

MEET THE 2012

ACC Value Champions

GlaxoSmithKline

The Home Depot

Lucchini S.p.A.

Medtronic

Pfizer Inc.

**RBC Capital Markets and
Morgan, Lewis & Bockius LLP**

**Rockwell Collins and Seyfarth
Shaw LLP**

**The Sherwin-Williams
Company and Gallagher Sharp**

**Target and Nilan
Johnson Lewis P.A.**

**Tyco International Ltd.
and Shook, Hardy & Bacon
L.L.P.**

**United Retirement Plan
Consultants, Inc. & Porter
Wright**

**Whirlpool Corporation
and Wheeler Trigg
O'Donnell LLP**

ACC Association of
Corporate Counsel

**Value
Champions**

ACC Association of
Corporate Counsel

WHIRLPOOL CORPORATON & WHEELER TRIGG O'DONNELL LLP

The Quest for Early Resolution, Lower Costs

Wheeler Trigg O'Donnell congratulates the Whirlpool Corporation legal team led by General Counsel Dave Grumbine and the WTO class actions team led by partner Mike Williams on their recognition as a 2012 ACC Value Champion.



Dave Grumbine



Mike Williams

MEET THE 2012

ACC Value Champions

Val'ue (noun): A fair return or equivalent in goods, services or money for something exchanged; relative worth in utility or importance.



Efficiency. Economy. Effectiveness. Predictability. Value.

These words are frequently heard in conversations about the practice of law, especially since the economic downturn began in 2008, often as desired characteristics or goals of attorney–client relationships. To measure progress against those goals, however, we must have metrics, quantifiable data that permits “fair return” to be assessed, “relative worth” to be demonstrated.

Meet our 2012 Value Champions, an inaugural group that has not only sought value but demonstrated it, in ways that other in-house counsel and their external law firm partners can emulate. We hold them up as examples of innovative approaches to common in-house legal challenges as well as willing resources for others who may still have questions.

The Association of Corporate Counsel created the Value Champions program to recognize law department and law firm leaders who have made great strides in improving the value of legal spending. This year’s honorees include five law departments and seven law department–law firm collaborations that delivered substantial value to their clients through value-focused legal management skills. As corporations continue to grapple with containing costs, General Counsel are improving the cost efficiency

MEET THE 2012 ACC VALUE CHAMPIONS

(In Alphabetical Order)

| | |
|--|----|
| GlaxoSmithKline | 6 |
| The Home Depot | 7 |
| Lucchini S.p.A. | 8 |
| Medtronic | 9 |
| Pfizer Inc. | 10 |
| RBC Capital Markets and Morgan, Lewis & Bockius LLP. | 12 |
| Rockwell Collins and Seyfarth Shaw LLP. | 14 |
| The Sherwin-Williams Company and Gallagher Sharp | 15 |
| Target and Nilan Johnson Lewis P.A. | 16 |
| Tyco International Ltd. and Shook, Hardy & Bacon L.L.P. | 19 |
| United Retirement Plan Consultants, Inc. & Porter Wright | 20 |
| Whirlpool Corporation and Wheeler Trigg O'Donnell LLP. | 22 |



MEET THE 2012

ACC Value Champions



of the legal function, both through how they manage internally and how they partner with their law firms. We set out to identify — and highlight — those who are effectively driving value by cutting spending, improving predictability and achieving better legal outcomes.

“These law departments and law firms have developed and implemented initiatives to deliver bottom-line results for their clients,” says Veta T. Richardson, President & CEO of ACC. “By demonstrating creative lawyering and good, old-fashioned business sense, these ACC Value Champions not only controlled legal spend, but they also improved legal outcomes for their clients.”

The ACC Value Challenge was launched in 2008 and has provided resources and training for in-house counsel and law firm attorneys to help effect change within the legal industry. By re-aligning relationships and promoting value-based fee arrangements and other management tactics, such as project management, process improvement, efficient use of technology and knowledge management tools, the ACC Value Challenge emphasizes that the market for the delivery of legal services benefits from the same insights and wisdom upon which every other service industry relies to provide world-class value to its customers.

We received 61 nominations from law departments and/or sections within organizations, along with law firm practice

groups, of all sizes and from around the world. They were reviewed by members of the ACC Value Challenge Steering Committee: Jeffrey Carr, Senior Vice President, General Counsel & Secretary, FMC Technologies, Inc.; Elisa Garcia, Executive Vice President & General Counsel, Office Depot, Inc.; and Michael Roster, former General Counsel, Golden West Financial and Stanford University.

“We had a large number of excellent entries, so making the final selections was not easy,” says Carr. “The ones we selected stood out not only because of significant results, but for their examples of interesting innovations or practices that could be easily replicated by others. As a long-time advocate for change in our profession, I am excited to see so many corporate counsel, and especially GCs, along with their firms, effectively proving their value as business partners.”

The highlighted programs feature true convergence, in which retainers or fixed fees have led not only to greater predictability but to the opportunity to practice preventative lawyering. In-house counsel and their external providers work shoulder-to-shoulder in these arrangements, not only to jointly create and share knowledge but to proactively mitigate risk throughout the corporations. This in turn demonstrates the legal department’s value as a business partner, and often as an example to follow, to other departments.

Consider the example of Sherwin-Williams, whose national counsel model to defend product defect and warranty claims for coating products resulted in a relationship that brings external lawyers and internal technical personnel together for technical training as well as conversations about sales-generating activities unrelated to claims handling. Or what about Tyco? Shook Hardy & Bacon, its national counsel for product liability litigation, now works proactively in other areas of practice including prelaunch product and literature evaluations. The legal department at Lucchini S.p.A., an Italian steelmaker, has led the rest of the organization in adopting a disciplined management approach with outside consultants.

Winning initiatives range in scale from the small and defined, such as RBC Capital Markets' work with Morgan Lewis to cut employment law spending, to the large and multiyear, such as Pfizer's evolving alliance of 19 external law firms. They include the formulation of creative tools, such as United Retirement's risk chart, and sophisticated systems, such as GlaxoSmithKline's online sourcing room.

The metrics Value Champions use to assess their progress and measure their success vary as greatly as their industries. For some, such as Home Depot, predictability of annual external spending was a goal. For others, such as Whirlpool, reducing cycle time was important, so much so that early resolution bonuses were

incorporated. For Medtronic, the metrics themselves were a goal that led to increased understanding and better forecasting.

Whatever their differences, which are many, the ACC Value Champions have much in common, including a willingness to try new things and open themselves up to scrutiny and assessment. They use fee structures in a variety of ways, but they share carefully crafted goals and rewards that are used to selectively drive desired behaviors. But we've only scratched the surface.

"I think the 2012 Value Champions are just the tip of the iceberg," says Catherine J. Moynihan, director of legal management services at ACC and the manager of the ACC Value Challenge program. "Four years in, the change curve is well along; this is the way the world is moving. This year we received nominations from more than 50 organizations in five countries. Even as we congratulate this year's winners, I hope we will receive many more nominations next year. After all, these initiatives have realized the ultimate goal: cost savings coupled with better legal outcomes."

By Jennifer J. Salopek

GlaxoSmithKline

Committed Leadership Combines with Technological Innovation



Bob Harchut

In September 2008, the GSK law department began to radically change when the company appointed a new General Counsel, Dan Troy, a firm believer that the hourly-rate billing

system can promote inefficiency. He became responsible for implementing one of the top priorities of GSK's CEO: to significantly reduce outside legal spend, while continuing to obtain excellent legal representation.

Bob Harchut, head of U.S. litigation since 1997, was asked in November 2008 to lead a new team within the law department called the Global External Legal Relations Team (GELRT). Its mission was to **dramatically change the paradigm by which GSK paid for legal services** by moving all outside counsel assignments throughout the world to value-based fee (VBF) arrangements whenever feasible.

Harchut was somewhat doubtful at first. "I thought the mandate to do this for all matters around the world might be impractical at the time," he says. "Other markets are not as far along in accepting VBFs, except the United Kingdom, and I thought putting complex litigations and transactions

onto VBFs would be extremely difficult."

Troy insisted that he truly **wanted the arrangements to be win-win**. "He believes that if firms are willing to put some 'skin in the game' to help us meet our cost savings goals, then he is happy to reward the firm for the value they provide to GSK," Harchut says.

Harchut began by assembling a **cross-functional team including Procurement, Finance, IT, and a Lean Sigma project manager** to develop tools and processes. Although Harchut had experienced a Six Sigma initiative in the mid-nineties, "it was initially hard to see how it could readily benefit the law department," he says. Nevertheless, the team looked at various tasks and processes, and mapped them out in detail with corresponding resources.

"It was an eye-opening process," Harchut says.

Troy was willing to invest in the law department and in the initiative. Harchut hired two financial analysts to help him track metrics and chart the success of the effort. GELRT then began working with law firms, deploying a pilot with 10 major U.S. litigation firms that represented the majority of GSK's legal spend. "They were very receptive and willing to work with us," Harchut says. "That may have been due, in part, to the effects of the economic crisis at the time."

A **willingness to experiment** was also key. Troy and Harchut espouse an approach of "launch and learn," believing that often perfection can be the enemy of the good.

Before the initiative began, less than 3 percent of GSK's external spend was through value-based fee arrangements. By the end of 2011, more than 68 percent of GSK's external spend was through VBFs, resulting in extremely significant savings. "One reason for this success was Dan Troy's tone from the top," Harchut says. Troy backed his VBF mandate by **linking the annual bonus objectives of law department personnel to contributions to GELRT's progress**, and he supported this by regular global broadcasts to the Law Department communicating progress towards the goal.

In the summer of 2010, GSK Legal launched its Outside Counsel Selection Initiative (OCSI), an electronic reverse auction program that has so far touched more than 80 firms. "This was a great idea that was brought to us by Marty Harlow and Justin Ergler, our colleagues in Procurement, who had been using online sourcing for sophisticated services in other areas of the company," Harchut says.

GSK Legal worked with Procurement to fashion OCSI into a matter-specific, mini-RFI tool that enables in-house counsel to easily request from firms their specific qualifications for a particular assignment.

It provides GSK Legal leadership with an abundance of valuable metrics as to firms' quality as well as their ability to adhere to VBFs. The other main component of OCSI is the electronic reverse auction "Sourcing Room," which encourages aggressive fee competition among the qualified law firms.

A scorecard is carefully crafted for each matter, weighting key firm selection factors (e.g., matter-specific credentials, experience in jurisdiction, etc.) along with pricing; the low bid is not always the one selected. The model is flexible and scalable. It was rolled out globally in 2011.

Since its launch, 57 OCSI events have been completed to date, resulting in total estimated savings of over \$32.6 million when the winning firm's budget (based on hourly rates) is compared to its final VBF offer; and over \$21 million in savings when the winning firm's initial VBF offer in the Sourcing Room is compared to its final VBF offer. These savings are a subset of overall, even more substantial VBF savings. **vc**

OUTSIDE COUNSEL SELECTION INITIATIVE (OCSI)

KEY COMPONENTS

- **Consistent Process:** Provides a simple and efficient mechanism to assign matters and affords GSK Legal leadership visibility/transparency into these directions
- **Matter-specific mini-RFI Tool:** Enables in-house counsel to easily request valuable, matter-specific qualifications from outside counsel, provides a consistent methodology for objective analysis of responses and summarizes data for GSK Legal Leadership
- **Online "Sourcing Room":** Allows outside counsel to submit and update free proposals for matters, and understand the relative competitiveness of their proposal

FROM THE JUDGES

"The company decided small steps aren't enough and instead demonstrated that big steps can result in big improvements."

"The clear objective to move all of GSK's legal work to value-based fee arrangements and the use of technology and a scorecard to select outside counsel are novel and have led to substantial cost savings."

The Home Depot

Fixed Fees, Efficiency Combine to Slash Spending



Teresa Wynn
Roseborough

Home Depot employs more than 125 people in its in-house legal department, under the leadership of General Counsel Teresa Wynn Roseborough. **The quest for fixed-fee arrangements**

began in the employment arena, when Jocelyn Hunter, Vice President and Deputy General Counsel – Benefits, Employment, Litigation, Merchandising and Regulatory Affairs, challenged several members of the Employment Law Team to develop an overall retainer program covering the majority of the employment law spend. “Our General Counsel at the time pushed us to achieve lower cost, predictable cost and shared risk,” Hunter explains.

This initiative evolved into a program of retainer and fixed-fee arrangements across many of the department’s practice areas. Ranging from employment and benefits to general liability, commercial litigation, patents and a long-standing fixed-fee program for M&A transactions, the arrangements share the basic principle of using a core group of retainer counsel to handle a portfolio of cases or corporate/transactional matters in their area of expertise for a fixed fee. Deputy General Counsel Briley Brisendine observes, “Once we saw the potential savings being generated, it became important to identify other practice areas where there was a similar opportunity for success.”

Home Depot’s lawyers wanted to get control of their legal spend, but didn’t want to squeeze the outside firms on cost completely; they wanted strong firms as partners but they also wanted greater predictability in their legal expenses. “The shared risk aspect meant that we could align the firms’ interests with those of the company,” Hunter says. “We pitched it as a win – win, pointing out

that the firms would have predictable work and revenue.”

The fixed-fee retainer programs cover:

- **Employment Law Regular Litigation:** all single-plaintiff and small multi-party employment litigation, high-profile agency charges, and miscellaneous state law employment advice; divided geographically among 12 firms
- **Employment Law High Exposure Litigation:** alleged class/collective action and large multi-party matters. Nationwide portfolio handled by one or two firms with significant expertise
- **Benefits Retainer:** advice and counseling on benefits issues and ERISA litigation at a fixed annual fee
- **General Liability:** covers premises liability litigation matters across U.S. and Canada; divided geographically among 15 firms
- **Commercial Litigation Consumer Class Actions:** covers all non-indemnified consumer class actions. Handled by one firm nationwide; three-year term with fixed-fee retainer adjusted annually
- **Commercial Litigation Customer Litigation:** covers customer damages claims. Handled by nine regional firms who employ local counsel as necessary; fixed fee per matter
- **Patent Applications:** covers patent application legal fees at a fixed fee per patent
- **Corporate, Transactional and Contract Matters:** fixed-fee arrangements negotiated for a majority of transactional work, including credit/bond issues, M&A transactions, and contract matters

The legal department has also implemented a variety of initiatives aimed at increasing efficiency and adding value. These include:

- **Retainer Counsel Meetings and Conference Calls:** regular meetings and calls among in-house and retainer counsel for sharing best practices, providing business

FROM THE JUDGES

“An example of focusing on a specific area of practice and delivering truly significant results: a 45 to 55 percent reduction in specific areas, and with near certainty in approximately 70 to 75 percent of those areas. And this isn’t short-term: The company has been doing this for at least four years and no doubt is getting better and better at it, along with outside counsel.”

“Home Depot, through its strong partnerships with a core group of law firms, cut its legal spend virtually in half.”

updates, and interactive discussions on strategic topics

- **Brief Bank Technology:** web-based platform organized by practice area to share resources, including briefs, court opinions, deposition transcripts, discovery documents and form documents
- **Recovery Program:** concerted effort to seek out potential recoveries in cases where the company is a member of a class or subject to regulatory fees, including areas such as shipping, pharmaceutical, credit,



tax refunds and customs duties, with recoveries obtained in cash and via business concessions.

Across the department, Home Depot has reduced annual legal fees by 45 to 55 percent since the start of the program in 2008. Additionally, the legal budget is more predictable. “We are now able to predict with near certainty approximately 70 to 75 percent of our annual legal fees, and our total fee spend is more consistent month to month,” Hunter says.

“We’ve found that creating true partnerships with outside counsel consistently drives the best results for the company, minimizes business disruption, and fosters the sharing of knowledge and resources among participating firms.”

Most promising, the company has reaped improved legal outcomes by better aligning the goals and interests of outside counsel with those of inside counsel, and thus those of the company.

“We’ve found that creating true partnerships with outside counsel consistently drives the best results for the company, minimizes business disruption and fosters the sharing of knowledge and resources among participating firms,” says Roseborough.

“You can’t argue with the strong results of this program,” says Hunter. “Some firms were initially reluctant, citing all the reasons the program could fail. Happily, the programs have been enormously successful for Home Depot and in providing certainty for the firms, and we believe similar initiatives could be successful at other companies.” **vc**

Lucchini S.p.A.

Improving Decision Making through Better Legal Support



Ernest Sultanov

Lucchini S.p.A. is the second largest steel producer in Italy, with annual revenues of 2 billion euros. The small in-house legal department outsourced its 400-plus legal matters to more than 30 law firms.

This model was unsustainable, however, as the company could not afford uncontrolled expenses over the long term. Upon becoming general counsel in 2010, Ernest Sultanov was charged with overhauling business as usual to reduce expenses, increase efficiency and bring greater budget predictability.

“The company had been facing a difficult market situation since 2008,” Sultanov says. “We were wasting money when we should have been focusing on debt restructuring and M&A. **My mission as general counsel was to reduce dramatically the expense of outside law firms without doing harm to the company.**”

Sultanov launched Project Dobra (an Italianized Russian word that means “good”) in January of 2011, with the following goals:

- Reduction of day-to-day spending
- Reliable, transparent and timely budgets
- Zero tolerance of inefficiency
- More control on each and every legal matter.

The project’s initial phases included research and the creation of new policies and procedures. “We contacted leading legal firms to learn their best practices, and tried to understand the practices of other companies in Italy and throughout Europe,” he says. **A significant first step was the creation of terms and conditions for legal services provision.** “Lucchini was probably the first Italian company to implement terms and conditions for all legal outsourcing,” Sultanov says. “We wanted the firms to use our systems and requirements to increase control, while decreasing the number of matters and firms.”

The terms include a ban on lump expenses, hidden charges (faxes, phone calls, copying and so forth), and billing for idle time.

Sultanov requires law firms to submit quotes before matters are undertaken and detailed, uniform invoices and timesheets. The application of the terms and conditions alone saved Lucchini 12.5 percent in its first year.

“It really changed our relationships with the law firms. We’re no longer working to their rules; it’s now more of a joint venture, a partnership. And the more they are compliant, the more we come to rely on them,” he says.

Sultanov also tackled IT issues. “It was not something that we could avoid; we had to make it more efficient,” he says. **“We needed a robust data reporting system that would enable improved decision making by management and supervisors.”** Surprisingly, no suitable European system for legal needs was available on the market. Lucchini selected a U.S. platform that still required “huge customization” by the project team, including the creation of customized templates for each matter of substantive law (civil, administrative, criminal). Data is automatically converted from the IT platform to SAP. Automating processes, coupled with improved planning, resulted in a decrease in legal expenses of 35 percent compared to the previous year. Reports that used to take two weeks can now be generated in five minutes, and the legal team has real-time access to every matter.

FROM THE JUDGES

“The fact that any company can achieve a 40 percent savings on standard matters—and do so in Europe—was impressive. The company also dissected different types of work and developed specific approaches for each type.”

“Lucchini recognized that a first step of establishing terms and conditions for its legal services providers and ensuring that they were followed would result in substantial cost savings. Then they added the rigor of evaluating the type of work and the steps/procedures to help them better price the legal services they consume.”

Planning is improved by a new level of consistency. Every matter is divided into specified steps and procedures, and every step or procedure has a limited cost. **The legal team ranks each single matter based on its importance and difficulty.** For M&A activities, Sultanov implemented an added value-based fee structure with capping and bonuses, which is transparent and beneficial both to Lucchini and the law firms.

The approach underwent a profound shift from reactive to proactive. Sultanov created a new risk policy that included identification, assessment, prevention, and monitoring, and he brought in the law firms as well. A \$350 million M&A project in 2011 was successful largely due to improved management decision making resulting from Project Dobra provisions, as was a comprehensive debt restructuring at the end of the year.

“The firms are now part of our risk prevention method, which makes the professional work really important. It brings the best to them and to us,” says Sultanov.

The outside lawyers agree. “As a law firm, we are also in pursuit of transparency, efficiency and clarity in our relationships with clients such as Lucchini. The implementation of the project has actually improved our internal ability to monitor the efficacy of the work of our associates and partners, resulting in improved efficiency of our operations,” says Maurizio Delfino, a partner with the Rome office of Willkie Farr & Gallagher.

The legal team has had success increasing the efficiency of other departments within Lucchini as well. They collaborate with other departments to identify the problems of the company and devise strategies to solve or avoid them. **Other departments, from human resources to manufacturing, have emulated the legal department’s disciplined management systems with their own consultants.**

“Many companies think they must make a choice between reducing costs and increasing control,” says Lucchini. “We were able to have both.” **vc**

Medtronic

Comprehensive Transformation Generates Impressive Metrics



Cam Findlay

When Cam Findlay joined Medtronic as general counsel in August 2009, the company faced numerous legal challenges and was spending a lot of money dealing

with them. “In past years, Medtronic had grown quickly and had been highly profitable,” Findlay says. “For these reasons, the company had never really faced pressure to make the legal function more cost-efficient.”

Findlay had worked previously at Aon Corporation, a large insurance firm. Although Medtronic and its legal department were roughly the same size as Aon and its department, Medtronic’s outside legal spend was roughly five times that of Aon’s. “Medtronic had for many years had the luxury of not having to worry too much about spending,” he says. “It struck me that senior management spent much of their time thinking about revenues and not so much thinking about costs.”

Circumstances demanded dramatic change. The health care marketplace was in upheaval, and legislation and regulation were posing unprecedented and momentous challenges to Medtronic. **Findlay began to focus on total transformation. Its key elements include a preferred provider program driven by an RFP process, alternative fee arrangements, new processes and technology, and an increased focus and reliance on measurement and metrics.**

In 2011, the legal department conducted an RFP-type process and implemented a preferred provider program to significantly reduce the number of firms doing work for Medtronic. “When you work with a lot of firms, you’re a small client of a large number of firms,” Findlay explains. **“We wanted to be a large client of a small number of firms.”** The department implemented its Medtronic

FROM THE JUDGES

“An important focus on no longer being reactive (that is, just responding to whatever comes at the legal department) but proactive: thinking through the legal issues, how they are managed and how the process can be improved... Significant and measurable savings even as outcomes also are improved.”

“Through a combination of RFPs, alternative fee arrangements, technology and metrics, Medtronic transformed the legal function.”

Preferred Provider Program (MP3), and succeeded in reducing the number of outside firms doing the vast majority of Medtronic’s work from several hundred to fewer than 40. Findlay says he now tries to have 90 percent of the work done by MP3 participants. **Benefits include reduced spending, enhanced partnerships with firms, and improved access to firms’ most talented lawyers.**

“We just looked carefully at what law firms do,” Findlay says. “I’m happy to pay for complex legal work, but I don’t want to spend \$400 an hour for an associate to do document review.”

Medtronic also put in place numerous alternative fee agreements—including contingency arrangements, fixed-fee arrangements and risk-sharing devices—to reduce volatility, improve predictability and, most important, align firms’ incentives with Medtronic and share the risks of litigation.

“When we first proposed the AFAs, the firms were not particularly surprised,

but they reacted with differing degrees of enthusiasm. Some really wowed us with their ideas,” Findlay says.

“It’s a very good time to be a buyer of legal services.”

The legal department has worked quickly over the past two years to put in place the latest in legal process and technology. They are implementing a new matter management system and e-billing system that allows lawyers to carefully manage individual matters and provide department leaders with priceless information on legal spending by firm, matter and even task.

“When we first proposed the AFAs, the firms were not particularly surprised, but they reacted with differing degrees of enthusiasm. Some really wowed us with their ideas.”

“Medtronic has traditionally been a very siloed place; each business unit has its own legal department in addition to corporate. The feeling in the businesses was that the litigation department would take over their matters and not involve them strategically or tactically. We really have tried to improve communication up, down and sideways,” says Findlay.

Financial forecasting has been improved by the use of monthly expense reviews, sophisticated metrics, and trending dashboards. **Comprehensive reports and dashboards are distributed to key decision makers monthly and are designed to trigger questions and constructive scrutiny.** Key metrics include legal spend by firm, average hourly rates, legal spend as percentage of total revenue, open matters by matter type, timeliness of invoicing and many more. “Having better information and metrics helps us manage the work better,” Findlay says. **vc**

Pfizer Inc.

Innovative Partnership Transforms the Practice of Law



Amy Schulman



Ellen Rosenthal

Continuous improvement is often touted by organizations but many such claims lack substance. Not so in the case of the Pfizer Legal Alliance (PLA), **a well-established initiative that relies on consistent self-examination to increase its effectiveness and efficiency.** Designed as a long-term collaborative partnership between Pfizer and 19 law firms that aims to transform the way legal services are delivered and valued, the PLA has a designated Chief Counsel in Ellen Rosenthal, who’s always asking herself what she could do better.

The PLA was created by Pfizer General Counsel Amy Schulman in 2009 as an alternative to the **traditional billable hour. She believes that the traditional approach creates a barrier to client–firm relationships and negatively affects the quality of legal outcomes.** “The PLA rejects the idea of a relationship between hourly billing and value,” she says.

Each firm works on a flat-fee basis established at the beginning of each calendar year. The firms provide legal services to Pfizer on the full range of matters facing the company. Approximately 70 percent of Pfizer’s addressable legal budget is currently spent within the PLA. There is no financial incentive for firms to compete for work within the PLA and they are encouraged to work together. Firms are rewarded with opportunities to expand their scope of work on high-profile projects, develop trust and long-term relationships with Pfizer

and each other, and deepen their knowledge of Pfizer and the pharmaceutical industry.

“The PLA represents true collaboration: mutuality of goals, accountability and firms partnering with each other. I think it helps us get back to the pleasure and satisfaction of practicing law,” Schulman says.

The fine-tuning often stems from the results of regular surveys of member firms, says Rosenthal. “One thing we learned was that we needed better communication between Pfizer and the firms than I could accomplish on my own,” she says. An innovation a year into the project engages dedicated senior Pfizer lawyers from the Legal and Compliance Divisions as Pfizer Alliance Leaders (PALs), each of whom is assigned to a single firm to facilitate collaboration and communication. Each firm appoints a Relationship Partner, who serves as a liaison with the PAL and acts as the primary

PFIZER LEGAL ALLIANCE MEMBER FIRMS

- Boies Schiller & Flexner
- Bradley Arant Boult Cummings
- Clifford Chance
- DLA Piper
- Goodell DeVries Leech & Dann
- Hughes Hubbard
- Irwin Fritchie Urquhart & Moore
- Jackson Lewis
- Kaye Scholer
- Kirkland Ellis
- Ropes & Gray
- Shook Hardy & Bacon
- Skadden, Arps, Slate, Meagher & Flom
- Torgys
- Tucker Ellis
- Watkins & Eager
- Wheeler Trigg O’Donnell
- White & Case
- Williams & Connolly

point of contact between the firm and Pfizer. PALs and Relationship Partners meet monthly to discuss top matters, issues related to quality/quantity of work, secondments, educational opportunities and more.

Two additions to the program in the past year are sources of great pride for Rosenthal: the Associate Roundtable and the Junior Associate Program. The Associate Roundtable brings together star associates from each member firm; self-governed, the group has become a strong social network in which the associates can cross-refer matters.

Each Roundtable member is paired with a Pfizer mentor, who identifies opportunities for the associates to do more high-profile work. The Roundtable also developed a CLE program for Pfizer attorneys that is conducted monthly at Pfizer as well as webcast to Pfizer offices and to all of the Alliance firms.

The Junior Associate Program was developed to strengthen the professional development of high-potential law school graduates through hands-on exposure to Pfizer legal matters. Launched in September 2011, the program rotates three first-year lawyers, two of whom who completed joint JD/MBA programs, between Pfizer and a PLA firm for two years. They will ultimately join Pfizer or the firm as third-year associates.

“Most corporations don’t hire newly minted lawyers, but we see it as a great opportunity to build a home-grown team,” says Rosenthal. “Both of these programs demonstrate our commitment to the future of the relationship with the PLA firms, and it is a real joy to see these associates grow.”

The PLA allows Pfizer to harness a cohesive, collaborative pool of legal expertise to quickly, productively and efficiently address matters and resolve issues, ultimately leading to more favorable outcomes.

Last year, for example, the PLA

led negotiations for master services agreements (MSAs) with two contract research organizations to make them preferred clinical trial service providers for five years. The complex transactions—conducted in parallel—had to be completed simultaneously and confidentially within a very tight timeframe, and involved Pfizer lawyers and two firms. One firm took the lead on drafting each MSA, while providing secondary support to the other firm. As issues or questions arose, the teams met to discuss and resolve them. The result was two successfully negotiated, aligned and high-quality deals in a span of just three months, along with best practice lessons that continue to benefit PLA legal work.

“Research shows that diverse teams that collaborate get better results,” Schulman says. “That is borne out all the time in the PLA.”

Rosenthal says she spent most of 2011 embedding operational tools for the PLA, such as the virtual communications hub that connects more than 700 Pfizer and firm lawyers—the “PLA Exchange.” The site is updated daily and features an expertise locator; conversation forums; daily news updates; articles on the PLA, Pfizer and participating firms; and helpful resources that facilitate feedback and knowledge sharing. She also developed the template for a monthly report that the firms can generate for their PALs.

“This year, the PLA has really begun to feel like an established institution; we’re standing on solid ground and can continue to evolve and mature,” Rosenthal says. Up next? Goals to drive incentives and awards, a pro bono program and a diversity program.

“We are looking toward a long-term future,” says Rosenthal. **vc**

FROM THE JUDGES

“Pfizer has had visibility for some time with the significant programs they have implemented. This submission is... an example of focusing on areas that really matter, not the peripheral stuff. And it shows how costs can be reduced and predictability achieved while at the same time improving outcomes.”

“Most corporations don’t hire newly minted lawyers, but we see it as a great opportunity to build a home-grown team. Both of these programs demonstrate our commitment to the future of the relationship with the PLA firms, and it is a real joy to see these associates grow.”

RBC Capital Markets and Morgan, Lewis & Bockius LLP

Managing for Continuous Improvement



Todd Schnell



Sari Alamuddin

The Royal Bank of Canada has 74,000 employees worldwide; more than 7,500 of them work in the United States. RBC Capital Markets' Minneapolis-based legal department provides employment law and litigation support for all of RBC's U.S. operations. Since 2006, RBC has worked with Chicago law firm Morgan, Lewis & Bockius LLP on labor and employment matters. For the past two years, client and outside counsel have worked to forge a deeper business partnership focused on improved budget predictability and reduction of legal costs. Key to this effort is a **strong focus on creating, managing and evaluating value-based fee arrangements.**

RBC Senior Associate General Counsel Todd Schnell has led the initiative. With 11 years of private practice experience, Schnell was familiar with the benefits and downside of billable hours. He joined RBC in 2005 and began to work on the value initiative in 2010.

"The biggest challenge was that lawyers are essentially service providers," Schnell says. "It's important to set expectations, but those are very different with alternative fees than with billable hours. **Alternative fee arrangements permit much better projecting and predicting.**" Three things that positioned Schnell's operation well: The U.S. employment law group is quite small (four total), litigation volume is not high and cases are relatively similar.

Schnell reviewed ACC resources to learn what other companies were doing, and talked to RBC colleagues as well as those in different industries. The current state is "an evolution based on trial and error;" and some arrangements now in place

are hybrids. RBC and Morgan Lewis are committed to **continuous improvement**; Schnell says the process requires "constant tweaking," and that Morgan Lewis has been "incredibly willing to work with us."

They have employed a wide variety of arrangements that have included

- fixed fees for the life of a matter, paid on a monthly basis
- fixed fees with risk-sharing provisions in which both parties share equally in any amount under or over the fixed fee
- fixed fees for all work on a matter up to a certain "trigger" point, followed by blended rates for work beyond that point
- capped fees.

Both parties' effective management and monitoring of these value-based arrangements have allowed them to better manage expectations on the cost of a matter and to propose adjustments to the arrangements when a litigation has taken an unexpected turn. "We evaluate achievement against expectations, looking for predictable—although not always lower—bills," Schnell says.

Schnell notes that he likes to look at cases in phases. In one instance, it became clear early on in the litigation that the actual cost of defending the matter would exceed the agreed-upon fixed fee, due to circumstances beyond the control of both parties. While acknowledging that a certain amount of risk is inherent in any fixed-fee arrangement, RBC and Morgan Lewis agreed on an arrangement under which the firm would honor the fixed-fee until actual costs hit a certain trigger point above the agreed-upon fixed fee, with a blended rate arrangement to apply to work beyond that point.

In some wage and hour class action matters, Morgan Lewis's handling of the cases resulted in actual costs below the total amount of the fixed monthly fees that RBC had paid during the life of the matters. Morgan Lewis reconciled the difference according to a risk-sharing provision—resulting in legal fees that were not only predictable but were in

fact lower than predicted as a result of the reconciliation.

Since 2010, value-based fee arrangements have resulted in an **effective savings of 35 percent** over the projected fees for that period. **Not one employment litigation matter opened since 2010 has been billed at traditional hourly rates.**

"RBC's General Counsel Group has actively promoted value-based fee arrangements and other management tactics to gain better value from outside law firms and greater predictability for our own budgets," said David Allgood, Executive Vice President and General Counsel. "By encouraging these arrangements, we also enjoy a smoother overall process as we start each project with a candid discussion of expectations and outcomes."

Schnell says internal working relationships have also changed for the better. **"These arrangements have improved our relationships with internal clients, because we can lay out a reasonable expectation of costs, and demonstrate that we are trying to control costs. Legal is no longer a black box."**

His best advice to other in-house attorneys considering implementing alternative fee arrangements? **"Be creative; feel free to bounce your ideas off of outside counsel and seek their honest feedback."** **vc**

FROM THE JUDGES

"An interesting mix of approaches for employment litigation, no doubt with the understanding that one size doesn't fit all, but with consistency on how to approach each matter. Also, an emphasis on managing and monitoring."

"The predictability and cost savings achieved were impressive."

Morgan Lewis

We are proud to congratulate our client RBC Capital Markets on its selection as 2012 ACC Value Champion, recognized for "Managing for Continuous Improvement" together with Morgan Lewis.



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Morgan Lewis & Bockius LLP

Rockwell Collins and Seyfarth Shaw LLP

Lean in the Legal Department? Yes!



Gary Chadick



Lisa Damon

When Rockwell Collins was spun off from Rockwell International as a public company in 2001, Gary Chadick came aboard as the new company's first General Counsel. Rockwell Collins (and its predecessor companies) had a long history of applying Lean principles to all of its business units and shared service functions, but those efforts had ebbed and flowed. In 2010, the company's CEO announced an initiative to renew those efforts across the company.

"I knew there were opportunities to apply Lean principles to the practice of law but had not seen anyone apply Lean to providing the in-house coordination of outside legal services," Chadick says.

Fortunately, he had an expert source in Seyfarth Shaw LLP partner Lisa Damon, a pioneer in using Lean Six Sigma for the delivery of legal services. Chadick invited Damon to address his department; when he heard how she had used value stream mapping of her firm's processes to

generate work product, he saw the clear opportunity to apply the technique in his own department.

"The effort needed to be transformational, not incremental, and visible to everyone in the Law Group in order to meet the Lean renewal goals established by our CEO," Chadick says. "As part of our discussions, Lisa made me aware of what other pioneer companies had done in terms of applying Lean thinking to the services provided by law departments, including the use of alternative fee arrangements. We interviewed other general counsel, outside counsel, and some of Seyfarth Shaw's other clients" to learn more.

What Chadick saw were tangible benefits—predictable fees, consistency of processes and a more efficient team—that his office and Rockwell Collins could realize. Chadick manages a 20-employee law group that provides legal advice and services worldwide, manages all litigation and handles corporate secretary responsibilities. The Office of the General Counsel also includes the Ethics and Business Compliance Group and the Export/Import Compliance Group—about 65 employees in total.

At a kickoff meeting with members of the Law Group and the Seyfarth team, Chadick articulated the case for change, described his vision for the future and empowered everyone to bring new ideas to implement a more value-based ap-

proach to the department's relationships with outside counsel.

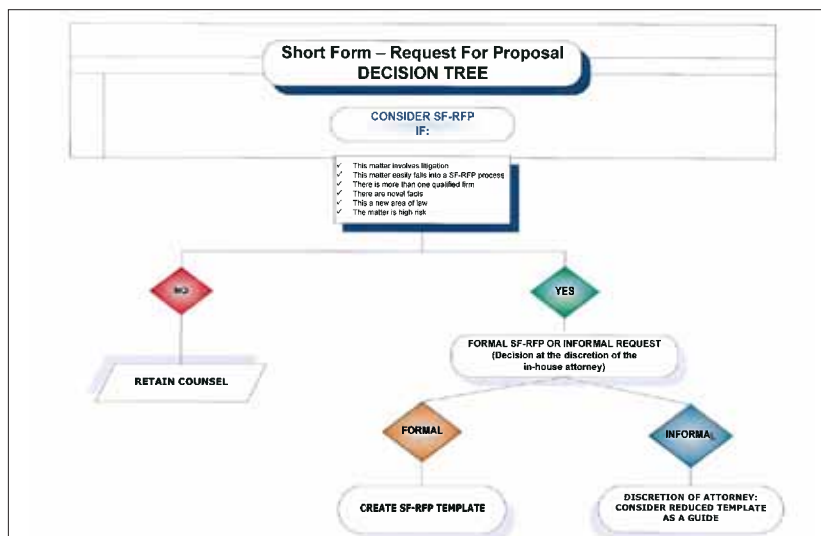
Damon led the Law Group through a value stream mapping exercise to plot RC's current state. Later, the Law Group developed a future state map, incorporating the use of knowledge management, process efficiencies, and best practices. **Within a year, the Rockwell Collins–Seyfarth Lean consulting team had completely reengineered how the Law Group selects, engages, manages and evaluates outside counsel.**

"The Lean workflow is the framework for the entire value-based approach. It maps out all of the steps in the process of selecting, engaging, managing and evaluating outside counsel," Chadick says.

In the first three months since the Law Group started using its new processes, it saved over \$58,000, primarily through AFAs. Chadick projects savings for fiscal year 2012 to be \$666,000 on \$3.9 million in outside counsel fees, or 17.5 percent. Although impressive, cost savings weren't his primary goal:

"We have always been very responsible in the way we manage expenses; there was no feeling that fees were out of control," Chadick says. "Rather, **our effort was to change directionally the way we engage with outside counsel in order to better align their interests with ours and to promote efficiency.** We shouldn't pay for wasteful or inefficient work."

Sub-teams within the Law Group developed a handful of key tools, including



FROM THE JUDGES

"As with many companies, an impetus for what was done came from the top: the CEO. The department's story shows how to go about the process in a systematic way."

"Through the use of project management techniques and sub-teams that included the entire legal department, "buy-in" by all members of the in-house legal department was ensured."

engagement letters based on alternative fee arrangements, a Short-Form Request for Proposals, a checklist for initial conversations with outside counsel, guidelines for discussions with outside counsel and decision trees that outline the use of the tools. Although some Rockwell Collins attorneys initially feared that firms would resist alternative fee-based engagements, and thus would have to be dropped, outside counsel proved able and willing to engage in alternative fee arrangements. Rockwell Collins now uses AFAs on all new matters over \$50,000.

“We didn’t use RFPs before, but now we use them very successfully to create competition. The firms really had to sharpen their pencils, and we have better goal alignment and focus on value of the legal services being provided by outside counsel versus billable hours,” Chadick says.

Most of Rockwell Collins’ alternative fee arrangements now are based upon success fee arrangements; some include a firm fixed price for a scope of work as well. **Chadick defines success in multiple ways:** Did the firm achieve the desired results? Were they strategic thinkers and responsive to input and needs? Was the work done efficiently and did they demonstrate good execution acumen? How well did they perform the work in terms of cost and schedule?

The Lean team also built in vehicles for continuous improvement, including effective feedback loops to ensure candid conversations about lessons learned; these lessons are documented and actioned. The reports are available for reference in selection of counsel for new matters.

“At the end, this opportunity for discussion and learning emphasizes that our system is performance-based and that we will reward firms where they should be rewarded,” says Chadick. “It focuses them on what success looks like through our eyes.”

“In the end, the Law Group was successful in re-engineering its processes due to the hard work and dedication of all of the members of the Law Group and Seyfarth Shaw’s guidance on how to apply Lean principles to the delivery of legal services.” **vc**

The Sherwin-Williams Company and Gallagher Sharp

Deep Collaboration Positions Outside Firm as True Business Partner



Ron Tamburrino



Bob Eddy

Although the Sherwin-Williams Company had worked with Bob Eddy at Cleveland-based Gallagher Sharp for more than 20 years, implementing a national counsel model has deepened their collaboration into a true business partnership.

“We had successfully implemented the national counsel model in such various traditional areas as product claims and mass toxic tort, but this is the first time we used the model to defend product defect/warranty claims for highly technical coating products,” says Ron Tamburrino, associate general counsel for litigation at Sherwin-Williams.

Tamburrino, who began the project in January 2011, explains that these coating products are used for bridges, heavy equipment and military applications. “They’re applied to objects that are exposed to the elements,” he says.

The legal department at Sherwin-Williams saw an opportunity to lower costs and increase efficiency by applying the national counsel model to these claims. Rather than having to educate new counsel in every new case filed regarding the intricacies of the organization, technical issues involved with the products and the projects where the products were often used, selecting a single national counsel would greatly increase efficiency.

“This is the first time we tried to approach these cases with nontraditional national counsel rules,” Tamburrino says.

Claims involve highly technical and nuanced factual and legal issues. **Eddy and other Gallagher Sharp attorneys attended specialized technical training**

side-by-side with in-house counsel and key business unit employees to develop industry certification. They gained specialized expertise about the products, their technical issues and performance characteristics.

“We really wanted to broaden their baseline technical knowledge,” says Tamburrino. “The lawyers from Gallagher Sharp sat shoulder-to-shoulder with the Sherwin-Williams team.”

They have also attended product-specific training independent of any ongoing litigation and built relationships with key management personnel in the business unit responsible for selling and marketing these products.

The technical knowledge regarding the products and relationship building jointly completed by outside and in-house counsel has proven invaluable in defending these claims. “It really gives them much keener insight into the litigation issues to address,” Tamburrino says. “They can identify those issues early, manage through them and resolve them more quickly.”

The national counsel model brings other benefits as well, such as streamlining many tasks that are common to the defense of these types of matters, such as common work product, similar pleadings, discovery, deposition strategies and so forth. **It is not**

FROM THE JUDGES

“An excellent example of how the use of a single firm to coordinate designated types of matters nationwide can result in significant savings, improved predictability and improved outcomes. This is an approach all corporate law departments can consider, no matter what their size, and even if their work is far more local.”

Target and Nilan Johnson Lewis P.A.

Prevention, Pricing, Predictability

a shared-risk arrangement due to the nature of the claims, but rather a hybrid retainer–hourly rate arrangement.

Sherwin-Williams estimates savings to be 15 percent per case in litigation and expenses, which was calculated by looking at cases involving similar products with different counsel. “The savings were achieved by stripping away the learning curve,” says Tamburrino. “We don’t have to teach the issues repeatedly, and it greatly decreases the number of hours our technical people have to spend explaining things.” Plus, he says, the billing model is simpler.

Legal outcomes have improved: Having an industry-certified expert as outside counsel has led to better early case assessment, resulting in dismissal with prejudice of three significant matters very early in the litigation. “Involving Bob [Eddy] at the claims stage to work with claimant counsel gathering information allows him to sit down at the table and explain in a rational way what the real issues are. He plays a vital role in educating the opposition,” Tamburrino says.

There have been nonfinancial benefits as well. **The business unit has grown to respect the expertise of the combined internal/external counsel team; their legal advice is now sought regarding sales-generating activities unrelated to claims handling.**

For other companies interested in implementing a similar model, Tamburrino offers these suggestions:

- Take all learning issues out of your legal budget by building relationships between your technical people and your outside counsel.
- Identify employees from your company’s business units who are involved in litigation, and use them to educate outside counsel repeatedly.
- Identify areas of expertise where the opposition is creating reports against your products.
- Find out what technical training your company’s people are attending, and send outside counsel. **vc**



Jim Rowader



Joe Schmitt

When Jim Rowader joined Minnesota-based Target Corporation in 1994, the Employee and Labor Relations department employed 10 people. The company now has stores across the United States and Canada, and the department is 100 strong. Along with the increase in size came an increase in the complexity and number of matters, work production and litigation. Rowader and colleague Greg Petouvis, a senior attorney who manages outside counsel relations, began their quest for increased value in 2006. **Target held the first of what would become an annual conference of outside law firms, to educate them on the business of Target and break down barriers between firms.** The motivation, says Rowader, was simple:

“The company’s growth led us to the realization that our external lawyers should be more connected among themselves and to Target in a business sense,” he says.

After that initial conference, **Rowader’s Employee and Labor Relations department began to drive efficiencies in which the work of one firm could be leveraged to help other firms. “That positioned us to create value-based fee arrangements,”** Rowader says.

Beginning in early 2009, the legal team began implementing a comprehensive, four-part system that addressed the main areas of their legal spend:

- Day-to-day advisory issues
- Single-plaintiff employment litigation
- Major advisory projects, such as 50-state surveys
- Class and collective litigation.

“We needed go-to law firms and attorneys across the country—a robust team,” explains Petouvis. The timing wasn’t coincidence, however: “The recession allowed us to deal proactively with cost pressures,” he says. Target now has value-based fee arrangements in place with a number of firms.

For employee and labor relations issues, Target works frequently with local firm Nilan Johnson Lewis PA, which has been a willing partner in all four areas of the project. For day-to-day advisory issues, Target and Nilan Johnson Lewis negotiated a monthly retainer that would cover any such questions by Target lawyers, paralegals and human resources staff. On single-plaintiff employment litigation, Target and Nilan Johnson Lewis entered into a staged flat-fee arrangement, with progress payments covering each of four stages of the litigation (through answer, discovery, sum-

(CONTINUED ON PAGE 18)

FROM THE JUDGES

“The company nicely broke the project into four components and attempted different approaches appropriate for each. They also presented hard data for three to four years, showing truly significant savings without degrading the quality of the legal work being done.”

“The “full-service” provided by Nilan Johnson Lewis PA for all labor-related matters with differing types of fee arrangements (flat fee with progress payments, volume discounts) has provided predictability of legal spend and will allow for efficiencies at the law firm.”



The ACC VALUE Challenge

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ACC Association of
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mary judgment, and up to trial). They also agreed upon flat fees for major advisory projects, on a project-by-project basis. Finally, they arrived at a significant volume-based discount on class and collective litigation or related matters. Nilan Johnson Lewis also agreed not to charge Target for various costs, including online legal research.

“We have designed a program that is not unrealistic,” Rowader says. **“We don’t squeeze the firms with cost restrictions, but rather reward them for a great level of service and quality. Performance scorecards allow them to see all of our metrics, not just cost. We provide holistic feedback that helps the firms understand the importance we place on the overall working experience.”**

Results have been impressive. Whereas Target’s previous costs for a single-plaintiff litigation might vary within a range of up to \$200,000, the company now is able to budget for each case with certainty. Day-to-day advisory questions, which formerly ranged in cost from \$3,400 to more than \$15,000 a month, now can be budgeted predictably. Further, there’s the intellectual capital that is gained and shared: Target Labor and Employment Relations attorneys and paralegals are encouraged to call Nilan Johnson Lewis counsel without any concern for cost if they have a difficult discipline or termination issue, unusual leave question or thorny compliance concern.

From Nilan Johnson Lewis’s perspective, the monthly retainer and project-based flat fees allow the firm’s attorneys and paralegals a unique opportunity to learn Target’s business and become more effective partners. The firm’s attorneys become involved in significant matters at a very early stage as part of the compliance and preventative processes, and learn Target’s policies and practices from the ground up.

This also allows them to be a more effective partner in litigation.

The most significant results achieved, however, were in the reduction of legal cost. Target and Nilan Johnson Lewis monitored the amount spent in each of the areas covered by the project, and compared those figures to the amount that Target would have spent in a standard hourly arrangement. Cumulative savings over the three completed years of the project total almost \$1.2 million, about 5 percent of total spend.

“We are humbled and pleased to be recognized as an ACC Value Champion,” says Rowader.

“This recognition is an indicator of a great partnership,” adds Petouvis. “We look forward to learning what other companies are doing.” **vc**

“We have designed a program that is not unrealistic. We don’t squeeze the firms with cost restrictions, but rather reward them for a great level of service and quality. Performance scorecards allow them to see all of our metrics, not just cost. We provide holistic feedback that helps the firms understand the importance we place on the overall working experience.”



Nilan Johnson Team

Tyco International Ltd. and Shook, Hardy & Bacon L.L.P.

Flat-Fee Arrangement Benefits Both Client and Firm



Dennis Lynch



Paul Williams

Since October 2004, Tyco and Kansas City-based Shook Hardy & Bacon have partnered in the nationwide defense of the company's entire product liability litigation docket in a flat-fee arrangement with a collar that includes local counsel fees. They share a single objective: to reduce the company's exposure and control costs while protecting quality service, responsiveness and results. Since its inception, the program has garnered praise for its innovative approach that abandons the traditional billable hour model.

The outside counsel selection process had just been completed and implementation was underway when Dennis Lynch joined Tyco as chief litigation counsel in the fire and security segment, which represented about \$12 billion of the company's \$42 billion in annual revenues. Lynch had logged eight years in private practice before going in-house at Unisys.

"I had had one-off experience with alternative fee arrangements on a case or two, but had never bundled hundreds of cases under a flat-fee agreement," he says. "Tyco was very lean in its law department to begin with. We had no internal litigation group, so were under-resourced to manage so many law firms. The national counsel approach was driven by practicality as well as a desire to get a handle on costs."

At the start of the relationship, the docket consisted of more than 500 cases. **In the first five years, Tyco's product liability case docket was reduced by 55 percent, new case filings declined by more than 65 percent**

and case cycle time was reduced by 40 percent. More than half of the company's cases are resolved with no indemnity cost to Tyco.

SHB conducts shadow billing, using standard ABA codes to determine where time and money is being spent and where they can extract the greatest efficiencies. "That gives us a database of more than eight years of metrics," says Lynch. "That track record is informative to us for other RFPs we have sent out. We have changed our mix of litigation."

The firm's philosophy is to identify how to get out in early case assessment: "What is our exit strategy, and how do we get there?," as Paul Williams, partner at Shook Hardy & Bacon, describes it. **Case count, cases filed and cycle time are important metrics; the longer a case is open, the more it costs.**

"Tyco wants resolution of risk. The firm and Tyco are both motivated to resolve cases as quickly as possible," Williams explains. "This restructures how resources are spent."

There's a psychological advantage to the setup, says Lynch. "Adversaries representing insurers in a subrogation scenario know it will not cost us more to go to trial."

SHB routinely provides feedback from the field on process improvements to enhance the services provided and to provide lessons and advice for the Tyco businesses. **"We track recent filings and conduct regular reviews of lessons learned. We use these to educate our internal clients on improving operations and limiting exposure, as well as cutting costs," Lynch says.** The flat-fee amount has steadily decreased.

The longevity of the relationship benefits the company. "Our lawyers are interested in learning the business and, with turnover on the corporate side, we have become the repository of institutional knowledge," says Williams. "We retool our philosophical approach to each case to use available resources and to learn from the past."

Two years ago, Tyco merged two additional litigation dockets with its product liability docket, and SHB now handles all three under the same alternative-fee arrangement. Tyco has also called upon SHB to assist in other areas of practice, including prelaunch product and literature evaluation, product recall advice, records retention counseling, employee witness training, e-discovery advice, training and intellectual property protection and enforcement.

Lynch's best advice? "Flat-fee arrangements, if you have the right firm and the right relationship, are a great way to achieve cost certainty—as much as you can get in corporate America—and a comfort level that comes from knowing that firm, its lawyers and their experience." **vc**

FROM THE JUDGES

"One of the great strengths of Tyco's projects is that they've been underway since 2004. It shows that value-based arrangements aren't a short-term fad. And they are doing all of this with a flat fee arrangement, demonstrating that a firm that puts its mind to it, and a focused in-house department, can make major improvements in how legal work is handled. Note that the annual cost is routinely coming down while outcomes are continuing to improve."

"I was impressed by Tyco's long-term relationship with Shook Hardy in partnering to manage a product liability docket on a fixed-fee basis."

United Retirement Plan Consultants, Inc. & Porter Wright

Making Fixed Fees Work in a Small Law Department



Russ Dempsey



Mark Koogler

When Russ Dempsey joined United Retirement Plan Consultants, Inc., in 2008, it wasn't his first in-house job, and he knew what he didn't know.

"I am a corporate generalist who had joined a public company," he says. "I knew I would need help with the securities work."

In the environment of the economic downturn at the time, Dempsey saw an opportunity to take the lead on discussions on value-based fee arrangements. He proposed a shared-risk arrangement first to the leadership at Porter Wright Morris & Arthur LLP.

"Porter Wright really welcomed the conversation with open arms, especially because we were willing to share the risk. It enabled us to build a partnership built on trust and collaboration," Dempsey says.

The initial agreement was for a monthly adjustable retainer for routine securities work; in addition, United Retirement pays a fixed amount on a monthly basis for "routine securities matters." The law firm and the in-house department collaboratively defined what qualifies as "routine securities work."

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 percent 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 percent of the amount minus the fixed fee.

For example: The company agrees to pay the firm \$10,000 a month to handle these routine securities matters. Let's say that billable hours in September total \$12,000. United Retirement is responsible for 50 percent of the amount in excess of the fixed amount of \$10,000, or \$1,000. The next month, the billable value of services provided for securities matters is \$8,000. United Retirement receives a credit for 50 percent of the difference, or \$1,000.

(CONTINUED ON PAGE 22)

FROM THE JUDGES

"What was interesting to me is that they were trying out and using various approaches and learning in the process. The monthly adjustable retainer for securities work is an incentive for both sides to improve efficiency. And they were willing to reexamine the arrangement from time to time and no doubt learn from that review. They also were learning how to establish fixed fees, and both sides were going about the process with considerable focus on various elements."

"This partnership enabled United Retirement to establish a predictable legal budget for securities and leasing matters, while preparing for the unpredictable nature of legal work through risk probability and risk-sharing strategies."



"Porter Wright really welcomed the conversation with open arms, especially because we were willing to share the risk. It enabled us to build a partnership built on trust and collaboration."

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Both parties agreed to review the fee arrangement at six-month intervals to confirm that it continues to be viewed as successful for the in-house law department and the firm. The program was successfully implemented for 18 months, resulting in reduced legal costs and improved budget predictability, and was discontinued only because United Retirement went private.

In a separate initiative, the United Retirement legal department and Porter Wright agreed to a fixed-fee arrangement for a number of lease negotiations. “When I was talking with Porter Wright about this series of leases, they were quick to point out the potential risks,” says Dempsey. “I didn’t want to create a list of risks that would kick us to an hourly billing arrangement, but rather a tool that would preserve the fixed-fee model.”

Porter Wright and United Retirement developed a Risk Chart to address the specific risks as a mechanism for managing uncertainties relating to a fixed-fee engagement. After noting the fee, scope of the engagement, decision points and makers in the Risk Chart, the parties documented the risks, consequences, gave the risk a probability, mitigation strategy, triggers and time for a project review.

As a result of completing the Risk Chart, United Retirement and Porter Wright were able to negotiate a reasonably acceptable fixed-fee arrangement that addressed United Retirement’s need for predictable legal expenses while allaying Porter Wright’s concerns regarding the time required to negotiate onerous lease provisions. **vc**

Whirlpool Corporation

The Quest for Early Resolution, Lower Co



Dave Grumbine



Mike Williams

It may seem hard to believe, but Whirlpool’s quest for increased value from legal fees began in the Product Engineering department. David Grumbine, senior counsel and director of dispute resolution operations, pinpoints the moment: “We were at a senior management meeting. The vice president of IT at the time asked me, ‘In litigation, is there anything you can do to make it more predictable, and is there anything you can do with information to make the company better?’”

Thus began a drive to redefine the entire legal operation at Whirlpool that has lasted almost 20 years.

Grumbine, who has been with the company since 1984, started working seriously to better control litigation and claims costs in the mid-1990s. “The convergence concept was popular at the time,” he says. “We approached the questions with a clean slate: why and how?”

He began by reorganizing the outside counsel program for product liability litigation. He created the National Product Council (NPC), reducing the number of firms that handle product liability defense from over 200 to just three. “We identified three core technologies that we defend often—those with compressors, laundry products, and heat-generating products—and that result in fairly repetitive litigation,” Grumbine says. He assigned the work to the three firms that succeeded in a national competition along those discrete product lines, then “challenged them to become more efficient in terms of cycle time.”

| EXAMPLE OF THE RISK CHART RELATING TO A FIXED-FEE ARRANGEMENT | |
|---|---|
| Risks | <ol style="list-style-type: none"> 1. Time-consuming issues such as escalation of rent clauses, reimbursement of a building allowance or the cost of tenant improvements upon default and termination of a lease agreement 2. Completely onerous lease |
| Consequence | More time spent by firm than budgeted |
| Probability | Time-consuming issues have a 70% probability. Completely onerous lease is unlikely and only a 5% probability. |
| Mitigation | <ol style="list-style-type: none"> 1. Develop points and position with respect to time-consuming issues in advance and specifically address the most problematic issues in advance of a LOI or term sheet 2. Rely on LOI or term sheet provisions to help reduce time on onerous leases. Also, company to share in overage above the fixed fee on completely onerous leases. Parties to review and agree after completion of the lease. |
| Trigger | <ol style="list-style-type: none"> 1. Approach for this item applies to all leases 2. Upon notice from Partner after initial review of lease |
| Project Review | CLO and partner to review engagement after completion of lease project to determine effectiveness and examine whether there are any areas for improvement. |

He put his money where his mouth was, offering bonuses for early resolution of cases. “The longer a case is open, the more you spend,” he says.

That system existed for a decade. “Then we had enough data to see what a lawsuit really cost us,” Grumbine says. **“Trust, and an understanding of the economics on both sides, enabled the negotiation of flat fees.”**

In the next phase, Whirlpool selected four additional national counsel firms to handle consumer class actions, business litigation, asbestos litigation and litigation in Canada. Wheeler Trigg O'Donnell, LLP, is Whirlpool's national counsel for class action matters, working under a mixed flat/hourly fee arrangement for more than four years. **By selecting a litigation-only firm that is based in Denver, rather than a multi-office, multi-practice-area firm that historically has defended class actions for Fortune 500 companies, Whirlpool immediately saved approximately 40 percent on class-action defense costs.**

“The fixed flat fee with incentives and targets drives down costs amazingly,” says Grumbine. “The firms find themselves to be more efficient; it's a true win-win. It also supplies the answer to that original question about predictability.”

Whirlpool and WTO devised a fee arrangement that enables them to make a reasonable estimate, in the earliest stages of litigation, of how much each case is likely to cost to defend through the class certification hearing; since 2002, local counsel fees have been included in the flat fee arrangement. The model has matured to the point that predictions are now accurate to within about 5 percent; and in-house counsel usually can prepare case budgets with little or no input from WTO.

The financial incentives, in the form of early-resolution bonuses,

are key to improved legal outcomes.

Whirlpool has successfully resolved more than a dozen class actions since the national class-action program was initiated; and only two classes have been certified for trial purposes. The company has settled only one class action on a class-wide basis since 2005, and the modest award was in the six figures.

“It's crucial to have performance goals and targets,” Grumbine says. “We compare against historical performance, and WTO is incented with bonuses to beat the averages or get matters dismissed.”

This is underpinned by the product-line and class specialization of the outside firms. “Our lawyers know Whirlpool's products and issues better than Whirlpool people do. We could try a complex case in two weeks,” Grumbine says.

The seven member firms of the National Product Council now constitute a brain trust for Whirlpool's in-house lawyers. Grumbine brings everyone together for bimonthly conference calls and an annual retreat. “We have created the best virtual law firm in the country,” he says. “We have the best legal minds in America working together to benefit Whirlpool.

“This is our dream place.” **vc**

FROM THE JUDGES

“This is a project that goes all the way back to the mid-90s, so there is an important track record. Product liability is a key element for a manufacturer like Whirlpool, so the project goes to the core of important potential legal exposures for the company, not peripheral stuff. And of course, no one can escape marveling at a cost reduction of 40 percent.”

“Consolidation of the number of firms and the utilization of metrics and reporting has resulted in more efficient handling of class actions as well as providing budget predictability. The use of early resolution bonuses has driven positive legal outcomes.”

“It's crucial to have performance goals and targets. We compare against historical performance, and WTO is incented with bonuses to beat the averages or get matters dismissed.”

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