilitate communication, centralize knowledge / work product and control costs. Need for partnering and collaboration among preferred outside counsel. Need to improve skills to better manage legal processes and outside counsel.

- **Our Firm’s Commitment.** To understand our clients better and respond meaningfully to their changing wants and needs. To look for new solutions to deliver legal advice and services more efficiently and at lower costs, while still striving to be profitable. To be a thought-leader in responding to ACC’s Value Challenge and, particularly, in managing litigation in an effective, businesslike manner. Importantly, to “walk our talk” on all these fronts.
- **New Solution – Managing Litigation in a Businesslike Manner.** Fennemore Craig is taking a lead role as Project Director in a nationwide “Managing Litigation as a Business” initiative designed as an ongoing collaborative effort among participating companies and select law firms and legal suppliers to improve how in-house legal teams are managing their companies’ litigation, share best practices, find new solutions to common challenges, marshal litigation management resources and tools in central online “Managing Litigation Portal” and assist law departments in acquiring needed skills and implementing continuous improvement programs to achieve better litigation results at lower costs..
- **New Solution – Managing Litigation Reference Model.** The Managing Litigation initiative has evolved into a new “Managing Litigation Reference Model” (MLRM) Project – a collaborative effort among seasoned risk, dispute and litigation management professionals to develop a national standard for managing disputes, claims and litigation in a businesslike manner. Fennemore Craig is taking a lead role. Copies of the MLRM Mission Statement and the latest outlines of MLRM Key Elements and structure and functionality of the proposed MLRM Portal are among the handout materials for this ACC Value Challenge session. Fennemore Craig has set up teams of Directors, associates and paralegals to marshal resources and strengthen the firm’s expertise relating to all of the MLRM Key Element areas.
- **New Solution – Proposed ACC Value Challenge InfoNet.** Recognizing the challenge many law department leaders face as “legal generalists” to make decisions that involve areas of the law about which they have little or no knowledge or where the law is rapidly changing or particularly complex – Fennemore Craig is offering to establish an online facility through which in-house lawyers can access panels of outside counsel with expertise in diverse legal practice who would provide quick “top-of-the-head” information in response to posted questions. There would be no cost for the use of the proposed “InfoNet,” sample screen shots of which were included in the session handout materials.

Waste Management. Robert Longo, Vice President and General Counsel – Western Group, Waste Management, described his views on approaches being implemented by his company's law department to drive greater value for the corporate client. He emphasized these key points.

- **Typical Law Department Challenges.** Geographic Spread. Wide scope of matters (environmental, contracts, employment, etc.). Significant legal specialty needs in multiple (often small) markets. Many non-repetitive matters. Mix of in house and firm resources for a project.
- **Advantages of Alternative Arrangements.** Better alignment of Interests. Efficiency (avoid waste on both sides- save time and, yes, money). Predictability. Incentivize results.
- **What Probably Will Not Work.** A structure that disproportionately favors one side. A plan that is not clear on success or contingencies. A plan that lacks flexibility. A client's sole objective to cut costs and a firm's sole objective to make more profit.
- **More Likely to Work.** Focus on alignment of interests. Share risks and rewards. A focus on supporting the business and maintaining the dialogue. Remaining flexible and customize to client, firm and circumstances. For litigation – a structure that incorporates early case assessment into the process.
- **Suggestions as to Budgets.** Consider a budget for all matters and cases (except minor questions or support). Helps to build skills (firms and clients) even if not tied to an Alternative Arrangement. Develop budget up-front or after early case assessment (if the matter is litigation). Track to budget regardless of approach to structure.
- **Possible Approaches – Explore Alternative Arrangements By Competitive Bids.** Arrive at structure through bid and negotiation process. Send bid for project to a few firms with an existing relationship. Provide the criteria that will be used to evaluate proposal (including the use of mechanisms to align interest and provide incentives). Ask firms for budget and approach. Can offer options if you want to narrow responses. Provide feedback to all firms.
- **Possible Approaches – Litigation.** Fixed Fee - some large companies with a repetitive large case docket use a fixed monthly fee through discovery and for other segments (i.e. trial). Holdbacks and Incentives - Agree on budget and rates for a case. Pay for 80% of billings each month. If case is successful as defined by parties (i.e. hits budget), firm gets remaining 20%, firm may get additional % based on other success criteria.
- **Possible Approaches – Transactional.** Holdback- Success fees can be used. Fixed Fee- if phased or if success and contingencies are well defined. Other ideas?
- **Also Consider.** Escalating discounts based on billings (not an alternative approach but

pretty popular). Is it a good approach?

PART C – Redesign of Legal Services / Budget Reduction: Participants were divided into small breakout groups comprised of roughly equal numbers of in-house and outside counsel and asked:

How would you restructure and provide services to your corporate client if you were informed that the client's annual budget for legal services was just cut in half? What major elements of your working relationship would you address? How and where would you start? How could you effectively and substantially cut costs without sacrificing quality?

Exercise Note: Following the breakout sessions, spokespersons for each small group summarized their group's conclusions in a plenary meeting of all participants. After the verbal summaries, in-house counsel members of the audience were asked how many of them reasonably expected to confront a fifty percent budget cut in the near future. Two participants indicated that they had already faced substantial budget cuts; but other corporate counsel present did not anticipate such dramatic budget changes.

What then was the purpose and real value of this exercise? The point was made that every suggestion outlined below for driving greater efficiencies and trimming costs, while maintaining the high quality of legal services for the corporate client, could be the topic of further discussion and a plan of action in follow-up ACC Value Challenge "Meet-Talk-Act" sessions.

Key Points:

- **Relating to Nature of the Work.** Meet with clients to assess goals – Meet with business clients to discuss resource allocation – Assess risks – Evaluate whether short term issue or long term issue – Review existing legal matters, try to anticipate future legal matters – Prioritization: What fits company's core business? – Ask: How much additional risk should you take on?
- **Relating to How Work is Performed.** Early assessments on cases- which to fight and which to settle – Reevaluate legal strategies – Have external counsel help with in-house processes – Early evaluation and assessment tied to budget process – Evaluating process for communicating with outside counsel to address how things get done to address inefficiencies – Early evaluation of what the other side wants and where the case is going
- **Relating to Who Performs the Work.** Preventive work that in-house counsel could do to avoid problems; manage risk in order to prevent having to go to outside counsel – Bringing e-discovery in-house – Deepening of in-house bench – hire more in-house counsel – Use contract attorneys – Bring external counsel in as in-house counsel – Open discussion needed to respond to corporate clients reduction in legal spending and law firms' concerns about losing work – balance required to mitigate issues on both sides

- **Relating to Staffing of Legal Matters.** Selecting the right teams on matters – picking teams that have knowledge of the company, consistently work for client, know the client, have requisite expertise – Discuss outside counsel staffing with inside counsel – Evaluate staffing and support issues – Consider variance of using in-house counsel vs. outsourcing – Recognizing inefficiencies such as double staffing – Seek more hours by elite lawyer/senior partner or associate – Some tasks can be managed by junior associate to develop relationships and skills of associate.
- **Relating to Engagement of Outside Counsel.** Wise firm selection – Consolidation law firms – Consider using firms in lower priced markets – Carefully assess the value of the firm – Outside counsel should have more visibility to inside counsel/client – Creating incentives for firms; create opportunities for work – Inside counsel have to deal with many issues and needs; better to speak to one specialist/client relations manager – Determine subject matter specialists across law firms – Some firms may fall away if they are not willing to address corporate clients’ issues
- **Relating to Use of Technology.** Use budgeting software – More efficient use of technology, specifically software / FTP sites – Alternative billing processes
- **Relating to Use of Legal Suppliers / Consultants.** Contemplate hiring consultant to look at case and offer suggestions – Being smart with selection of vendor’s tools that can reduce costs
- **Relating to Relationship Partners / Other Parties.** Look at co-defendants for efficiencies and cost sharing
- **Relating to Fee Arrangements / Compensation.** Discuss fee structures for projects – Volume incentives applied retroactively at higher percentage – Flat fees for specific services – Assess alternative fee agreements – Incentive and risk sharing 80/20
- **Relating to Risk Management.** Look to third party allies such as insurance companies, indemnity agreements, etc. – Partner with insurance company to determine how much risk can be absorbed
- **Relating to Cost Management.** Close monitoring of e-discover costs – Conduct audits of past year’s spends
- **Relating to People Skills.** Improve cost management skills, particularly in litigation

Conclusion: Forms were provided requesting participants to submit their ideas for advancing ACC's Value Challenge in Arizona, with the following comments:

Today's program is just a start. The broad goal of ACC's Value Challenge is to find effective ways to better align the value and costs of legal services provided by law firms to corporate clients. Of course, meaningful change will not happen overnight – and it's very unlikely that it will happen at all if we don't keep the dialogue going among law department and law firm leaders and take steps to implement new, positive ideas.

Please take a moment to share your thoughts on things we might do to advance the goals of ACC's Value Challenge among Arizona in-house and outside counsel. We will combine your suggestions into a single document and send you the summary. Perhaps, we will find a project or other collaborative endeavor that everyone agrees is worth pursuing.

In conclusion, session leaders expressed their individual commitments to finding effective ways to advance the ACC Value Challenge among Arizona ACC Chapter members and their respective outside counsel and achieved better alignment in the value and costs of legal services.