

## ACC Value Challenge

### SUMMARY REPORT COLUMBUS SESSION- September 25, 2009

A. **Redesign legal services:** participants at the session were asked to identify how they would restructure and provide legal services if the client's budget was cut in half.

#### IDEAS /ISSUES IDENTIFIED BY THE GROUP:

1. **Collaboration is key**
  - Sit down together early and work together on finding a solution
  - Discuss how to restructure, even if this means taking a short-term hit
  - Notion that collaborative discussions would mainly be with trusted firms
2. **Trusted firms and alternative providers**
  - While it may be easier to have difficult and collaborative discussions with trusted firms, participants discussed possible benefits of also looking beyond firms that clients are most comfortable with to determine whether other legal service providers might offer better cost structures
  - Relationship managers are important—regardless of the firm, involving the relationship manager (either the in-house relationship manager, the law firm relationship manager or both) is important to finding good solutions and structuring sustainable relationships
  - Consider whether convergence or consolidation can yield cost savings and efficiency benefits; if have smaller number of firms, may be able to ask them to work cooperatively and share risks
3. **Discuss what work needs to be done; prioritize & manage client expectations**
  - Determine what work can be commoditized and consider exploring alternative staffing mixes- such as contract counsel or staff attorneys
  - Determine which matters are 'must haves' and which may be contingency matters
  - Determine which litigated cases require more focus and priority and which ones can be 'slowed'

- Determine whether certain tasks don't need to be performed and eliminate them
- Discuss changes in approach with clients so their expectations are appropriately managed

**4. Determine appropriate staffing mix**

- Consider whether current staffing mixes are the most cost-effective (e.g., should the cases have more or less partner time)
- Determine whether staff or contract attorneys can handle some tasks more cost effectively
- Determine whether law firms can 'loan' lawyers to in-house law departments to handle more work in-house
- Determine whether the law department will need to lay off in-house counsel; outsource certain portfolios

**5. Ask the firms to budget and prioritize**

- Notion that firms have expertise; consider going to firms handling larger portions of law department's work and ask them to propose budgets and assess case priorities based on half the budget

**6. Set flat fee budgets with parameters on adjustments**

- Try to create certainty and definition on costs of legal services
- Define what happens and how risks are treated if unexpected circumstances arise or matters go way beyond budget
- Set incentives for good results that come in below budget (consider bonuses)

**7. Explore whether a purchasing coop might benefit smaller law departments with less legal spend**

- Consider whether law departments could group together to receive legal services with other companies on similar types of matters to leverage firm services and returns while minimizing costs to individual clients

**B. Sample Success Stories:** Several participants offered brief insights into practices their law departments/firms are implementing that focus on value. Following are summaries of these practices:

- ***Approved Counsel Program-*** Nationwide Mutual's law department's ACP program has enabled the law department to reduce the number of firms the law department drives the majority of its work to from around 380 to 68; the law department is performing another round of evaluations and plans to consolidate and reduce even further to around 30 firms. Important components of the

process include relationship management, debriefs (discussing what is good and not so good) and rating firm performance using a 5-star system.

- ***Understand the client's business-*** The law firm of Calfee, Halter & Griswold LLP described practices focused on spending time defining value for their clients and learning about their client's businesses—without cost to the client—so that the firm can develop closer relationships, be more strategic and help provide valued preventive legal services.
- ***Consolidate related work and structure fixed fee relationship-*** The Columbus Blue Jackets' law department implemented practices to consolidate worker's compensation matters for several of its club/businesses with one firm on a fixed fee basis.
- ***Risk sharing approach to legal expenses-*** National Investment Managers' law department is implementing risk-sharing arrangements with firms to reduce legal expenses. One practice includes having a firm handle all routine securities work on a retainer basis. The firm tracks hours and submits shadow bills to help determine the appropriateness of the retainer. If the billable hours worked on routine securities matters exceeds the fixed fee amount, then the company is responsible for 50% of the excess. Similarly, if the billable value of monthly hours worked is less than the fixed fee amount, then the company will be provided a discount of 50% of the amount less the fixed fee.
- ***Results first; sliding curve for legal service providers-*** The General Counsel for American Electric Power described the importance of quality and results in structuring legal service relationships. He also described a view of a 'sliding curve' for legal service providers—with larger firms that might handle 'bet the company' matters on the left and firms that are smaller but provide good quality work and results on the right, and a view that law departments can slide across the curve towards the right whenever possible provided service and results match expectations and definitions of value.

C. **Alternative Fee Structures:** participants were asked to identify how they would determine how to structure and manage fees and firm relationships on an alternative fee structure basis for the law department's litigation, employment and intellectual property portfolios.

1. **Inventory matters and calibrate what needs to be done-** identify the current and anticipated matters that will require outside legal support; consider consulting/benchmarking with other in-house counsel to gather information on types of alternative fee structures they may be implementing
2. **Staffing matters-** participants shared two differing views on this: (1) one table of participants noted that they might defer to outside counsel regarding staffing portfolios of

matters; and (2) one table noted that they might set guidelines or have discussions on staffing: partners might be required on more complex matters because of their expertise and the ability to handle matters more expeditious and cost-effectively.

3. **Communications are key**-discuss history of engagements to provide background and context. In addition, communicate open, freely and often to help manage expectations.

4. **Budgets, phase-billing, risk sharing**- consider structures that include setting budgets for portfolios, matters or phases; also consider arrangements that acknowledge risk-sharing and reward results (such as a bonus fee for good returns and minimum fee to cover costs of litigation).

5. **Implementation**- notion that might start incrementally or by subject matter rather than ‘turning a switch’ to move to all matters handled on an alternative fee basis.

6. **Challenges**- participants identified several potential challenges to address, including: need for outside counsel to understand the business, need to establish trust, defining ‘success,’ and implementing change management practices to address possible risks such as working with new people, etc.

**D. Preferred Provider Relationships**: participants were asked how to structure programs to select preferred providers.

1. **Identify firms that will be invited to participate in the process**- start with people you know; determine whether firm’s culture is compatible with the law department’s culture.

2. **Trust**- is important in these relationships; need to determine how to assess firm ‘values’ and culture.

3. **Communicate**- why the process is being undertaken—is it displeasure with existing firms? Desire to consolidate? Cost-savings? Reasons and insights into the thought process will help firms participating in the selection process to understand the business needs of the law department.

4. **Determine who will deliver added value**- define what value means for the law department and design the process to help identify which firms will be able to deliver added value.

**E. Alternative Fees- Quick Poll**: quick poll was taken asking participants –by show of hands—What percentage of matters/legal spend would be on an alternative fee basis by the end of 2010? In taking the quick poll, we started with 5% and moved up in percentage from there.

*>>Around half to three-fourths still had their hands up saying around 30% would be on alternative fee/value basis; around ten percent still had their hands raised at 70%*