

## **An Event in Support of the ACC Value Challenge**

### **SESSION SUMMARY Boise, ID – November 18, 2010**

#### **Program Title and Overview**

This unique event in support of the ACC Value Challenge was titled, “Defining and Delivering Greater Value for Clients.” The session was hosted by the ACC Mountain West Chapter and co-sponsored by Fennemore Craig, Law Department Desktop Services and LexisNexis.

The program involved an overview of the ACC Value Challenge and related developments nationwide; case studies highlighting specific law department efforts to achieve greater alignment between the value and costs of legal services provided to their respective corporate clients; and small group breakout sessions in which participants discussed potential ethical issues involved in implementing alternative fee arrangements.

#### **Co-Moderators and Guest Panelists**

Wayne Ipsen, Senior Corporate Counsel, U.S. Ecology, Inc., and President-elect of the ACC Mountain West Chapter, introduced the program. Daniel Day, Senior Attorney-Litigation, SUPERVALU Inc., and Michael Roster, Chair of the ACC Value Challenge Steering Committee, moderated the program. Case studies were presented by the following panel of seasoned in-house and outside counsel and supplier representatives:

- Michael Roster, former General Counsel, Stanford University and Medical Center
- Kevin Satterlee, Associate Vice President and General Counsel, Boise State University
- John Balitis, Director, Fennemore Craig – Phoenix
- Forrest Morgan, President, Law Department Desktop Services, and former Associate General Counsel of Westinghouse Electric Corporation
- Grace Wang, Corporate Litigation Specialist, LexisNexis

**PART A – Understanding the ACC Value Challenge.** Michael Roster, Chair of the ACC Value Challenge Steering Committee, 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](http://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 – Panelist Presentations**

### **Strategic Partnering: Recasting the Stanford Law Department**

#### **Key Points from Michael Roster’s Presentation**

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 preventative 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.

## **Achieving Cost Efficient Results Boise State University Law Department**

### Key Points from Kevin Satterlee's Presentation

- **A different approach.**

For our law department, the question of value of outside counsel is how that counsel adds to our mission. But at Boise State we operate a bit differently. We are an educational institution. We are an organization with a mission.

Our definition of value is “value to the mission, not to the case.” We need outside counsel who are willing to understand that working for us is working for our mission, not working on the case before them.

We do not need outside counsel to cost effectively defend the one lawsuit that is on their plate. We need outside counsel that will defend the case, while getting to the root of why we are being sued in the first place, who are willing to dig in and help us resolve the potential underlying issue, recommend the policy or procedural changes that get us there, and then continue to help us carry out those changes for the good of the future of the organization. Not that all this must be pro bono, but I need counsel that understands our non-profit mission and that helping further the mission is better in the long run than getting hired to defend the next case they might get.

- **Two case studies help illustrate this approach.**

BSU was sued by a student religious organization. We needed counsel willing to meet with our student affairs staff, delve into the policies that led to the problem, understand how the issue affected our delivery of education, and to help resolve the conflict. Most any outside counsel is willing to do more hourly work. But the question for us is whether counsel view the assignment as hourly work or as an investment in the future of the University.

BSU issues bonded debt. The question in terms of value is whether bond counsel is willing to help us just issue valid debt or are they willing to understand our building needs, understand our bond and revenue system, and how the use of our debt impacts how we conduct our business of educating the public.

- **The bottom line.**

In short, VALUE is in what outside counsel adds to the organization, what they add to the mission; more than value in low cost or cost effective resolution of this case. So, for our law department, achieving “value” is not about the cost of the services. It is about the value that the outside counsel is willing to invest in our mission. If your firm is not willing to make this investment, you will not be successful as outside counsel, and we will not have achieved the value I need from that relationship.

In other words, you do not have to bleed blue and orange (BSU’s colors) to get hired as our outside counsel; but if you do it right, you will want to bleed blue and orange to give us the value that matters for us in the future.

## **A Model for Implementing Technology at Small Law Departments: Striving for Greater Value (Canam Steel Corporation)**

### Key Points from John Balitis’ Presentation

#### **Background of the Case Study**

- **About the SLD/Canam Project.** Mr. Balitis explained that the referenced project involves a collaborative effort among Fennemore Craig, Law Department Desktop Services (LDDS), LawPartnering, Legal Research Center, LexisNexis and Ron Peppe, Vice President of Legal and HR, Canam Steel Corporation-US, to assist Ron and his in-house team in improving their operational efficiencies, reducing costs and achieving more value for the company’s legal spend.

The further broader goal is to develop an approach for implementing appropriate technology at companies with small law departments (SLDs).

- **Managing Litigation as a Business.** The SLD/Canam project came about from the nationwide “Managing Litigation as a Business” initiative, which is 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’ risks, disputes and litigation.

The program involves Corporate Participants sharing best practices; finding new solutions to common challenges; marshaling useful resources and tools in central online “Managing Litigation Portal” (at [www.managinglitigation.com](http://www.managinglitigation.com)); and assisting law departments in acquiring needed knowledge and skills and implementing continuous improvement programs to achieve better results at lower costs. Mr. Balitis noted that the Managing Litigation program is being recommended by senior ACC members as a significant resource that complements and facilitates achievement of ACC Value Challenge goals.

- **Managing Litigation Reference Model.** Experienced corporate litigation managers and outside trial counsel serving as faculty in early “Managing Litigation” kickoff events collaborated in identify the “Key Elements” involved in managing litigation most effectively. Subsequent efforts to organize and enhance usefulness of the Key Elements evolved into a new “Managing Litigation Reference Model” (MLRM) Project (see, <http://MLRM.net>).

Today, the MLRM project is described as a collaborative endeavor among seasoned risk, dispute and litigation management professionals to develop a national standard for managing disputes, claims and litigation in a businesslike manner. Together, the Managing Litigation initiative and MLRM project are lead by Fennemore Craig, LexisNexis, LDDS, LawPartnering and others as “ML Project Directors.”

- To date, law department leaders from over 60 companies have attended one-day ML kickoff events. Ron Peppe participated as a member of the faculty for the Washington DC ML kickoff event in March 2009. Subsequently, Mr. Peppe contributed to refinement of the MLRM by helping to develop a small law department perspective on how best to use the Key Elements and related resources. The task force produced a “MLRM Small Law Department Pathfinder.”

In further discussions, ML Project Directors proposed this collaborative project to assist Mr. Peppe’s in-house legal and HR team in identifying and deploying state-of-the-art technology to drive greater efficiency – and the idea was born to develop a model to assist other companies with SLDs to do the same.

- **Canam Steel / Law Department Profile**

#### General Company Overview

- About 1300-1400 employees in U.S.
- 13 manufacturing plants
- Company provides variety of steel products, engineering/design services, construction services
- Does business in all 50 states
- Dealing with a dozen or so law firms at any one time
- Ron Peppe is Vice President Legal and Human Resources

#### Legal Team

- Ron is only attorney

- Shared Admin Assistant with Company Officer
- Legal New Hire – Contract Administration
- Legal New Hire – Environmental Regulation
- HR – Benefits Manager
- HR – Payroll Manager
- HR – HR Manger at Every U.S. Plant

#### Primary Legal Practice Areas to Manage

- Compliance
- Contracts
  - Bidding Process – Contract Management – Disputes
- Employment / Labor Relations (dealing with unions)
- Environmental
- Litigation
  - Contract disputes – Employment – Personal Injury
- Merger and Acquisitions

#### Biggest Current Concerns / Inefficiencies

- Lack of centralized document repository
  - Creates challenges in compliance audits
  - Recreating the wheel often / much duplicative effort
  - Spending more than necessary in discovery
  - Could use help in litigation management
  - Much of the Company’s legal practice / critical knowledge resides only in Ron’s head
- **Implementing New Technology.** Mr. Balitis explained that SLD/Canam project contributors identified the following concerns of law department leaders about implementing new technology. He encouraged program participants to supplement the listed issues from their own perspective and experience.
    - How do we select solutions that are needed and make most sense?
      - What is our team doing well, or not well, or not at all that we should be doing?
      - What processes are we using that technology could help us do more efficiently?
      - Are there things we are now doing that technology could help eliminate?
      - Are there things technology could help us do that we’ve never before considered?
    - What technology is available? What is it designed to do?
    - Can we afford and how to we pay for the technology?
  - What is the best way to select vendors? Can we trust they have our best interests in mind?
  - How do we implement with least disruption to our legal function?
  - Will the new solutions be compatible with our existing technology?

- Will new systems be compatible with each other?
  - Who will administer the new tools? What training is needed?
  - Will my in-house legal team members use the new applications?
  - Will our law firms and suppliers cooperate where needed?
  - If technology could improve our operations in several ways, what should we do first?
  - Will the tools save us more money than they cost?
  - How do we minimize our risk in making an investment in technology?
  - How do we ensure our law department is gaining maximum value from our investment?
- **Fennemore Craig's Perspective.** Mr. Balitis confirmed that Fennemore appreciates that law departments of all sizes are under pressure from corporate management to operate more efficiently, reduce costs and gain more value for their legal spend and that technology can play an important role in achieving these goals.

In response, Fennemore is resolved to being efficient in the services the firm provides and assisting clients in making informed decisions relating to the above concerns/issues relating to the use of new technology and working with reliable vendors. To these ends, Fennemore is committed to staying at the cutting edge of technology advances.

In this context, Fennemore leaders envision that the firm can play an expanding key role by providing technically proficient lawyers and para-professionals (paralegals, IT personnel, etc) to assist clients with limited resources in deploying and administering technology solutions and, of course, utilizing appropriate tools when requested to do so in providing advice, services and other resources in various legal practice areas.

Fennemore believes the SLD / Canam project will confirm that law firms and/or solution providers contributing staffing resources for this purpose will become an integral part of the model for implementing technology at small law departments. Mr. Balitis provided specific examples of how his firm is already successfully doing this with a number of national clients.

#### Key Points from Forrest Morgan's Presentation

- **Personal Credentials.** Mr. Morgan briefly reviewed his background as associate general counsel at Westinghouse Electric Corporation, where in the early 1990s he was asked to bring the corporate in-house legal team into the age of computers. Developing a dedicated website to serve as a law department extranet connecting the company's in-house team and outside counsel and a central repository of legal work product was at the heart of the project.
- **Law Department Intra- / Extranets.** Mr. Morgan offered and discussed the following elements of the ideal law department portal:
  - Easy to use
  - Minimal cost to Law Department

- Minimal setup and IT involvement
  - Covering all areas of legal practice
  - Web based- 24/7 availability
  - Minimal effort to populate extranet
  - Available to all outside suppliers
  - Law department based and controlled
- **Portal Functionality.** Mr. Morgan highlighted following useful functions of a law department portal:
    - Work product management
    - Communication
    - Collaboration
    - Standardization of processes
    - Best practices
    - Knowledge management
    - Supply chain management
- **The Canam Desktop.** Mr. Morgan next displayed a series of slides depicting the "Desktop" (dedicated intranet / extranet portal) that Law Department Desktop Services is constructing for Canam Steel Corporation as part of the project to assist Ron Peppe / Canam Steel in achieving greater efficiency in law department operations and working more effectively with the company's preferred law firms and suppliers. In this, Mr. Morgan highlighted –
    - The portal is designed to be the “primary workspace” of the in-house legal team through which members can communicate and collaborate with each other, their internal clients, outside counsel, suppliers and other parties, as well as access all needed information and resources pertaining to all types of legal issues and matters.
    - Templates for different types of legal matters are designed to store and present pertinent information, documents and other materials in the same way experienced in-house and outside counsel organize their physical files.
    - These libraries, lists, etc., can be general or matter specific at the discretion of the law department; and viewed, edited and/or supplemented based upon permission levels assigned to authorized law department, law firm and/or third-party intranet / extranet users.
    - The law department administrator can easily change the template to add, modify or delete libraries, lists, calendars, discussion forums, etc., to align with how the

company prefers to organize information and work with its outside counsel and suppliers.

    - The flexibility of the portal's platform and functionality (Microsoft SharePoint Services) in facilitating contract management or, alternatively, any type of process and/or project management.

- Importantly, the law department extranet can serve as a constant reminder to outside counsel and suppliers of the company policies and protocols for delivering high-value legal services at reasonable costs.
  - Similarly, the facility can promote use of best practices to avoid inefficient efforts and drive better value-cost alignment.
  - Needed resources, including the services and tools of preferred suppliers, are put at the fingertips of in-house and outside counsel intranet / extranet users.
- **A Quick Look at the Future.** Mr. Morgan opined that more companies with larger legal departments will follow the lead of DuPont Legal, Eli Lilly, Westinghouse Electric, Wyndham Worldwide Corporation and others in developing dedicated websites at which they will central legal research, work product and other resources for their in-house and outside lawyers and coordinate communications and collaborative efforts at delivering more appropriate, cost efficient and effective legal advice and services to corporate clients.

Mr. Morgan also believes that the SLD/Canam project will confirm that, through collaborative efforts among preferred outside counsel and suppliers, dedicated law department portals will be readily available, affordable and a key element in the model for driving efficiency in legal operations and deploying useful technology of all kinds at small law departments.

- **Related Resources.** In closing, Mr. Morgan noted that the participant binder includes (a) a copy of the “Value Practice: Implementing a Law Department Extranet” by Wyndham Worldwide Corporation, which is part of the ACC Value Challenge Tool Kit resources; and (b) a questionnaire/checklist prepared by Law Department Desktop Services designed to assist law departments in evaluating law department portal technology.

#### Key Points from Grace Wang’s Presentation

- **Law Department Core Needs**
  - Mitigate risk (managing volumes of e-discovery, protecting assets, staying informed)
  - Demonstrate value (implement best practices, create cost-effective litigation strategies)
  - Control costs (improve efficiencies with outside counsel, leverage information quickly)

- **Useful Metrics to Reduce Spend**
  - Spend by Matter
  - Spend v. Budget by Matter
  - Hourly Billing Rate
  - Staffing by Matter
  - Caseload by Lawyer
  - Cost v. Average for Similar Matters
  
- **Litigation Trends and Challenges**
  - Main drivers are control and efficiency
  - Focus on early case assessment to manage exposure and understand the risks
  - Control the cost of outside counsel with alternate fee arrangements (fixed fee, time limit incentives, contingency fees and success bonuses)
  - More in-house counsel activity (specific tasks such as early case assessment, monitoring & review of depositions, review document productions, e-discovery processing brought in-house)
  - Streamline outside counsel activities (use technology to leverage ROI on work product)
  - Better management of in-house activities (litigation holds and custodians)
  
- **Best Practices for Managing Litigation**
  - Leverage technology and content for greater efficiency and collaboration
  - Use standardized reports for consistency and discussion facilitation
  
- **Best Practice for Managing e-Discovery**
  - Regain control of internal processes to minimize cost and reduce risk
  - Implement a process to cull data and process only the most relevant information
  
- **Benefits of Using Technology**
  - Greater case clarity minimizes risk
  - Early case assessment sets expectations
  - Compliance
  - Defend assets
  - Enhance collaboration and improve communication
  - Streamline processes
  - Generate more value from outside counsel

## **PART C – Small Group Breakout Sessions**

### **The Ethics of Value-Cost Alignment Spotting Ethical Issues in Alternative Fee Arrangements**

In general, the small breakout groups discussed the reasonableness of the billable hour model and various alternative fee arrangements in light of Rule 1.5 – Fees, of the Idaho Rules of Professional conduct. Guidelines for faculty leading small group discussions raised these questions among others:

- What ethical issues or potential conflicts might arise with respect to fixed-fee consultation hotlines? Among other things, consider the situation where the firm gives advice on the hotline when, unknown to the person handling the hot line, the other side of the question may be getting advice from the firm on the same or a similar question.
- Is it unethical if the firm makes more money for a fixed price matter/stage/portfolio than they would if they billed solely by the hour? Among other things, is it unethical if, in doing the fixed fee work, the firm is making use of research done for other clients previously? What if the client's costs are 20% to 25% lower for the work than it has paid previously because the firm has become significantly more efficient with fixed fee work?
- What conclusions should we draw from Mike Roster's Hamburger Hypothetical and the comparable ABA and Idaho Rules for Professional Conduct? Put another way, where does the firm take into account the factors other than hours?
- Putting the shoe on the other foot, is it ethical for in-house counsel to approve bills that don't take into account the factors in addition to hours? Are in-house counsel doing so currently?

Discussion highlights included:

#### **Key Points Reported by Rob Dickinson**

- **Extranets:** As you know, in the law firm/client context, an extranet is a computer network that allows access to specific information maintained within the law firm's intranet, for specific purposes, to a defined set of users (clients), from the outside or remotely. Securing proprietary information and maintaining privilege is of great concern when setting up and administering such a system. We discussed the following – (a) protect by limiting access through the use of user permissions, (b) use privilege logs to track actual users and specific materials viewed, (c) do not over utilize (only place a minimal amount of information or documentation into the extranet for remote access by clients), (d) never place extremely sensitive materials or those items you clearly want

protected by privilege into the extranet (never rely on or expect privilege to apply to keep items from disclosure when placed on an extranet).

- Consultation Retainer: A retainer arrangement involves the advance payment of work to be performed later. As we know, it is common for a person seeking the services of a lawyer to pay a retainer to the lawyer. When the client uses the services of the lawyer who holds the retainer, the retainer is reduced by the value of the services rendered. Services can be charged on a fixed, pre-negotiated rate or on a variable hourly rate depending on the nature of the retainer and the practice of the lawyer being retained. With regard to our discussions, we focused on the concept of a “consultation retainer”, which involves paying in advance for future, sporadic and usually brief exchanges typically taking the form of a phone conversation initiated by the client to the attorney during which the client will describe factual circumstances, expresses concerns, and then request an opinion of counsel. We centered our comments on the fact that more often than not the attorney fielding the call from the client does not perform a conflicts check before the consultation. As a result of this issue, we believed that it would be best to simply give to the client a generic response, or offer a statement of the law, which the client could then apply to the facts at hand. For some clients, this form of consultation may not be acceptable or sufficient. If this is the case, then the attorney will need to slow the process down to perform a conflicts check. In addition, although we discussed the distinction between having a formal consultation agreement or an informal arrangement, I do not recall, and my notes do not provide any indication, that we came to any agreement as to the best or a preferred form.
- Fixed Pricing: Some firms are beginning to provide a variety of legal services at a fixed, pre-determined and agreed upon price. Providing and securing compensation for services under such a model must be analyzed under the Rules of Professional Responsibility (the “Rules”). As long as the parties are aware of the agreement, the scope of services and any other terms and conditions are clearly communicated, and the pricing structure is reasonable at the time of entering into the representation the agreement should be enforceable. Under the Rules, a client may request a detailed accounting of the fees and costs associated with representation. In a fixed fee scenario, the firm must still be able to provide such a statement; providing a breakdown of the fees and costs on an “hourly basis.” As a result, firms must still track their time and expenses on fixed fee matters.

#### Key Points Reported by Peter Jenkins

- small group members comprising both in-house and outside counsel acknowledged having little or no experience with alternative fee arrangements; and, when used, ethical considerations had not been considered
- consensus that Professional Rules of Conduct offer flexibility and do not on their face require hourly billing

- consensus that Professional Reuse of Conduct do not prohibit alternative fee arrangements
- reviewing the questions listed above, it was agreed that no ethical issues are inherently involved
- consensus that the key to successful use of alternative fee arrangements, and similarly to avoiding ethical and possible other problems, is upfront, open and ongoing dialogue between corporate and outside counsel

### Key Points Reported by Grace Wang

In-house counsel in the group shared that they face ethical dilemmas often with the duality of their roles. They need to hire the best counsel they can so that upper management can be confident that the best lawyers are on the job. Frequently this is seen as the “top guns” with the larger price tags regardless of the fact that a lawyer from a more modestly priced firm could do as good of a job if not better. In-house counsel don’t want to be in the position of being “second-guessed” if result ends up not being the one desired so they hire the “top guns”.

While the majority of the group had not used AFAs before, there were two examples shared by participants. In one example, the lawyer provided their clients with service for a monthly retainer. The retainer was adjusted up or down given the amount of work and what was reasonable. This encourages his clients to come to him with their issues (sometimes too many). These tend to be smaller companies and in essence he serves as their “general counsel”.

Another example was the use of flat fee/milestone billing for labor employment litigation.

---

**Participant Materials:** Among the materials included in the participant binder for this unique event was a summary of responses by in-house counsel attending prior ACC Value Challenge related programs to the following questions:

*Aside from cost, how does your law department determine the value to your company of services you purchase from outside counsel? Please indicate the specific criteria you use.*

*Aside from reducing fees, describe two things your law firms could do to increase the value of the services they provide your company.*

The summary clearly demonstrates that law department leaders have very different opinions and criteria relating to the “value” of the legal services they purchase from law firms. This, in turn,

emphasizes the importance of candid dialogue between corporate clients and their law firms to discover how the client defines and recognizes value in provided services.

Obviously, without a clear mutual understanding of what constitutes value, delivering value at reasonable cost becomes an extremely difficult undertaking in which it is very easy to miss the mark. Also, law firms need to grasp and learn to manage effectively the reality that providing services that one client considers highly valuable does not guarantee that the same level of service will satisfy the value criteria of other clients.

**Follow-Up with Program Participants:** Importantly, ACC Mountain West Chapter leaders recognize that success of the ACC Value Challenge locally and nationwide requires ongoing attention on finding ways and focused efforts by in-house and outside counsel to achieve better value-cost alignment. To these ends, program sponsors Fennemore Craig, Law Department Desktop Services and LexisNexis proposed this follow-up message to attendees of the Boise event, requesting that they submit their ideas for advancing ACC's Value Challenge in Idaho and Montana:

*Our November 18, 2010, program was 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 Idaho and Montana in-house and local 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.*