

**Value Based Billing
Principles and Structures**

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VBB Agenda

1. What?
2. Why?
3. How?
4. When?
5. Why Not?

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What is value-based billing?

Any fee arrangement in which you...

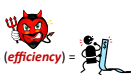
...pay for results, not effort.
(usually abandons rate x hours)


(examples to come)

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What is not value-based billing?

- Rate discounts
- Blended rates
- NTE fee caps
- Mere budgets
- Even “flat fees” as some craft them...

RATE x HOURS (efficiency) = 

 Total Risk Control, LLP


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Why value-based billing?

A means to a means to some really good ends.

VBB requires...

identification and alignment of interests...



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Alignment of interests leads to...

1. Results that match true goals = **better results.**
2. Incentives to increase efficiency & improve processes = **sustainable reduction in spend.**
3. **Risk-sharing**
4. **Improved relationship**
 - Reduced stress
 - Better-directed management time
 - Increased/deeper partnership




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[Why] is “why” still a question?

- It Ain't Broke.
 - Don't mess with success...2d guessing...support from The Top...?
- We Here At [x] Don't Do VBB.
 - My lawfims hate it/never raise it/won't do it.
- How to define success...no “should cost” data...?
- Bad first-date experiences*
- Lack of training or tools (models, templates, how-to's)
- No time

...and.....




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[Why] is “why” still a question?

“VBB may be fine for commodity work, but *my matter* is too...

...unpredictable
 ...complicated
 ...important and risky
 ...*unique.*”



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How?


1. Steps
2. Some structures to consider
3. Be creative; experiment.

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Steps (no hot rock in hand)

1. Identify opportunities on docket.
2. Identify objectives (short, medium, long).
3. Invite lawfirm brainstorm session.
4. Prepare templates and guidelines for acceptable VBB structures.




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Steps (hot rock in hand)


1. Identify top business and Law Dept goals.*
2. Identify trusted and favored (or 2 or 3 favored) outside counsel.
3. Share goals.
4. Solicit VBB proposals (no hourly based!).**
5. Start talking.



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**VBB Structures
(and real world examples)**



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1. Flat Fees

- For time period (e.g., month)*
- For scope (phase**)
- For life of matter
- For portfolio of like matters (over time; for LOM)
- For broader portfolio***

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Flat Fee Example

Annual Fee for Commercial Litigation Portfolio:

- Flat fee of \$12M for all U.S. litigation cases for a Fortune 500 company
- Client began as an hourly client and moved into a flat fee model once a baseline had been developed
- Docket varies with new cases added and other cases resolved
- Flat fee amount changes annually to account for the anticipated case load for the coming year
- Client pays the fee at \$1M per month

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**Flat Fees
Managing Common Pitfalls**

Pitfalls	Remedies
OC gets "quick win"	Provide for collars and shared savings; use portfolio
OC mis-budgets and works too much "for free"	Break fees into phases; apply analytics to budgets; build data; use portfolio
Parties "mis-scope" project	Establish regular check-ins to monitor scope; front-end competitions to get different views on scoping
OC staffs with cheaper timekeepers; client doesn't get senior partner attention	Use holdback and/or success fees; incorporate staffing plan into project and have reporting against plan
OC overworks to justify higher flat fee	Get new OC

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2. Budgets+Collars
(aka flat fees with training wheels)



Fee = \$100,000

If \$90,000 - SVOT - \$110,000 = no adjustment

If SVOT < \$90,000, lawfirm refunds 50% of \$ between SVOT and \$90,000

If SVOT > \$110,00, client pays 50% of the \$ between \$110,00 and SVOT

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Budget+Collars

Pro: Some risk, some protection

- If work within expected zone, efficiencies rewarded; inefficiencies penalized
- Windfalls and disasters avoided

Con: Requires shadow billing

- What is lawfirm's incentive? What will next fee be?
- Removes some major bonuses of VBB (no hourly bills to prepare and review! No unexpected bills!)

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Budget + Collars Example

Annual Fee for Litigation Claims Work:

- Target Budget of \$5M for one year
- Based on two year history of hourly billing, and projected work.
- The budget fee is \$5M unless the tracking fees at the client's rates are less than 90% of \$5M (\$4.5M) or exceed 110% of \$5M (\$5.5M)
 - 50% of savings below 90% returned to client; overruns above the 110% level paid by client at 50% of client's rates
 - Example 1 Savings Scenario: Fees are \$4.0M. Firm returns to client \$250,000.
 - Example 2 Overrun Scenario: Fees are \$6.0M. Client pays firm a total of \$5.25 million (half of overrun above collar)

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3. Retainers

- Fixed amount for a set period of time and stated scope of work
 - E.g., monthly amount for “counseling” work (defined as maximum hours/task, or hours/period)
- Typically applies to high-level, specialized counseling
- Provides “access” to SME’s as needed
- Often contains a periodic “look back” to assess mutual fairness

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Retainer Examples

- Counseling on Environmental/Natural Resource Issues:
 - For monthly fee of \$5000, [law firm] will counsel on day-to-day questions arising in environmental/natural resource regulatory arena [add specific inclusions/exclusions]. “Counseling” is defined as individual inquiries requiring less than 3 hours to complete, and total monthly inquiries requiring 10 hours or less to complete.
 - For monthly retainer of \$5K, [law firm] is “on call” for chemical regulatory counseling, with a review in six months to see if the retainer needs to be adjusted.

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3. Performance Holdbacks

- Client or OC **holds** funds in reserve to **grade** law firm’s performance
- Only partially a success-based payment (or not at all)
- Explicitly linked to client satisfaction with OC’s overall performance:
e.g.:
 - Accuracy of budget
 - Achievement of case objectives on time/under budget
 - Communications performance
 - Right staffing performance – right level; right team; compliance with client goals (e.g., diversity; development of vertical client team)
 - Value added services – CLEs; pro-active risk and cost reduction opportunities

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Holdback Example

- Fee deal with client provided for payment of 90% of agreed fees for 12 month period for class action case, with 10% holdback payable based solely in client’s discretion
- Client paid full holdback when firm won second motion to dismiss antitrust claim with prejudice

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4. Flat fees with success awards

- Identify multiple victories, large and small, possible throughout life of matter
- Not all are case-ending
 - Desired schedule
 - Discovery limit (e.g., no APEX dep)
 - Reduction in damages claimed
- Reward counsel for achieving victories
- Reduce upside on flat fee
- Flat fee alone vs. flat fee with victories

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Flat Fee plus Success Example

Antitrust defense:

1. Flat fee of \$X for MTD
 - Set at 50% of average price
2. Plus success fee of additional \$X + 10% of 2X if MTD wins
 - Results in premium of 110% of average price
3. Flat fee of \$Y for SJ
4. Plus success fee of \$Y plus 30% of 2Y if SJ wins
 - Results in premium of 130% of average price, less loss at MTD phase

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5. Contingent Fees


- Explicitly links OC compensation to outcome
 - Full contingent fee or reduced flat fee coupled with contingent fee
 - May include total cap on recovery varying at stage of “success”
 - Can be used as “reverse” contingency for defense work
- Ultimate “value” based fee

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VBB Scorecard

- Does it work? Yes!
 - Reduced spend
 - Reduced case cycle time
 - Increased predictability
- Trust, but Verify
 - Reports? Yes
 - Shadow bills? No
- How to Move Forward
 - Most repeatable area first; then work up to more bespoke cases
 - Consider portfolio of cases with one firm: mutual fund effect
 - Be transparent with OC on what outcomes and conduct you value



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When?


- Not on first date.
- Not on last date.
- Start small.
- Go big.

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Why Not?

What are the limitations on your ability to implement VBBs?



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VBB: common obstacles

- Value based billing does not really apply to my area of practice.
 - Counseling, litigation, and transactional work all are very conducive to value based billing. Ask your preferred provider firms for examples used with your type of practice.
- Litigation has so many unknowns at the outset, we could not utilize a fixed fee due to the uncertainty.
 - Break case into phases; make explicit assumptions; iterate.
- There are so many value based fee types that crafting a fee arrangement seems like a very time consuming exercise.
 - Use outside counsel pricing directors or in-house legal finance/procurement support. Consider bundling of work to reduce number of times specific fees need to be determined.
- I feel that value based billing may encourage the use of inexperienced associates on my matters.
 - Use staffing plans and holdbacks or other client satisfaction payments to alleviate such concerns
- Hourly rates are likely safer for me to use, as I could get a value based wrong and be in a tough spot with outside counsel.
 - Sustainable relationship is a two-way street; start small and work up; utilize collars. OC wants to make you look good, and be successful; they just need to know how.

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