Value Practice:

Managing Finances in Complex Litigation . . . Kaye Scholer's "STARR" Approach

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Executive Summary:
Kaye Scholer has developed an approach and a set of tools to manage finances in complex litigation. Dubbed the "STARR" framework, it involves coordination between client and law firm to: Set the budget, Track fees and expenses, Analyze spending data, Respond to challenges, and focus on Results. The system produces dashboard outputs enabling the client team to see how spending on a matter is progressing versus budget on a month-by-month basis. It also enables the client team to manage complex litigation on a macro level, while National Counsel coordinates more detailed administrative aspects with other law firms and vendors on the virtual team. The system can be used in multiple technology environments – there is no special infrastructure required.

Core tenets of the approach include: detailing the activity assumptions underlying the budget, identifying cost effective resources to perform the work, implementing alternative / fixed fees for discrete pieces of work where possible, and continually tracking progress versus baseline plans around staffing, activities and timing of the work to be performed. Though most helpful in complex litigation, the system can also be used in more routine matters.

The benefits of the STARR approach, according to two senior Kaye Scholer partners, are: strong value for clients (especially via alternative fees), sound budgeting and forecasting, and reduced administrative burdens.

Following are additional details on how Kaye Scholer implements the STARR framework, and how it helps clients achieve better value.

Kaye Scholer's STARR Framework . . . Details and Implementation

Utilizing a step-by-step approach, the firm confers with the client at the outset of the matter to formulate strategy, including identifying the reasonably attainable desirable results (or RADRs), identify the work to be done, craft a cost-effective plan to achieve it, and implement a management system to monitor progress. Similar assessments take place during the budget planning cycle in subsequent years. Below are the steps involved.

Setting the Budget. After client and firm plot the strategic course for the matter, a budget is set to show in detail how time, effort and money will be invested to complete the various pieces of work necessary to carry-out the strategy. There are three key components involved in setting the budget: assumptions (addressing what will be done, and when), resources (addressing who will do it), and cost (addressing how much the client will pay).

Assumptions. What is the scope of work to be performed? What is the anticipated volume of activity? When will the work take place? These are the questions sought to be answered in crafting detailed assumptions in the course of the budgeting process. In essence, the assumptions help clarify what the client is buying. And the Kaye Scholer approach goes beyond general descriptors like "Discovery" to drill down to component levels like X number of fact depositions, Y number of document custodians, and Z number of expert witness work-ups. It also involves strategic thinking about the projected volume of work (e.g. will the current caseload likely increase or decrease), and the level of activity associated with the different phases of litigation.

Setting forth the assumptions in this level of detail serves multiple purposes. It: confirms a common understanding of the scope of work anticipated, enables "per project" cost structures, serves as a benchmark for analyzing performance against budget, and helps in addressing variations that may arise (discussed further below). It also focuses attention on related areas that could impact the budget. These include: indemnity and insurance issues, and related proceedings (like government investigations).

In situations where Kaye Scholer serves as National Counsel in complex litigation matters, it also can help clients in gathering assumptions and cost projections from other firms and vendors on the team, providing a single point of contact to ease the administrative burden on the client.

Resources. The assessment of resources focuses on who should be doing what work. The decision is a function of expertise + cost effectiveness. While there are fewer options for highly specialized or sophisticated work, there are opportunities to perform more routine projects with more cost effective resources. This leads to thinking beyond conventional staffing possibilities to include, where appropriate, temp attorneys and non-law firm vendors (in the e-discovery context, for example).

Cost. The assessment of cost focuses on value--what are various activities worth to the client and what resources are required from the firm. In the aggregate, how do these respective figures add up to reflect a total budget amount that works for the client? To help analyze and manage costs, Kaye Scholer offers clients templates addressing: staffing plans, work plans, fees by task, and billing guidelines for the matter. In addition, based on its prior experience with the STARR approach, the firm has developed mathematical models to help in predicting litigation costs for various tasks.

Tracking Fees and Expenses. The key to successful tracking is having a process in place to manage the flow of information and enable informative reporting. It can be "low tech" or "high tech." Regardless, though, it should be uniform in its approach and regular in its frequency (usually monthly for major matters). The tracking efforts should be both prospective and retrospective. Kaye Scholer prospectively asks firms and vendors what they anticipate billing for the next 3 to 6 months, depending on the case. This is essential to identifying potential problems before they occur. If firm or vendor prospective forecasts exceed budget, the issues can be addressed before the expense is incurred.

As the year goes on, the tracking efforts also retrospectively gather information about invoiced amounts from all law firms and vendors involved to assess progress against budget to that point in time. Discrepancies between prospective and retrospective numbers are reviewed closely to verify the accuracy of the forecast for upcoming months.

Analyzing the Data. The primary goal in analyzing the data to look for variance from budget or work plan, and understand what has caused it. Commonly, there are a few different possibilities.

Timing. A revised discovery schedule, for example, may delay work from May to November. This would affect the forecasts (re timing), but in and of itself would not affect the overall full year budget. If, however, that work were pushed back to the following February, it would affect both forecast and full year budget.

Changed circumstances. If case developments changed materially since the crafting the assumptions, this could affect the volume of work to be performed, which in turn could increase or decrease the budget.

Unauthorized work. If a firm or vendor on the team has done additional work on its own without clearing it in advance under the project plan and budget, this could cause a variance, and the client would be consulted as to whether the additional work was reasonable and necessary.

Inefficiencies. Lack of efficiency can lead to variance from budget, and the STARR approach can be very helpful in identifying and correcting these situations.

Responding to Challenges. Based on developments uncovered in the analysis phase, there are several options for managing resources to get "back on budget." These include:

Readjusting priorities or strategy. What is within our control? Are there any non-essential activities that can be pared back? What activities can be deferred? For how long, and at what risk?

Readjusting work load among counsel. Can certain work be shifted to lower cost firms or vendors?

Improving management / coordination. Does the process need any refinement to reduce the amount of unwarranted variance?

Revisiting fee terms. Should fee terms be adjusted – perhaps moving more of the work to a fixed fee structure?

Focusing on Results. Looking at the "bottom line," the focus on results asks – is the team producing high quality work in a cost effective way, and properly managing its operations to give the client what it needs from a finance perspective?

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