

Value Practice:

**Class Action Defense Via Flat Fees & Performance Incentives . . .  
Nationwide Insurance and Fowler White's Different Approach**

**E.K. Cottrell**

**Interviewed while Partner, Fowler White Boggs P.A.**

**Executive Summary:**

Fowler White represents Nationwide as lead national counsel on designated types of property and casualty class action claims. The work is performed via a flat fee per case, with the law firm receiving additional compensation for achieving dismissals with prejudice or defeating class certification. Fees are paid quarterly. Flat fee rates are negotiated for a three-year cycle, and also cover the cost of local counsel, which Fowler White oversees and helps select. Nationwide maintains an in-house class action unit, staffed with lawyers who work primarily on class actions, and serve as liaison with regional counsel and business contacts.

This alternative fee arrangement is in its 5<sup>th</sup> year of operation, having been renewed after the expiry of the initial 3-year term. It has since been expanded to include other lines of property and casualty coverage.

**Results:** Firm and client describe the results as: efficiency and cost savings, more predictability over the timing and extent of expenditures, and higher levels of consistency across multiple cases (including strategy, style, reporting, and deliverables).

Following are additional details on how the arrangement is structured, and the benefits that arise from it.

**Background & Structure of the Arrangement**

Nationwide, one of the largest insurance and financial services companies in the world, has implemented a fixed "per case" fee arrangement with Fowler White Boggs concerning class action defense work. The firm serves as lead national counsel on designated types of property and casualty class action claims, which typically relate to no fault coverage, uninsured/underinsured motorist coverage, and homeowner coverage claims.

The work is performed according to a pre-determined flat fee per case, with a portion of the fee tied to outcomes. The law firm receives additional compensation for achieving dismissals with prejudice or defeating class certification.

In determining the appropriate amount to pay per case, Nationwide analyzed its historical data on what these types of cases had typically cost the company to defend. They then conferred with Fowler White about ways to engage more effectively to deliver high quality representation at a lower cost.

Below are additional details on the arrangement's logistics:

- Attorneys' fees are paid on a flat, per-case basis while the case is open
- Fee amounts are fixed for a three-year cycle, and are paid quarterly
- Fees cover the cost of local counsel, which Fowler White oversees and helps select.
- Nationwide maintains an in-house class action unit, staffed with lawyers who work primarily on class actions. They manage the cases internally, and also serve as liaison with regional counsel and business contacts.
- Nationwide maintains primary responsibility for document/data harvesting and storage, with assistance of Fowler White.
- Fowler White also provides support on individual matters that may impact or relate to the class actions.

### **Benefits Arising From the Arrangement**

According to Cottrell, there are several benefits arising out of the arrangement for both firm and client. These include:

- Customized project templates to capture litigation work flow assumptions,
- Knowledge management efforts and tracking to effectively use historical data on costs to produce various pieces of work from prior matters,
- Lean staffing, and a law firm compensation system that evaluates successful performance on these alternative fee engagements,
- Intense focus on hiring entrepreneurial lawyers who are dedicated to innovation and finding a way to make this work, and
- Client satisfaction assessments to determine the effectiveness of the alternative fee structure from the clients' perspective.



In terms of measuring results, Fowler White evaluates success according to whether it has a satisfied, long-term client, and whether the economics of the arrangement enable the firm to earn a reasonable profit (measured by tracking hours devoted internally, and calculating a “shadow” realization rate). Similarly, Nationwide measures success by assessing outcomes achieved, quality of work performed, and savings versus historical spending patterns.

**Contact information:**

E. K. Cottrell ([ecottrell@fowlerwhite.com](mailto:ecottrell@fowlerwhite.com))