

Value Practice:

**De-constructing Legal Services - Calculating Unit Costs & Component-Based Pricing Structures  
Johnson & Johnson's Approach to Alternative Fees**

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**Interviewed while Legal Sourcing Manager at Johnson & Johnson ("J&J")**

**Executive Summary:**

The company divides a litigation matter into component pieces of work, and negotiates fixed fee amounts with its law firm(s) to cover each component. The amount per component, or "per unit," is based on a variety of factors including:

- matter complexity
- level of specialized expertise required, and the
- importance of the task in driving overall results.

In refining these cost assessments, J&J relies on: analysis from its in-house legal team (lawyers and managers), historical data on what similar components have cost in the past, and targeted use of competitive bidding.

The process creates a baseline budget for the matter, with assumptions as to how many "units" are projected across various categories. As the matter progresses, J&J tracks shadow hourly rate invoices to tabulate actual costs paid per unit, and adjusts the forecast as necessary to reflect an increase or decrease in the actual number of units produced (e.g. in light of an expanded discovery order). These fluctuations in the number of units can affect the final budget figures (up or down), but the underlying per unit cost remains the same.

Sarkar describes the results as achieving greater value by paying calibrated amounts for deliverables as opposed to time spent, while creating incentives for the law firms to deliver greater efficiency. He also sees the approach as a manageable transition to alternative fees, while retaining aspects of the conventional hourly rate approach to address uncertainty.

Following are additional details on how J&J divides matters into components, negotiates per unit figures, and monitors matter progression.

**Dividing Matters into Components & Negotiating Per Unit Figures**

J&J has created a general template, based on the UTBMS Litigation codes, to capture the various components in the litigation lifecycle. Below are sample component entries from the "Assessment Phase," along with the number of units typically reflected in a matter.

- Factual investigation (1 unit, meaning there would typically be a single fixed fee amount paid to cover all factual investigation)
- Entry of protective order (1 unit)
- Motion to dismiss (1 unit)
- Answer (1 unit)
- Case management order (1 unit)
- Expert consultation (multiple units, based on number of experts, i.e. law firm is paid X dollars per initial expert consultation)

In determining the appropriate amount to be paid per unit, J&J relies on its in-house legal team to provide insight on the risk profile of the matter overall, the complexity of the component work to be performed, and the extent to which specialized outside counsel expertise is required. The company supplements this analysis with historical information on how much J&J has paid in the past for similar components in similar types of matters. Lastly, where warranted, the company will gather competitive bids from qualified law firms to understand different cost options within the context of this particular litigation. Arriving at the ultimate “per unit” cost figures is an exercise in triangulating these various sources of information, and negotiating more effective terms where the data point to any outliers on the high side.

### **Monitoring Matter Progress and Adjusting as Necessary**

As the matter progresses, the J&J team uses various approaches to track “actuals” versus assumptions, and verify the correct amounts are being paid.

- E-billing systems – The company instructs its law firms to bill a component piece of work by using a specified UTBMS Litigation code or codes, which enables real-time tracking of actual amounts spent per unit. So, for example, where J&J agreed to pay a single fixed amount encompassing early case assessment, initial fact investigation and initial strategy development, it could track the portion of fees earned and paid to date by looking at the amounts invoiced under L110 Fact Investigation + L120 Analysis / Strategy, which would reflect those amounts.
- Reports generated by law firm- Another way J&J tracks data is by obtaining reconciliation reports from law firms. Typically requested at the close of particular phase of litigation, these reports compare number of units projected versus the number of units actually produced. In some instances, they will also contrast hourly rate total (rates x hours) versus unit cost total (number of units x price per unit). Where there is a disparity between these two figures, and that disparity is attributable

to a change in case developments, J&J has a reconciliation formula to bridge part of the gap.

- Reconciliation- To address situations where the complexity of work changed unpredictably (even though the number of units may have stayed constant), J&J utilizes a risk sharing approach with its law firms. Under this approach, if a matter is otherwise well managed and work efficiently performed (in the eyes of in-house counsel), and the shadow hourly total varies from the unit cost total, then . . .
  - J&J will pay the law firm 75% of the difference where hourly billings exceed the unit cost total (placing some “skin in the game” from the law firm), and
  - J&J will pay the law firm 25% of the difference where the unit cost total exceeds the hourly billing total (which creates an incentive for the law firm to perform the work more efficiently where it can).

In terms of knowledge management, J&J tracks its negotiated unit cost terms in an internal data base to help with future cost analyses, and also to help in evaluating comparative law firm performance and value delivered.

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