

2013 ACC Value Champions



ACEA S.p.A.

Bank of America

British Telecommunications plc

**China State Construction
Engineering Corporation**

HIROC & Borden Ladner Gervais LLP

**Hot Fuel Litigation Joint Defense Group
and Shook, Hardy & Bacon L.L.P.**

Marsh & McLennan Companies

Mondelēz International, Inc. & Axiom

NetApp, Inc.

Nike, Inc. & Seyfarth Shaw LLP

Office Depot, Inc.

United Technologies Corporation





The ACC VALUE Challenge

Driving Value in Legal Spending

The ACC Value Challenge promotes adoption of management practices that enhance the value of legal service spending.

Through the ACC Value Challenge, law departments and law firms:

- Download and/or contribute resources explaining and demonstrating many ways to drive value
- Participate in educational programs to develop skills in structuring value-based fees and using the management skills to drive efficiency and control spending
- Network to share ideas, successes and lessons learned

Some of the many ways to drive value supported by the ACC Value Challenge include:

- Using **Value-Based Fees** (i.e. not based solely on the billable hour) to align firm/client relationships around key objectives;
- Strategically **Allocating Work**, considering the most appropriate use of internal and external resources;
- Employing **Project Management** to effectively define scope and set budgets that stick;
- Identifying and eliminating inefficiencies through **Process Improvement** tools and techniques
- Deploying **Technology** to harness data and support procedures to control spending; and
- Using **Knowledge Management** systems to avoid “re-inventing the wheel.”

We invite you to **take the ACC Value Challenge**. Set targets and employ management practices to:

- Reduce spending;
- Improve predictability of spending, and
- Achieve better legal outcomes

For more information visit
www.acc.com/valuechallenge

ACC Association of
Corporate Counsel



Meet the 2013 ACC Value Champions

RE-ENGINEERING THE LEGAL FUNCTION

By Jennifer J. Salopek

The nominations received for the 2013 Value Challenge suggest an interesting trend: In-house legal departments are borrowing concepts from manufacturing to increase both the value they provide to business clients, and receive from external law providers. Terms like *analytics*, *resourcing*, *performance indicators*, and *process improvement* appeared frequently in this year's nominations, along with such traditional manufacturing concepts as optimizing the value chain, Lean/Six Sigma, time and motion studies, and cycle time.

“The traditional practice of law has been turned on its head by these departments. Gone are the days in which legal practice consisted solely of meetings, memos and briefs,” says Catherine J. Moynihan, ACC's director of legal management services. “In-house counsel are re-engineering the legal function to maximize the strategic value of their work, resulting not only in reduced costs and higher client satisfaction, but also in improved morale among their staffs.”

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 eight law departments and four 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 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. Nominations were evaluated by Frederick Dempsey, senior vice president & chief legal officer of United Retirement Plan Consultants; D. Cameron Findlay, senior vice president of Medtronic, Inc.; and Emily Jelich, vice president of Enterprise Corporation and associate general counsel of RBC Law Group, Royal Bank of Canada.

Meet the 2013 ACC Value Champions (continued)



Terms like *analytics, resourcing, performance indicators, and process improvement* appeared frequently in this year's nominations, along with such traditional manufacturing concepts as *optimizing the value chain, Lean/Six Sigma, time and motion studies, and cycle time.*

First, the supply chain: Numerous 2013 Champions are using interesting global legal process outsourcing models to “right-size” or “best-source” legal services. For example, **BT Global Services** created an India-based intake portal that evaluates the complexity of the work requested, passing complex projects to the in-house team and handling the rest — about 30 percent — within the LPO.

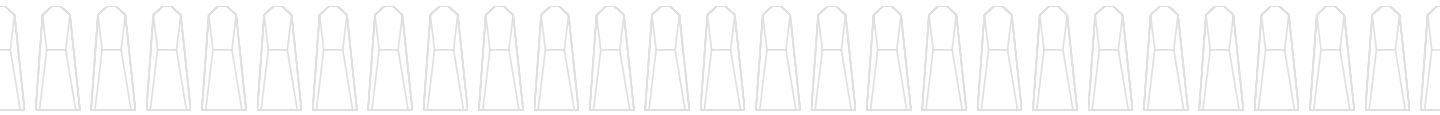
Working with **Seyfarth Shaw**, **Nike's** legal department has implemented a Technology Solutions Center for contracts management that directs work to the right resource from among a choice of three, including on- and offshore options. Meanwhile, **Mondelēz International**, working with **Axiom**, combined process and project management with an LPO solution to handle a contract review process that leveraged a virtual organization of 50 attorneys to review more than 6,000 documents in 35 days, saving Mondelēz millions in legal fees.

“All in-house legal departments struggle with increased volumes,” says Jelich. “Seeing that there are means to deal with that without blowing the budget is helpful for others, particularly when it is done in a risk-based fashion that more effectively aligns to the needs of the business.”

Further, these moves benefit legal department staff, who are able to work at the top of their abilities, focusing on work that is meaningful and challenging.

“The most important thing a general counsel can do is assess what the legal department is doing and ensure that it is focusing on high-value, high-risk work. Once you figure out what you should be doing, you can go outside to determine how you want services delivered and the right-sized provider,” says Findlay.

Next, the analytics: At least two Champions, **Mondelēz International** and **BT Global Services**, conducted time and motion studies to inform their efforts. Mondelēz needed to understand the required staff resources and budget to review thousands of contract documents involved in the spinoff of Mondelēz, Kraft Foods' North American grocery business. BT Global Services studied tasks team members were completing and whether they were using their time efficiently. **NetApp** gathered robust analytics to drive the “down-shifting” of work based on type and complexity, expanding its value chain to include an LPO that handles contract management and administration management services under a hybrid onshore/offshore model.



HIROC, the Health Insurance Reciprocal of Canada, brought in Catalyst Consulting to analyze years of matters in order to understand their complexity and resulting staffing needs. HIROC then used the information to create a robust multi-year agreement with **Borden Ladner Gervais** that focuses on matters rather than hours, and permits great budget predictability.

Analytics also help legal departments understand and manage another concept borrowed from manufacturing: cycle time. Working with **Seyfarth Shaw, Nike** was able to reduce the average time for processing procurement contracts from two weeks to 2.6 days, an 83 percent increase in efficiency. **ACEA S.p.A.** mandates responses to requests for legal services by the next business day.

Many of this year's Champions are leveraging technology for efficiency and data analysis. **NetApp's** Instant Nondisclosure Agreement, which facilitates an electronic signature process, has decreased cycle time on NDAs from weeks to just minutes. **ACEA S.p.A.** and **China State Construction** used technology to share information and knowledge with clients in the business units, leading to better legal outcomes and enhanced internal reputation for the legal department. Both also deployed value-based fee arrangements linked to outcomes — quite the motivator for their external legal counsel.

“What struck me was the diversity of approaches to legal department management, from the narrowly targeted to the broad-based,” says Findlay.

Marsh & McLennan Companies are using all of these techniques and more: technology, data analysis, metrics, convergence, strict outside counsel management and value-based fees with strong top-down leadership. “MMC has attacked the issues on a broad range of fronts,” says Findlay. “The sheer variety of their simultaneous initiatives has resulted in a more client-focused legal department.”

Bank of America, Office Depot and **United Technologies Corporation** were cited by the evaluators as having strong outside counsel management across the board. **Bank of America's** Litigation Roundtable promotes collaboration and learning across 30 law firms while returning cost savings to BoA. **Office Depot** took a targeted approach to developing requests for proposals that have delivered a 30 percent reduction in spend.

Office Depot also has recognized the economies of scale that can happen with joint defense groups. The company has partnered with other

Meet the 2013 ACC Value Champions (continued)



The commitment of all of the 2013 Value Champions to the journey is remarkable, showing incredible creativity as they seek to re-engineer their in-house legal departments to bring greater value, enhanced customer service and lower costs to their organizations.

defendants on patent troll litigation that has reduced costs by 65 percent. In much the same way, multiple defendants combined to work with **Shook Hardy & Bacon** in their defense of the “hot fuel” litigation that saved countless hours and dollars, and in a great example of the whole being greater than the sum of its parts, yielded better outcomes.

United Technologies Corporation has implemented an outside counsel management program that emphasizes value-based billing by firms even to clients other than UTC. UTC’s relentless focus on one metric, percent of spend on value-based billing, demonstrates what can be achieved: 70 percent of external spending on value-based fees.

“UTC’s example illustrates that value is really a journey and every point is progress,” says Jelich. “But the progress doesn’t end. Their commitment to the journey was remarkable.”

Indeed, the commitment of all of the 2013 Value Champions to the journey is remarkable, showing incredible creativity as they seek to re-engineer their in-house legal departments to bring greater value, enhanced customer service and lower costs to their organizations. The 2013 Value Challenge drew 75 submissions, an increase of 28 percent from 2012; 20 percent were received from outside the United States.

“Our team and steering committee have worked hard to spread the word about the concepts embraced by the Value Challenge, and have provided many valuable tools and resources on how to incorporate them on a day-to-day basis,” says Veta Richardson, ACC’s CEO.

“The increase in number and diversity of submissions is evidence that adoption of these concepts is becoming more widespread, and this is important for the in-house legal profession,” she continues. “The results demonstrated by the Value Champions show that general counsel are key strategic partners who are business savvy and can contribute positively to the bottom line.” **vc**

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CELEBRATING A SUCCESSFUL PARTNERSHIP

Borden Ladner Gervais LLP (BLG) and our client, Healthcare Insurance Reciprocal of Canada (HIROC), are proud to be recognized as 2013 ACC Value Champions for “Achieving Predictability and Pay for Performance in a Long-Term Client/Firm Arrangement”.

This prestigious honour is the culmination of a long professional relationship, mutual trust and the desire to be successful partners.

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It begins with service

ACEA S.p.A.

Achieving Better Legal Outcomes and Client Service While Lowering Costs



Renato Conti

ACEA is a public utility that, among other things, distributes electricity to the City of Rome. It is the largest Italian operator in the water sector, and also converts waste to energy. ACEA operates in tightly regulated businesses. As there is scant opportunity to increase revenues, margins must be widened by lowering costs. The call for increased efficiency and cost management in the company is

continuous, says General Counsel Renato Conti.

But he also found that his department suffered from a public image problem. “There were two approaches to the legal department, those of top management and those of operational departments,” Conti explains. “Although executives were very sensitive to the legal aspects of the business and involved the legal department early, legal services were perceived as burdensome infrastructure by the operational departments. They wanted to do things themselves and only involved us when things

broke down.”

“We’re trying to establish a closer link with the business by creating a partnership, showing that we have the same focus and cost-conscious approach.”

In late 2012, the company formalized a two-pronged project first piloted in 2008. The project’s goals are to enhance working relationships between the legal department and

the lines of business so that legal team members are involved in decision-making earlier; and to increase alignment with, while reducing spending on, outside counsel.

“Although we liked to be perceived as paratroopers or characters in a ‘Rambo’ movie, we truly wanted to improve our reputation and status with internal customers, and to bridge the gap between quality offered and quality perceived,” Conti says.

First, to identify the gaps and proactively understand operational departments’ needs, the legal department issued a formal questionnaire. Armed with the results, they leveraged technology, customer service and knowledge sharing to improve communication and to participate actively in value creation.

A new legal department software suite enables the management of files, bills, timesheets, costs, risk and all other file elements. Lawyers receive reporting data that they now share with internal clients for process and management analysis.

Conti adopted a strict communication policy that mandates responses to requests for legal advice by the next business day and specifies that the responses contain substantive information.

The receiving lawyer must take ownership of the issue, provide any requested information and commit to a timely resolution.

The department also began sharing legal knowledge throughout the organization via learning roundtables, conferences and published guidelines.

“We’re trying to establish a closer link with the business by creating a partnership, showing that we have the same focus and cost-conscious approach,” Conti says.

The other prong of the project focuses on external counsel, and implementing alternative fees that feature bonuses to align incentives.

Under the new structure, firms representing ACEA’s cases in court are remunerated proportionally to the goal achieved via their defense (the judgment rendered by courts in each grade of trial). This is calculated by a success-fee remuneration structure that is tempered by a series of factors, including effort provided by the in-house legal department; number/value of files assigned to the specific firm, and so forth. Firms retained for advice on contract and extraordinary matters (capital markets, M&A, etc.) get paid on a flat fee plus satisfaction fee basis. A dozen participating firms were on the front lines in creating the program.

“We were scared we would get no answer at all from the external firms,” Conti admits. “It’s a tough line: If you want money, you bring me results. If you don’t win the case, I don’t pay you.”

ACEA’s results have been impressive. Conti enjoys total budget predictability on cases handled by outside firms, and costs that have declined by 31 percent. Further, he reports that the closer partnership has resulted in a 35 percent improvement in outcomes. **vc**

FROM THE JUDGES

“This example reminds us that in-house counsel must focus on communication and responsiveness internally, as we request our external counsel to do with us. And it shows that the enhanced partnership that value billing can foster extends to the internal business partners as well. Further, this indicates the pervasiveness of value billing — this is not simply an American or North American discussion.”

“Good way to get a handle on requests coming into the legal department and to ensure prompt and appropriate handling.”

Bank of America

Litigation Roundtable: On Budget, and On Top of All Costs



Gary Lynch

In 2010, Bank of America began its legal value journey with the creation of the Litigation Roundtable, tapping Marcy Hingst and hiring Lani Quarmby, both experienced litigators, to oversee outside counsel management. In the two-plus years since, that journey has continued toward convergence across multiple lines of business, resulting in close coordination with external legal service providers, increased efficiencies and cost savings for the company.

Quarmby credits the innovative leadership of General Counsel Gary Lynch and Director of Litigation Jana Litsey for the success of the Roundtable, an innovative partnering and convergence model focused on reducing legal costs while delivering high-quality legal product. Bank of America selected member firms that had a shared understanding of the company's goals and its desire for collaboration, teamwork, open communication and best practices.

"We reduced the number of external firms we worked with from around 700 to 30," Quarmby explains. "The Litigation Roundtable comprises Bank of America's go-to firms for all defensive litigation."

Regular evaluations assess law firm performance and efficiencies. Tracking and reporting are essential for transparency and vendor management. The department tracks and compiles such data as law firm spend, hours billed, number of matters, resolution cycle time, cost per case, budget to actual, savings, volume discounts, discovery and expert spend, and diversity metrics. These metrics, along with several others, align with the bank's comprehensive vendor management program, including management of the bank's external counsel and third-party vendors.

Member firms are encouraged to work together and share information; this leads to greater efficiency, according to Quarmby. Bank of America conducts an annual Litigation Roundtable Summit for all 30 of the firms and in-house litigators, providing an in-person opportunity for interaction and collaboration between Roundtable firms. "The Summit is an opportunity to share best practices, subject matter expertise, coming litigation trends, and other effective case management skills and objectives," she says.

Quarmby cites Bank of America's Enterprise Litigation Team (ELT) as one of the Roundtable innovations. The ELT is a team of in-house counsel and 13 firms selected based on subject matter expertise and geographic reach; they handle all of BoA's high-volume, single-plaintiff litigation (mortgage and consumer-related claims) on a fixed-fee basis.

"This approach has improved resolution cycle times and decreased settlement amounts," she says. "It avoids duplication

of effort and allows the firms to become experts in their areas." The ELT now handles 67 percent of BoA litigation matters.

"Know your spend," is a favorite mantra of Lynch's. To add controls and accountability, the in-house legal department instituted three other innovations: a detailed budget template, a commitment to the use of fixed fees and the creation of a civil litigation project management support team for discovery.

All litigation matters with more than \$250,000 of anticipated annual spend require a detailed budget template. Budgets are developed based on phases and sub-phases of a case by timekeeper, but are not limited to outside counsel spend; they must include an estimate of all expenses and fees, including third-party vendors and experts. "We look at firms' staffing models for an appropriate mix of partners and associates, provide training, and ask the firms for detailed expectations," Quarmby says. "The Roundtable firms really work with us as partners." The budgeting process is the starting point for fixed-fee negotiations and a commitment from the law firms to control spend.

The template approach has brought greatly increased predictability to Bank of America's legal budget. In fact, 2012 spend was within 1 percent of forecast. The approach is being broadened to include other lines of business across the company.

"We obviously have not been immune to the critical legal issues that have confronted the global financial services industry," says Lynch. "We require the highest-quality legal work, but that can be delivered even while financial efficiencies are realized. Pursuing each without sacrificing the other has been our focus."

In 2012, Bank of America decreased its legal expenditures by more than 10 percent over 2011; more than 80 percent of litigation matters are now on alternative arrangements.

"Although we're pleased, we're not satisfied," Lynch says. We remain fully committed to seeking additional means of managing expenses while providing superior legal services." **vc**

FROM THE JUDGES

"This example evidences a commitment to pursue the journey toward a more effective internal legal department and relationship with external counsel. It also demonstrates the extent to which having external firms understand the need to partner for common clients is valuable and creates efficiencies for the firms and their clients."

"Strong, robust, across-the-board outside counsel management."

British Telecommunications plc

“Best Sourcing” Program Uses LPO Intake Portal and Optimizes Staffing



Chris Fowler

The United Kingdom-based in-house legal team at British Telecom provides commercial legal support to BT’s Global Services (GS) line of business for transactions within the UK, and for major corporate and commercial transactions across the BT Group on a global basis. Although GS brought in revenues of £8 billion in 2011-2012, “Like many companies our strategy is cost reduction. Legal

is not free from being evaluated. Our clients are demanding more legal service for less money,” says David Eveleigh, GS general counsel.

Eveleigh and Chris Fowler, UK chief counsel, began their value journey by asking themselves how they could free up and relocate some resources to key growth markets, such as the Asia-Pacific region. “We wanted our in-house lawyers focusing more on what they did rather than on who they did it for; we wanted a sharper operational focus,” Fowler says.

BT’s value initiative aimed to optimize legal value by implementing “best-sourcing” initiatives to track what legal

“We invested time in documenting best practices and implemented sophisticated triage rules,” says Eveleigh. “That was valuable to our ability to monitor the work, manage to expectations and manage the performance of our own people.”

services are requested and deliver the right blend (and cost) of offshore, in-house, and external resources appropriate to the task. By “legal value,” BT means that the complexity and value of the work should determine the appropriate resource to be used and cost to be incurred.

Fowler wanted to find out what tasks legal team members were doing and whether there were productivity opportunities. “We undertook a detailed time and motion study that revealed that a significant proportion of the team’s work was low-level and repeatable,” he says.

BT took a captive organization in India and flipped it into a legal process outsourcing partner, United Lex, to implement the value initiative, which hinges on best sourcing and tracking processes. (BT has no ownership interest in UnitedLex.) Now, all requests for legal work within GS entered into a web-based portal go directly to UnitedLex, which evaluates their complexity; more complex tasks are passed to the in-house legal team in the UK while low-value,



FROM THE JUDGES

“Using this alternative methodology for intake was very interesting, and impressive that it assists in-house counsel to become more strategic without impacting the risk-based advice received by the company.”

high-volume, repeatable tasks stay with UnitedLex. Share-Point technology allows tracking of work requests, matter ownership, progress reporting and demand tracking, and generates statistics.

Originally, those tasks included such things as addenda, contract summaries, nondisclosure agreements, order forms and RFPs. Since the inception of the project, the number of task types handled by the LPO has expanded and includes procurement review, contract generation, legal research and the like. In 2012, approximately 30 percent of all work requests were handled exclusively by the LPO.

“We invested time in documenting best practices and implemented sophisticated triage rules,” says Eveleigh. “That was valuable to our ability to monitor the work, manage to expectations and manage the performance of our own people.”

“We rethought our approaches and developed a playbook that allowed faster time to market and service-level reporting,” agrees Fowler.

Once valuable in-house resources were freed up, senior lawyers were relocated to Asia and the United States, putting them closer to BT’s growth markets and significantly reducing transactional expenses. The outsourcing arrangement allowed the team to manage a consistent workload with fewer people, resulting in a decrease in headcount from 78 to 40.

BT calculated average hourly costs for the in-house team, the LPO and external firms. It tracks the costs for each type of provider and produces a monthly aggregated Legal Value Index. Increased use of the LPO means that in-house resources are now devoted to higher-level work: Whereas 13 percent of work in 2010 was devoted to deals of more than £50 million, 21 percent of work was on those bigger deals by the end of 2012. BT Legal was also able to expand the range of specialized advice it provides, such as environmental, data protection and freedom of information issues.

“We wanted to get the lawyers in front of customers,” Fowler says. “We now can demonstrate to our internal customer that the value of their legal spend is being optimized and monitored.” **vc**

BT RESOURCE OPTIMISATION

Increased use of the LPO means that in-house resources are now devoted to higher-level work.

Month/ Quarter	UK Legal Front Door Projects (to BT Legal)	UK Legal Front Door Projects (to BT Legal)	Total UK Legal Front Door Projects	Legal Hours (LPO)	Legal Value (LPO)	Legal Hours (UKCLR)	Legal Value (UKCLR)	External Legal Spend	Total Legal Hours	Total Legal Value	Quarter Outturn	
BASELINE (AVG Q4 FY10/11)	8	24	32	325	£3,000	6,616	£906,260	£63,961	6,941	£973,240		
April	4	40	44	398	£3,674	6,300	£852,974	£23,870	6,698	£888,997		
May	7	38	45	348	£3,212	7,117	£974,887	£4,336	7,465	£982,455		
June	18	18	36	474	£4,375	6,120	£818,318	£14,110	6,594	£856,911		
Q1/Average	10	32	42	407	£4,754	6,512	£892,059	£13,641	6,919	£909,454	85%	
July	20	20	40	275	£2,538	5,810	£778,298	£22,111	6,095	£782,436		
August	11	27	38	350	£3,231	6,493	£868,283	£1,111	6,843	£872,513		
September	5	27	32	290	£2,400	6,463	£865,266	£20,416	6,723	£898,071		
Q2/Average	12	25	37	295	£2,723	6,259	£837,949	£13,668	6,554	£854,340	122%	
October	8	29	37	208	£1,920	7,017	£941,302	£20,000	7,245	£971,322		
November	10	26	36	348	£3,212	6,169	£827,016	£30,310	6,517	£860,743		
December	10	23	33	422	£3,895	4,373	£592,192	£28,299	4,795	£628,141		
Q3/Average	9	26	35	326	£3,009	5,860	£787,037	£39,190	6,186	£829,235	147%	
January	16	22	38	335	£3,092	6,924	£937,648	£20,011	7,259	£978,807		
February	14	26	40	329	£3,037	5,072	£686,850	£1,111	5,401	£688,887		
March	10	30	40	360	£3,323	6,500	£880,230	£0	6,860	£883,553		PROJECTED
Q4/Average	13	26	39	341	£3,151	6,165	£834,905	£12,689.00	6,507	£850,749	126%	
Year to Date	133	326	459	4,107	£37,908	74,388	£10,055,864	£237,564	78,495	£10,303,836		
Average Monthly	11	27	38	342	£3,159	6,199	£837,989	£19,797	6,541	£858,659	118%	CUMULATIVE

Objectives Requirements	Legal Hours (UKex)	Legal Value (UKex)	Legal Hours (UKCLR)	Legal Value (UKCLR)	Legal Value (Panel)	Total Legal Hours	Total Legal Value	Objective Outturn	Reduction In Spend from Baseline
Threshold Values	341	£3,150	6,285	£860,947	£60,782	6,626	£924,578	50%	5%
Target Values	358	£3,300	5,954	£815,634	£57,583	6,312	£875,916	100%	10%
Stretch Values	374	£3,600	5,293	£725,008	£51,185	5,667	£778,592	300%	20%

LPO Blended Hourly Rate	Based on relevant PD's raised											
£22,407 per month; £268,864 per annum; 14 people @ 40 hours per week; Therefore £9.23 avg rate												
CLB Blended Hourly Rate 201:	Apr '11	May '11	Jun '11	Jul '11	Aug '11	Sep '11	Oct '11	Nov '11	Dec '11	Jan '12	Feb '12	Mar '12
Band 1 £200 @	10.4%	10.4%	10.4%	6.0%	6.1%	6.1%	6.3%	6.3%	8.3%	8.3%	8.3%	8.3%
Band 2 £135.00 @	43.8%	43.8%	43.8%	48.0%	46.9%	46.9%	45.8%	45.8%	43.8%	43.8%	43.8%	43.8%
Band 3 £125.00 @	43.8%	43.8%	43.8%	42.0%	42.9%	42.9%	41.8%	41.8%	45.8%	45.8%	45.8%	45.8%
Band 4 £115.00 @	2.1%	2.1%	2.1%	4.0%	4.1%	4.1%	4.2%	2.1%	2.1%	2.1%	2.1%	2.1%
Therefore	£ 136.98	£ 136.98	£ 136.98	£ 133.90	£ 133.88	£ 133.88	£ 133.85	£ 134.06	£ 135.42	£ 135.42	£ 135.42	£ 135.42

BT COMBINES AVERAGE LPO, INTERNAL AND EXTERNAL HOURLY COSTS IN ITS TOTAL LEGAL VALUE CALCULATION

TOTAL LEGAL VALUE PERFORMANCE IS COMPARED TO THRESHOLD, TARGET AND STRETCH VALUES



From left to right:
Chris Fowler, Richard Keenan, David Eveleigh, Andrew Collis, and Lucinda MacDonald-Robinson

China State Construction Engineering Corporation

Small Department Leverages Technology, Social Media Tools and Smart Pricing to Get More Bang for the Buck



Mohd Sadique

China State Construction Engineering Corporation is the largest real estate and construction company in the world. The company's legal department is headquartered in Dubai, United Arab Emirates, and led by General Counsel Mohd Sadique. He began his quest for lower costs and improved value for money in January 2012.

"In an in-house setting, 'clients' are other departments, the CEO, the board and the staff — in short, everyone," he says. "The days of expansive legal teams are over. In view of our team's modest size, innovation and technology are the chosen bedfellows of our department. They have been instrumental in achieving cost reductions and credible value outcomes."

CSCEC's legal department has a \$20 million annual budget and a team of only five professionals who oversee the legal issues of a total staff numbering 4,527 in Saudi Arabia, Qatar, Kuwait and the United Arab Emirates. Technology extends their reach and bandwidth while knowledge sharing aids client service, communication and understanding.

For example, legal activity is tracked in a central database. Line graphs depict time expended in each country over the preceding months; they are shared widely across the organization. "This creates awareness as to which country warrants greater attention when measured against the yearly targets for the country," Sadique explains. "It guarantees prioritization and alerts staff to track which country demands a greater investment of time." It also acts as a key performance indicator for staff.

The legal staff leverages up-to-the-minute technology, including micro-blogging and instant messaging, to interact with one another and with their internal clients. Using a central online system, the department tweets out legal updates, classifying subjects through the use of hashtags.

"Twitter's 140-character limit ensures brevity, while its use strips away the monotony of work and aids real-time information sharing," Sadique says.

Instant messaging, available on mobile devices and desktops, allows regional staff to interact with the legal team. It aids prompt resolution of problems and serves as an early warning system of burgeoning issues. In addition, updates on pending corporate legal cases are available to upper management with a single click through the central online system.

Greater efficiency has been achieved by pulling contracts back in-house, aided by the use of templates. Legal staff personally draft and review major contracts rather than outsourcing them. The work is aided by a system that permits

the population of 20 key, regularly used contract documents through customized pro forma.

"This saves precious re-drafting time, eliminates major errors and ensures compliance," says Sadique. "Further, by doing it in-house, the contract is more in tandem with the organization's needs."

Those in-sourcing exercises saved the company \$5 million in legal fees in 2012 over 2011, including man-hours and taking into account opportunity costs of other work.

The quest for value extends to the company's relationships with outside counsel. A selective panel of law firms have signed on to CSCEC's corporate culture, which requires a fee estimate prior to the commencement of work. Sadique avoids hourly-rate retainers and requires a fixed minimum fee, usually 60 to 70 percent of a usual fixed fee, with a success fee to be paid if monies owed are recovered. Because the projects can total in the billions of dollars, the amounts owed may be sizable; outside counsel may recover principal with interest, in which case the interest usually covers the success fee, Sadique says.

"This value-added fee structure incentivizes the law firm, expedites project completion and enhances the prospect of recoverability for our organization. It also promotes palatable legal outcomes," says Sadique, who reports that the fee structure saved \$15 million in legal fees in 2012 and enhanced recovery by 60 percent.

Even the handoff of work to outside counsel is made more efficient through the use of technology. An online folder protocol establishes a period of 30 days for claims to be considered and resolved. At the end of that period, access to the folder is disabled and external counsel is appointed.

"I commenced the value initiative to ensure value for money when clients sought legal representation. It contributed to a reduction in legal spend and better value outcomes for my company. In most cases, it also enhanced recoverability of erstwhile bad debts. The upshot to all this is that it boosts corporate confidence to seek legal representation and to draw on external legal expertise," Sadique concludes. **vc**



FROM THE JUDGES

"Further evidence that clients globally are pursuing value-based discussions. This was also a very interesting use of leveraging new technology to assist in departmental communications."

"A good example of a multipronged approach to legal department management using technology, outside counsel management and new processes."

HIROC and Borden Ladner Gervais LLP

Achieving Predictability and Pay for Performance in Long-Term Client/Firm Arrangement



From left to right: John Morris, Borden Ladner Gervais LLP, Cindy Clark, Borden Ladner Gervais LLP, and Michael Boyce, HIROC

Several elements are essential for creating value-based arrangements for legal services that work: information on volume, complexity and risk of matters; trust and a sense of partnership. Having worked together for 25 years, Healthcare Insurance Reciprocal of Canada (HIROC) and its external legal counsel, Borden Ladner Gervais, were well positioned to take their relationship to the next level. That level represented a new configuration of business fundamentals that included work measured by number of matters rather than hours, insourcing work to the in-house legal team, the rigorous use of legal project management, and a multi-year fee arrangement of a base amount with performance bonuses.

“We have taken a different approach to medical malpractice in Canada. We wanted expertise rather than an area of geographic concentration. We offered steady, ongoing work, which allowed us to attract the best and the brightest defense counsel,” says Michael Boyce, vice president of claims at HIROC.

“We compared our costs to settle claims with doctors and with other insurers; ours were usually lower,” he continues. “But we are always looking to see how we can improve and simplify, and we wanted to make use of the fact that we could predict the number of claims very accurately; and how long it would take to settle most of them.”

To arrive at that knowledge, HIROC brought in Catalyst Consulting of Vancouver, British Columbia, to conduct an in-depth analysis of four years of litigation matters and to study average and total hours and staffing patterns for each level. To this was added a five-year forecast of the demand and growth in matters by level of complexity. Richard Stock is principal with Catalyst.

“We do the technical work that provides the information [for these innovative arrangements],” he explains. “We gather the data, make linkages, give it a different interpretation. We urge

our clients to challenge assumptions and old practices.”

In August 2011, HIROC issued a request for agreement for legal services only to BLG. The scope of work included slightly more than 300 new matters per year across five levels of complexity. The request detailed criteria for the configuration of a team of about 20 lawyers and 10 paralegals, rigorous protocols for the preparation and approval of matter budgets, and the use of legal process management methodologies. Compensation would be in the form of a base fee combined with a performance fee determined by such value criteria as process management, responsiveness, predictable costs and results delivered.

“In today’s terms, the most progressive arrangements are those that are based on billing for service rather than hours. We can’t predict every matter but we do have a good sense of what is a reasonable fee. In HIROC’s case, the volume makes it easier to predict,” says John Morris, a partner at BLG who works closely with Boyce.

The base fee includes all professional fees; all office-related expenses such as binding, copying, courier and postage; and increases for timekeeper experience and inflation.

“BLG has always been incredibly efficient at having the right level of lawyer do the work and the strategic use of paralegals. We saw the new agreement as an inducement to be even more efficient, and as a learning experience,” says Boyce.

HIROC now enjoys greater predictability in areas other than budget. The agreement allows both client and firm to retain top legal talent, address succession issues and minimize bureaucracy to support the new working arrangements.

Such arrangements are organic, says Stock, who is currently working with HIROC and BLG on improving the agreed performance evaluation process in 2013. “You are changing behaviors and practices, and adopting new ones. You’re picking up new skills and techniques. Such arrangements should not be mechanical but rather we must continue to make adjustments.

“A lot can happen in six years.” **vc**



FROM THE JUDGES

“This one makes the point that alternative value arrangements deliver predictability to the client, which is important for all corporations and their budgeting. It diminishes the notion that the only reason clients pursue alternative value arrangements is to reduce costs. Also the partnership provided a number of benefits to the law firm.”

“Good use of analytics to look at existing body of work before negotiating an AF arrangement.”

Hot Fuel Litigation Joint Defense Group and Shook, Hardy & Bacon LLP

Circling the Wagons and Holding Strong: Innovative Approach to Joint Defense



Tim Berry
Marathon Petroleum
Company



Tristan Duncan
Shook, Hardy
& Bacon LLP

In 2006, the *Kansas City Star* published a special report entitled, “Hot fuel for you and cold cash for big oil,” which claimed that consumers were being bilked out of \$2.3 billion a year by gasoline retailers selling fuel

without temperature adjustments. Plaintiffs’ attorneys were quick to file 52 class-action lawsuits in 28 states, the District of Columbia and Guam, naming 80 defendants. The actions were consolidated into multiple defendant litigation in Kansas and became widely known as the “hot fuel” litigation.

“These suits attacked an entire industry practice,” explains Tristan Duncan, Partner and energy law attorney at Shook, Hardy & Bacon in Kansas City. “The industry is regulated by government and required to sell gas the way it does — in fact, federal and state regulators recently approved the challenged business practice as in the public’s best interest.”

As a result, industry was united and its interests were aligned. Tim Berry, an attorney now at Marathon Petroleum Company, suggested that the defendants formulate a joint litigation strategy to defend against the class actions across the country. The National Association of Truck Stop Operators facilitated the collection of proposals from law firms to handle the representation and assembled the client-side defense team; interested companies signed up to participate.

“Shook, Hardy & Bacon has done a variety of common representation cases. We thought this was a good fit for our model,” says Duncan, who eventually worked with 13 co-defendants. The parties designed an innovative strategy of pooling resources to increase the impact of their individual investments; a cost-effective defense spread the costs associated with the litigation. The fee structure was innovative: Each group member paid for common work based upon the number of cases in which it had been sued. It was a simple model built to assign costs in proportion to exposure.

“We had never handled cases in this way. Our initial response was to embrace it. The costs for defending the cases on our own would have been astronomical; we probably would have had to settle,” says Shawn Shearer, senior counsel of 7-Eleven, one of the defendants with the largest percentage of cases.

“In this way, individual group members enjoyed economies of scale and would not fall victim to the unfair and unprincipled wars of attrition,” says Duncan. “These otherwise overwhelming costs would not be borne by any single co-defendant.”

Duncan led a team of eight attorneys and two paralegals for

FROM THE JUDGES

“Having a law firm look for synergies amongst a client group, rather than differences, to the advantage of the entire group and managing the group interests was a great advance which also opened up more opportunities for the client group.”

the bulk of the defense. Four core partners handled MDL-wide responsibilities and issues, while four associates worked on issue-specific work that cut across all defendants.

The SHB team conducted periodic status calls with the group to evaluate their proposed litigation strategy and determine the best course of action to achieve victory in all cases.

“This was cutting-edge, complex litigation. All our moves were fully vetted,” says Duncan. “It is a tribute to this group of in-house counsel that they worked so well together. The result was better lawyering.”

Four defendants went to trial in Kansas. Circle K won summary judgment and the case was dismissed; the other three went to trial (QuikTrip, 7-Eleven, and Kum & Go). Nine other companies were not sued in Kansas but continued to help fund the work because they were defendants in other states. “It was an insurance policy for the defendants who would be next,” Duncan says. “Our clients took the long view, which allowed us all to get set up to win.” In Kansas, plaintiffs failed to carry their burden of proof; the jurors did not find a deceptive practice and awarded a unanimous defense verdict.

Defendants who bore defense costs alone were not as fortunate. In April 2012, the *Wall Street Journal* reported that six of these defendants agreed to settle for \$21.6 million. (The proposed class settlements have not been finally approved by the court.) **vc**



Shawn Shearer
7-Eleven, Inc.



Stuart Sullivan
QuikTrip Corporation



Charles Campbell
Kum & Go, L.C.



Doryce Norwood
Circle K Stores, Inc.



Suzanne Gagle
Marathon Petroleum
Corporation



David Ball
Speedway LLC



Kristin Seabrook
Pilot Flying J



Katherine Dickinson
Wawa, Inc.



Tom Carney
The Pantry, Inc.



Gary Zimmerman
Sheetz, Inc.



Greg Smith
Murphy Oil Corporation



Joe Akers
RaceTrac Petroleum, Inc.

Marsh & McLennan Companies

A Multi-Faceted Approach to Creating Value: Technology, Convergence and Value-Based Fee Arrangements



From left to right: Paula McGlarry, Lucy Fato, Michael Caplan, Peter Beshar, Kate Brennan, Jennifer Feldheim, and James McNasby

Over the past seven years, the Marsh & McLennan Companies Global Legal Department has embarked on a strategic plan to reduce legal costs, particularly outside counsel fees, while improving the overall quality of legal services to the company. Since 2008, the MMC legal department has reduced outside legal fees by 56 percent. The plan has three major elements: implementing new technology, reducing the number of outside law firms and pursuing innovative value-based fee arrangements.

Leveraging new technology in pursuit of innovation and improved metrics, the department recently completed a global implementation of Datacert's Passport system for e-billing and matter management, migrating from a legacy system that was over 20 years old; it has transferred over 85 percent of its outside legal spend to the system. MMC Legal was Datacert's first global customer to implement Passport.

"With new technology and improved reporting, we're now more focused than ever on metrics that give us the ability to measure performance and operational efficiencies," says Michael Caplan, MMC Legal's chief operating officer. These metrics include global spend by operating company, line of business, region, law firm and matter, cost savings, and cost avoidance.

MMC Legal also launched an initiative to streamline the number of outside law firms used by the department, selecting about 50 from more than 400. A Request for Information was sent to these 50 firms with questions ranging from capabilities and rates to appetite for value-based fee arrangements.

A significant output from the exercise was the development of a new standard-form engagement letter for each preferred provider, setting forth billing guidelines. It requires law firms to provide a business case, key dates and deliverables, suggested staffing models, and blended rates for partners and paralegals for non-fixed-fee work. Caplan estimates that the move to a preferred provider list and consistent billing guidelines has saved MMC at least \$10 million annually since July 2011.

This approach had the approval of Peter Beshar, executive vice president & general counsel. "In terms of getting our in-house lawyers on board, I had to have support from the top," says Caplan. "Peter signed on to the idea that we had to look at the outside firms at the same time that we were implementing new technology."

MMC Legal began using value-based fee arrangements about three years ago on M&A transactions. The company moved to an alternative-fee model in 2012 through competitive bidding, but expects to increase its utilization of these types of arrangements in 2013, especially in the areas of litigation, M&A, subpoenas, contracts and intellectual property.

"We have really moved toward fixed fees, feeling that they're really the only kind of alternative fee arrangement we can stick to, because they're tied to scope," says Caplan. "We've gone from 0 percent of matters under fixed fees to 40 percent.

"We care greatly about predictability. It is more important to us than price. We have notified all of our preferred partners that we are moving all work for key matter areas to fixed-fee pricing; the responses have been very positive," he says.

How has the MMC Global Legal Department been affected? "Our view is that in-house lawyers can add more value over time than outside firms. By reducing our overall legal spend, we are able to strategically add more internal resources to support growth," Caplan says. In addition, MMC Legal is looking to move to a shared service model, where in-house lawyers will support multiple operating companies.

"A primary goal of the Marsh & McLennan Companies Legal Department is to create value: for our business colleagues, our company's clients and our shareholders. We believe we can accomplish this by using sound judgment to focus on the things that matter and striving to be efficient in all that we do," says Beshar. "We expect the same of our outside counsel partners and look to them to help us design value-based fee arrangements that make sense for the matters we work on together. Above all, we look to create lasting relationships with all our constituents, as a way of maximizing the value we add to all the matters that we touch." **vc**

FROM THE JUDGES

"Focused improvement on using value-based fee arrangements, which shows how much progress can be made over a relatively short period."

"This nomination really jumped out; they attacked issues on a broad range of fronts. I was impressed by the sheer variety of simultaneous initiatives being undertaken to make a more client-focused legal department."

Mondelēz International, Inc. and Axiom

Parting Gift for Kraft's Grocery Business: A Neatly Packaged Contracts System



From left to right: Jonas Bruzas, Mondelēz International, Inc., Victoria Bobryk, Axiom, Gerd Pleuhs, Mondelēz International, Inc., Tom Finke, Axiom, Joe Sullivan, Kraft Foods Group, Chris Chang and Meg Scholand, Axiom

When Kraft Foods made the decision to spin off its \$18 billion North American grocery business into a separate company, everyone knew the project would generate a lot of legal work. Ultimately, the spinoff affected 20,000 patents, 40,000 contract documents and 80,000 trademarks.

The new business was called Mondelēz, a made-up word derived from the French for “world” (*monde*) and the Spanish for “delicious” (*deliz*). Just as the combination is innovative, so was the way the in-house legal department approached the work involving commercial agreements. They partnered with Axiom, a new-model legal services firm headquartered in New York, with 11 offices and four delivery centers globally.

The project, which became known as Project Gemini, had two distinct phases: the collection and assessment of the impact of the spinoff on more than 40,000 contract documents; and the negotiation of the duplication or consent to assignment of more than 6,000 agreements prior to the execution of the spinoff. It ultimately involved more than 200 professionals.

“To execute the spinoff required digging into the details of how we did business, and determining which contracts would belong to which of the two resulting companies. We needed to get into the weeds,” explains Gerd Pleuhs, executive vice president and general counsel of Mondelēz. “This is the first time we’ve reached out to a company like Axiom, which had the ability to scale to meet the demands of the project.”

In Phase 1, Axiom professionals collected and loaded Kraft’s North American commercial agreements into a custom contract management system. They configured the system to meet the project’s unique requirements and implemented a process for collecting related information not contained in the agreements themselves. A second step was to assess the impact of the spinoff on the agreements.

Axiom conducted a time and motion study on a sample of the agreements to create a resourcing plan and a budget, which

enabled it to do the work on a fixed-fee-per-agreement basis.

“Kraft was concerned about costs, especially after several outside advisers insisted that it would be impossible to do [this project in the desired timeframe] due to the immense number of agreements and counterparties,” says Thomas Finke, general manager of Axiom’s Chicago office. “The assessment step provided Kraft with budget certainty and shifted the burden of efficiency to us.”

After training sessions conducted by Kraft and Axiom professionals, the Axiom team of more than 60 attorneys and five project managers completed the assessment in fewer than 35 days. Along the way, they reported progress and open issues daily to a joint operating committee.

Phase 2 was the disposition phase, which involved drafting and delivering thousands of notices, consents and/or duplicated agreements to counterparties; negotiating with counterparties; daily reporting of progress against milestones; and uploading executed documents into the contract management system. Kraft and Axiom jointly drafted a 90-page project playbook that detailed the roles and responsibilities of all professionals involved, guidelines for negotiating with counterparties, and processes and templates for eight separate workflows.

A team of more than 50 Axiom attorneys drafted and delivered the consents and duplicate agreements to counterparties. Axiom provided Kraft with reports on progress against milestones and costs of the project relative to budget.

“Axiom’s value was across two dimensions: first, a focus on project management and establishing efficient processes; and second, an in-house orientation our experienced attorneys brought to working with Kraft’s counterparties. These factors enabled us to stay on budget and on schedule,” says Finke.

Pleuhs reports that Mondelēz has subsequently started a global program called “Do What Matters” that emphasizes using the right resources for the right projects. The relationship with Axiom, he says, allowed Kraft/Mondelēz’s in-house team to focus on adding value by delivering customized legal advice to the businesses.

“Absent this approach, we would have had to take the risk approach and dedicate all of our in-house staff to this project. It’s lucky Axiom and we found one another.” **vc**

FROM THE JUDGES

“Illustrates effectively that using innovative thinking at the beginning of a transaction can open up new and improved ways of managing a situation. In this case, the new and improved method was substantially more time and cost-effective than the traditional alternative would have been.”

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NetApp, Inc.

A Technology Roadmap Helps Keep Legal Costs in the Middle of the Road, While the Team Accelerates in the Fast Lane



Matt Fawcett

NetApp began its value journey three years ago, when Matt Fawcett joined the company as general counsel. Fawcett's first order of business was to create a totally new function, operations, hiring Connie Brenton as chief of staff and director of operations. With Brenton's arrival, the task of optimizing the legal department's support for a growing 13,000-employee company accelerated. A new focus on analytics and metrics, and a shift to managed services outsourcing, provided the fuel.

With a focus on reducing inefficiencies, Legal Ops launched a four-point plan:

- Develop a technology roadmap.
- Integrate dashboards and analytics.
- Develop a managed service provider.
- Implement value-based fee arrangements with outside firms.

New metrics played a key role in NetApp Legal's use of information and intelligence to identify areas for improvement. One such area was contract management and administration. By utilizing electronic signature functionality known as "Instant NDA," a process that formerly took days (or even weeks) can now be completed in a matter of minutes. This decreased cycle times by 350 percent, returning to the company more than 500 days of productivity in the first year.

"The reality of our business is that deals happen 24/7 across multiple borders and time zones," says Fawcett. "We have to build processes that acknowledge that reality and do not impede the business."

NetApp's partnerships with a new managed service provider (Elevate) and a new technology provider (Sky Analytics) have been a game-changer. As willing beta testers, NetApp Legal participates in weekly strategy calls with these cutting-edge professionals, developing new, real-time reports to track and analyze everything from what a "right rate" should be for a particular lawyer in a particular field, to what the "right" number of resources should be on a matter, to billing accuracy.

The information is put to good use: After tracking and analyzing the data in unique and innovative ways, NetApp Legal shares the information with external firms. Hand in hand with Elevate, they conduct quarterly business reviews

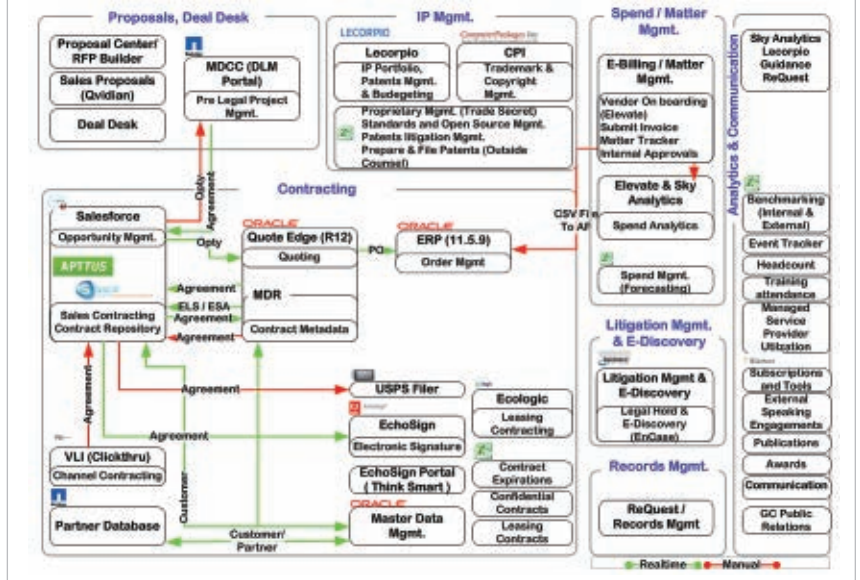


with outside counsel. Acting as a neutral third party, Elevate helps tell the story, with both quantitative and qualitative feedback. "This helps to build a more active and symbiotic partnership with outside counsel," Brenton says.

The numbers benefit the collective inside and outside team. The data allows NetApp to modify the way it does business based on objective criteria; outside counsel use the data to apply process improvements across their entire client base. The collaborative process is mutually beneficial and builds

with outside counsel. Acting as a neutral third party, Elevate helps tell the story, with both quantitative and qualitative feedback. "This helps to build a more active and symbiotic partnership with outside counsel," Brenton says.

LEGAL SYSTEMS LANDSCAPE



NetApp's Technology Roadmap

trust. Indeed, one of the primary benefits of sharing this information with outside counsel partners is that the exercise of presenting the data incites behavior change. The methodology changes the way NetApp and its outside counsel relate and do business together.

Using Sky Analytics, NetApp continues to search for opportunities to embrace more predictable and fair billing models than traditional hourly-based fees, better aligning investment to *value* and *results*, rather than just time. “The reports are showing us how matters are resourced, so we can look for changes in behavior or staffing models,” says Brenton.

“We also sought opportunities to choose from a large mix of options — interns, temporary legal support, people across borders — all of whom should be client-invisible. But, inside the sausage factory, is a more cost-effective, scalable, resilient department not predicated on a single person or single set of solutions,” says Fawcett.

As a data storage company, NetApp has a corporate culture that appreciates and anticipates technology. After watching the business adopt new technology and SaaS solutions, NetApp Legal decided to follow suit, and develop and execute a legal technology roadmap. Although the roadmap is still in development, the department has already adopted a contract management platform, and identified and decommissioned redundant or underutilized tools.

“We were in a position to innovatively create an infrastructure for the department, and we’re now integrated into the infrastructure of the whole corporation, from ebilling to records management,” says Brenton.

The move has been good for the legal department’s relationship with its internal clients. “It’s been a healthful effort, looking at our technology with a long-term vision,” Fawcett says.

“When you see better, you plan better; when you plan better, you execute better, and when you execute better, you deliver predictable results that have the potential to create differentiated value for the client.” **vc**

FROM THE JUDGES

“So often the lack of analytics is said to prevent innovation. It’s great to see an in-house group actively look for and effectively use technology to enable their data collection, to then bring real analytics forward. It shows that it can be done and, with that work, can help the department to really make advances in all areas of their work.”

“Both NetApp and Nike show that the use of LPOs is a growing trend; companies are trying to bring order to chaos through technology — it’s extremely effective and cheaper.”

NetApp’s Quarterly Review Process

Integrated Approach for Success

NetApp’s successful quarterly review process involves four parties:



NetApp

- Define relationship goals/values
- Drive discussion and relationship
- Prioritize areas of improvement
- Partner with firm in delivery/execution



elevate

- Generate scorecard and perform opportunity analysis
- Provide guidance on improvement strategies and AFAs
- Support ongoing delivery models



SKY ANALYTICS

- Run analytics on billing trends of law firm
- Benchmark against similar firms
- Provide reports on staffing models and billing practices



Outside Law Firm

- Provide expert legal advice/guidance
- Align delivery to client value/goals
- Monitor, execute, and own identified areas of improvement

Review Components



● Qualitative scorecards
● Quantitative scorecards

Overview of NetApp’s Quarterly Business Review Process

Nike, Inc. and Seyfarth Shaw LLP

Moving on Up: Process Model with LPOs Allows In-House Counsel to Focus on Sophisticated Work



Mike Goodman
Nike, Inc.



Grant Hanson
Nike, Inc.



Robert Reynolds
Seyfarth Shaw LLP



Kevin Woolf
Seyfarth Shaw LLP

“About three years ago, we realized that our lawyers were spending a great deal of time on routine work that could be more efficiently handled by alternative providers or systems,” says Grant Hanson, vice president and global counsel, commercial, at Nike, Inc.

Members of the Nike Legal Department worked to develop a solution for the high-volume, largely routine transactional work that previously absorbed a significant amount of their time. For Senior Counsel Mike Goodman, that included hundreds of technology-related procurement contracts. “We needed to process routine work activity efficiently to serve our business partners in their daily operations. The challenge was to improve turn time and workflow management while cutting costs,” he says.

Goodman turned to SeyfarthLean Consulting, the consulting arm of AmLaw 100 global law firm Seyfarth Shaw LLP. “We saw that Nike was striving for a strategic realignment in the deployment of in-house resources: focusing their lawyers on highly strategic initiatives that leverage their institutional knowledge, strategic focus and business know-how,” says Seyfarth Partner Bob Reynolds.

Working with their respective teams, and with Hanson’s support, Reynolds and Goodman teamed up to develop what has become known as the Transaction Solutions Center. The TSC is a process model that reallocates legal services across a shared services platform for cost efficiency, while centralized oversight and management ensures consistent quality. It combines that shared-services aspect with a proprietary web-based workflow platform into an innovative whole.

Users access the TSC web-based portal via computers or mobile devices to enter requests for legal services, a process that takes about two and a half minutes. The system notifies a Seyfarth attorney, who assesses the overall risk profile of the request, sources the right provider, and quickly moves the request to the next stage of the workflow—all usually in less than five minutes.

The assessment and assignment process hinges on a risk matrix designed collaboratively by Nike and Seyfarth Shaw. “The placement is designed to match the specific legal request with the right provider based on the transaction’s risk profile,” explains Seyfarth’s Kevin Woolf, the partner who manages

the day-to-day efforts. “The technology allows us to develop a detailed understanding of a client’s activity profile and to identify deal patterns by scenario. It also allows Nike to maintain the optimal level of touch from the in-house team.”

Requests may be routed to Seyfarth Shaw or one of its trusted third-party providers, who include a solo practitioner in Washington State, a boutique firm in suburban Georgia and a legal process

outsourcer in India. “The shared services platform allows us to leverage right-size partners we trust,” says Woolf. “We are often sending work to others that, under an old model, may have come to us by sheer inertia. By allocating work to the attorney who is both qualified and cost-efficient, we have enhanced our relationship with Nike. We’re seen as strategic partners.”

Nike lawyers have full visibility into the workflow of the entire portfolio via real-time online access to the TSC, as well as customized weekly dashboard reporting. Moreover, Seyfarth is the central point of contact for all billing and project management for the process, while the TSC also functions as a searchable repository of contract documents.

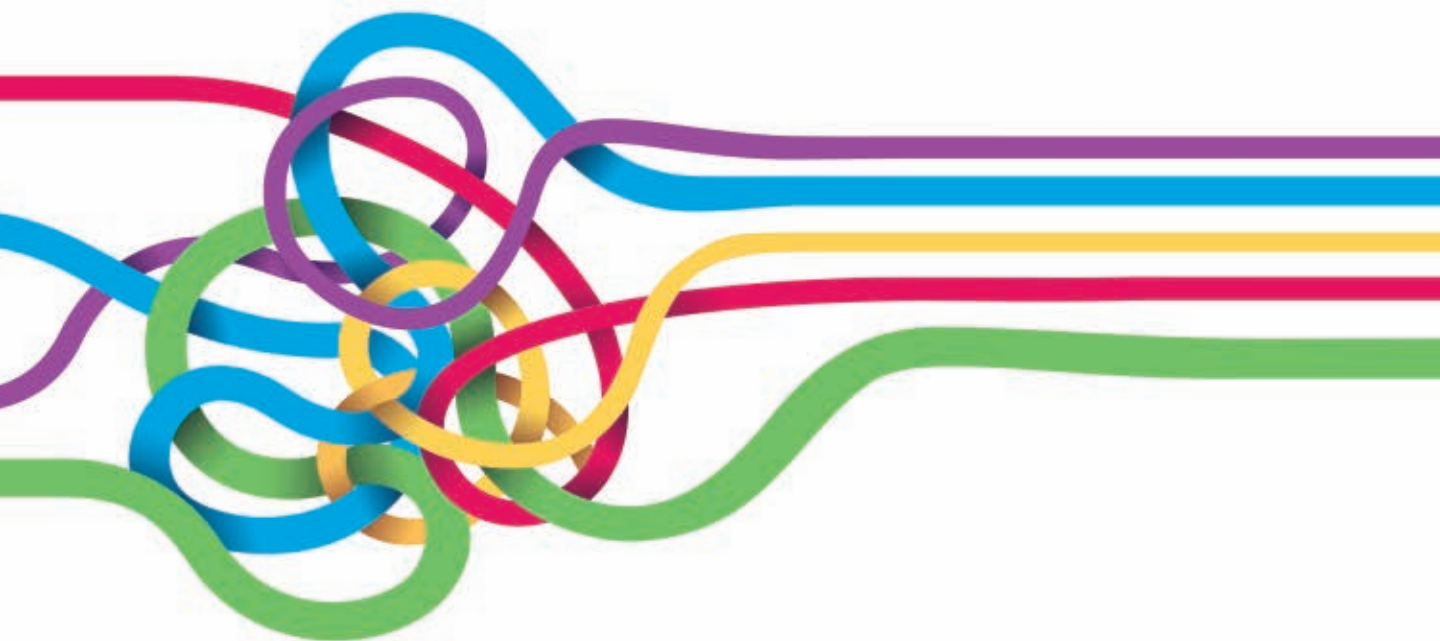
“The TSC combines major process improvement, a robust technology platform and a reallocation of shared services. It has changed the in-house counsel’s role from gatekeeper to manager-leader, and has shifted our role as outside counsel from document creation and negotiation to broader resource and project management,” says Reynolds.

Intangible benefits to in-house staff also have been felt: After all, as Hanson says, “Any lawyer wants to do the most strategic work they can.” The system is being expanded with increased capabilities and real-time, on-demand reporting at Nike subsidiary Converse, under the management of General Counsel Ann Miller. **vc**

FROM THE JUDGES

“As all in-house departments struggle with increased volumes, seeing that there are means to deal with that without ‘blowing the budget’ is a helpful model for others, particularly when it’s done in a risk-based fashion that more effectively aligns to the needs of the business.”

“Both NetApp and Nike show that the use of LPOs is a growing trend; companies are trying to bring order to chaos through technology — it’s extremely effective and cheaper.”



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Office Depot, Inc.

Starting Small and Going Big to Surpass 25 Percent Spend Reduction Target



Elisa Garcia

Office Depot's legal department, led by Executive Vice President and General Counsel Elisa D. Garcia C., began a shift to value-based fee arrangements about four years ago. The goal was to reduce legal spend by at least 25 percent and to bring greater predictability to legal budgets, because the cost of outside legal services is passed on to Office Depot divisions, which must budget for

them and often had little information to go on other than the previous year's expenditures.

"There was a clear business imperative for the move to value-based fees: The whole company was reacting to the economic downturn that began in 2008. These changes were especially welcomed by our business clients," says Garcia.

Garcia and her Legal Leadership Team sought to provide preventative, cost-effective lawyering with an exceptional understanding of business needs. They partnered with several outside counsel to deliver exceptional savings and better relationships in four areas of focus: labor and employment and class litigation, securities law and public company expenses, real estate leases, and patent troll litigation.

For its labor and employment and class litigation work, Office Depot issued an April 2009 request for proposals for single-plaintiff employment litigation. "We advised the firms that we expected them to suggest creative, alternative billing arrangements that incorporate more than a traditional discount," Garcia explains. Office Depot subsequently entered into agreements with two law firms, one regional and one



Standing (left to right): Kristen L. Sampo, Joseph G. White, and Darlene Quashie Henry; Seated (left to right): Heather Stern, Elisa D. Garcia C., and Elizabeth A. Hamilton

FROM THE JUDGES

"Noteworthy commitment to using alternative value arrangements to obtain more strategic relationships with external counsel, and manage spend. Nice that it also shows the benefit of better partnerships with external counsel on in-house counsel."

national, which included deeply discounted hourly rates, a cap on fees through summary judgment, and a cap on fees from summary judgment through trial. Last fall, all of the single-plaintiff employment work was transitioned to the national firm under an annual fixed-fee arrangement with a collar provision. The company has a similar arrangement with a second firm for all class/collective/multi-plaintiff actions.

In 2012, Office Depot entered into a fixed-fee arrangement with a collar for its securities work, including review and filing of all of the company's annual, quarterly and current reports, and section 16 reporting and advice. "Getting a major Wall Street firm to agree to a fixed fee was huge for us," Garcia says. "Further, it helped our new lead lawyer in Corporate Securities & Treasury get up to speed and feel supported without worrying about the time clock."

For real estate leasing, Office Depot has entered into fixed-fee arrangements with four outside counsel for the negotiation of its retail leases. These arrangements include graduated levels of compensation depending on the complexity of the transaction, negotiated to fruition. "These relationships have enabled us to provide the company with a sound budget for outside counsel real estate fees in response to anticipated leasing activity for the upcoming year," says Garcia.

Office Depot has partnered with other retailers and defendants to assemble joint defense groups for cost sharing in patent troll litigation, typically five to 10 other companies. The group then requests fee proposals from several law firms that include alternative fee arrangements.

"I really love the work we have done in this area, which has grown exponentially," says Garcia. "By handling patent troll litigation in this way, we have saved approximately 65 percent on average on attorneys' fees and costs."

The value perspective has changed the way the Office Depot legal department works. "The first thing our lawyers ask when putting out RFPs or handing over a new case is, 'How can we bill this differently?' Although we still meet with some resistance, more than half of our legal work is now done under value-based fee arrangements. At 30 percent spend reduction so far, we have exceeded our target; the value journey continues," Garcia says. **vc**

United Technologies Corporation

Top-Down Focus and Training Leads to Eye-Popping 70 Percent of Spend on Value-Based Fees



Charles Gill

United Technologies' path to alternative fees began in 1999 with the initiation of the UTC Outside Counsel Management Program. Featuring engagement guidelines, matter management, spending analysis and an approved network of law firms, the program has enabled UTC to transition away from the billable hour for more than 70 percent of its external spend.

"Buying legal services based on an hourly rate rewards inefficient law firms; the price for any particular task shouldn't increase simply because it took longer to perform the task. True value is performing the same service at a lower price, more efficiently, without sacrificing necessary quality or accepting increased risk," says Charles D. Gill, senior vice president and general counsel.

Kimberly Townsan, senior manager of Legal Administration, was brought in to assist in implementing UTC's new counsel management program.

"We have taken a real building-block approach of continuous improvement and evaluation," she says, noting that refinements have been made in three key phases. Engagement guidelines became standards that emphasized value billing and included a chart of alternatives. They were initially distributed to 800 to 900 firms; "There was some pushback," Townsan says.

Next came convergence: a concerted effort to reduce firm count. "Even as our revenues more than doubled, we were able to cut our firm count in half," she notes. "While we have grown through acquisitions, we didn't let the number of firms increase." Rather, UTC implemented a process for reviewing requirements to leverage existing preferred and recommended firms within the network.

Third was the adoption of new key metrics, which included reporting AFAs at the business unit level, individual attorney level and firm level. "This was more of a challenge with our activity outside the United States, but we've definitely achieved momentum there," Townsan says.

To educate firms and expand use of value-based fee arrangements, Associate General Counsel Paul Beach conducted training sessions in the United States, Europe, and Asia. Providing the "UTC Alternative Fee Toolkit," he highlighted examples of

successful arrangements, and recognized attorneys and firms who had implemented them. The training sessions communicated these key principles:

- Quality comes first, commensurate with risk.
- Early case assessment is crucial.
- Play fair and respect relationships.
- Bonus opportunities reflect risk.
- It's OK for firms to make more profit as long as UTC achieves lower costs.

Since 2011, business unit attorneys have collaborated with Steven Greenspan, associate general counsel for Litigation, on strategy for all significant litigation. His experience as a partner in a major law firm has enabled rigorous evaluation to determine appropriate firm selection and fee arrangements. UTC also worked with matter management vendor LT Online to incorporate specifications into the Lawtrac application that facilitate the tracking of alternative fee statistics at the firm level.

In 2012, UTC announced to outside firms that the percentage of firms' billings under value-based fee arrangements would be a major consideration in granting rate increases. "If at least 60 percent of their billings, on a dollar basis, were under AFAs, we would grant reasonable rate increases," says Townsan. If not, increases would be limited to the wage inflation rate of the firm's jurisdiction.

"If firms can't meet the requirements, they are evaluated for removal from the network," Townsan continues. "It really emphasizes the importance of value-based billing to UTC. We must have a commitment from external counsel that they are willing to invest in this relationship. In return, we make a commitment to them that they will get the work."

UTC Legal has found that AFAs provide sustainability (the effect of personnel changes is minimized) and internal time savings — reduced non-value time spent on invoice reviews, budget reconciliations and discussion of invoices. Because UTC commonly rotates attorneys, use of AFAs ensures that the project plan and agreed-upon costs are memorialized in the event there is a change of personnel, either on the firm side or within the UTC matter team. The number of invoices has been reduced to a fraction, and budgets are more predictable: over 70 percent of UTC's outside counsel spend in 2011 and 2012 was under alternative arrangements.

"There is risk, but firms have the opportunity to improve their margins. AFAs drive efficient project management on a matter," Townsan says.

New attorneys who come to work at UTC receive training on the Outside Counsel Management Program as part of their onboarding experience. It's likely that they also learn of Gill's quote from UTC's 2005 meeting of their worldwide attorneys:

"Billable hours are the last resort." **vc**

FROM THE JUDGES

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