



Monday, October 24
11:00am-12:30pm

**101 – Outside Counsel Management –
Using Value-Based Fee Structures for
Litigation**

Liz Daly
Assistant General Counsel
Rockwell Collins

Kerry Galvin
Senior Vice President, General Counsel & Secretary
Valerus Compression Services, LP

John Murphy
Chair
Shook, Hardy & Bacon L.L.P.

Katherine Perrell
Partner
Seyfarth Shaw LLP

Dennis Sheehan
Vice President and Deputy General Counsel
Foot Locker, Inc.

Faculty Biographies

Liz Daly

Assistant General Counsel
Rockwell Collins

Kerry Galvin

Kerry A. Galvin is a senior vice president, general counsel and secretary of Valerus Compression Services, a natural gas process and treating company, located in Houston Texas. In this capacity, she is responsible for coordinating and providing legal, environmental and facilities management services across all of Valerus' businesses.

Previously, Ms. Galvin was senior vice president and general counsel of Lyondell Chemical Company, a publicly traded global chemical company with assets of approximately \$18 billion and revenues of more than \$22 billion. When she joined Lyondell's legal department she was responsible for legal services associated with a number of activities, including corporate finance and securities, corporate governance, and mergers and acquisitions. She also served, for a time, as associate general counsel, with responsibility for international legal affairs, and was based in Lyondell's European headquarters. Ms. Galvin began her career in private practice in Houston, Texas, with the law firm of Mayor, Day, Caldwell and Keaton.

She has been a director of the National Association of Manufacturers and a member of the conference Board of Chief Legal Advisors. Currently she is a director of the American Corporate Counsel Association and a member of the American Bar Association. She also serves on the board of directors of the Alumni Association of the University of Michigan.

Galvin graduated cum laude from Georgetown University with a BS and cum laude from the University of Michigan with a JD.

John Murphy

As Shook, Hardy & Bacon's chair, John Murphy has led the evolution of the firm in its mission to be "the best in the world at providing clients creative and practical solutions at unsurpassed value." Mr. Murphy has honed the firm's ability to deliver on its vision statement by focusing on such areas as science and technology, knowledge management, litigation support, operational efficiency, and a culture that encourages diversity to thrive. His commitment to cost management has resulted in the firm being recognized as "an extra-early adopter" of bringing pragmatic project management techniques to the law firm business model (The American Lawyer: Litigation, June 2011) and for leveraging strengths to "provide unbeatable value to clients (Law360, December 2009). In 2010, the

National Law Journal recognized SHB as generating a higher percentage of revenue from alternative fees than any other firm in the country.

In addition to cost management, Mr. Murphy remains committed to the firm's pursuit of sustaining a diverse environment. His efforts were recognized by the Minority Corporate Counsel Association, which awarded SHB its 2010 Thomas L. Sager Award. John also received Missouri Lawyers Weekly's 2010 Law Firm Leader of the Year Award, which honored his "extraordinary vision, innovation and leadership."

Katherine Perrelli


Katherine Perrelli is a partner in Seyfarth Shaw LLP's Boston office and national chair of Seyfarth's litigation department. She is a trial lawyer with years of experience representing regional, national, and international corporations in the financial services, transportation, manufacturing, technology, pharmaceutical, and staffing industries. Her practice focuses on trial work and counseling in the areas of complex commercial disputes, unfair competition, trade secrets and restrictive covenants, and compliance with federal and state employment laws. Her experience spans all forms of dispute resolution, including mediation and arbitration, as well as litigation in federal and state courts and before administrative agencies across the country.

She has been selected regularly as one of the state's "Super Lawyers" in a joint survey conducted by the publishers of Law and Politics magazine and Boston magazine, as part of a special publication entitled "The Top Attorneys in the Northeast."

Ms. Perrelli received a JD from Western New England College School of Law and a BA from Skidmore College.

Dennis Sheehan

Vice President and Deputy General Counsel
Foot Locker, Inc.




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Value-Based Fee Structures for Litigation

October 2011



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Today

- Our goal: Bust myths, provide solutions, offer insight
 - ... *So that you can effectively use value-based fee structures for litigation*
- Our game plan:
 - Review 5 Popular Myths
 - Myth Busters: Panel Case Studies
 - Audience Myth Busting Exercise
 - Hands-on tools to help you get started today
- Meet our team of Myth Busters



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Five Common Myths Worth Busting

- “Litigation work doesn’t fit the ‘value’ mold.”
- “Value-based work is an hourly rate in disguise.”
- “Alternative fee arrangements sacrifice quality.”
- “I lack data needed to make an informed pricing decision.”
- “I’m too busy to entertain new processes in the face of a suit.”



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Tales from the front – Part One

- How Shook Hardy & Bacon and Footlocker busted the myths
 - “Litigation work doesn’t fit the ‘value’ mold.”
 - “Value-based work is an hourly rate in disguise.”
 - “Alternative fee arrangements sacrifice quality.”
 - “I lack the data needed to make an informed pricing decision.”
 - “I’m too busy to entertain new processes in the face of a suit.”



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Tales from the front – Part Two

- How Seyfarth Shaw and Rockwell Collins busted the myths
 - “Litigation work doesn’t fit the ‘value’ mold.”
 - “Value-based work is an hourly rate in disguise.”
 - “Alternative fee arrangements sacrifice quality.”
 - “I lack the data needed to make an informed pricing decision.”
 - “I’m too busy to entertain new processes in the face of a suit.”



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Scenario: ‘The Bake ‘n’ Bake Company’

- New GC (you) with small team, high demands, budget constraints
- Today’s surprise: a \$10 million product liability issue
- Challenges include:
 - Cost, timing, resources
 - Competing views of success
 - Negotiating power with outside counsel



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Tackle the 'Bake 'n' Bake' case

- Each table: You are now an in-house team
- 15-20 min table exercise to develop a strategy and fee structure
Panelists will be roving facilitators
- Quick report-out before closing



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Tools you can use

- Goal-setting Tool
- Value Matrix
- AFA decision tree/checklist
- Short-form RFP – decision tree/template letter
- Sourcing Checklist
- Discussion Guide



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Myths Busted?

- Quick report out before closing
- Which tables Busted the Myth?

Learn more later . . .

Wednesday, 9-10:30 a.m.
ACC Value Challenge Clinic

Preliminary Session Flow
Outside Counsel Management -- Using Value-Based Fee Structures for Litigation
Monday, October 24 11 a.m. - 12:30 p.m.

Faculty: Kerry Galvin from Valerus (moderator); Kate Perrelli from Seyfarth Shaw and Liz Daly from Rockwell Collins; John Murphy from Shook Hardy & Bacon.

Time	Length	Topic	Speaker
11:00 a.m.	3 min	Welcome and introductions <ul style="list-style-type: none"> • Today, we want to bust myths, provide solutions and offer insight to help leaders/members of small law departments start to use value-based fee structures for litigation. • How this session will work. • Meet our panel of "Myth Busters" 	Kerry
11:03	7 min	Five Myths to Bust Today <ul style="list-style-type: none"> • "Value-based work is just an hourly rate in disguise. Same problems of inefficiency and lack of predictability." • "I won't get the quality of counsel or level of service I need or expect. Too much work will get pushed down, or corners will be cut." • "I don't have the data I need to make an informed pricing decision." • "Litigation work just doesn't fit the 'value' mold. It is more unique and less predictable than transactional work or compliance work." • "It's just too complicated, and I'm too busy." 	Panelists
11:10	25 min	Insight and Tools <ul style="list-style-type: none"> • Panelists, share work done together and separately that busts 1 or more of the myths above. (2 mini case-studies of 5 min or so, 1 from each client-firm team) • Provide quick insight on how you've used value-based fee structures on litigation-related issues that attendees often face. These could range from managing 'slip-and-fall' or other recurrent stream of smaller litigation matters to coping with the "one-off" type cases that occasionally arise, as well as overseeing major litigation cases. • Indicate what were some of your 'a-ha' moments. What are key considerations you would share with colleagues in the audience to help them? What kinds of tools would help them? 	Panelist
11:35	5 min	Quick Q&A	Kerry
11:40	15 min	Scenario <ul style="list-style-type: none"> • Now, let's take a typical situation that many of you (our audience) may have faced, and see how our panel would use value-based approaches to solve it. • Create/share a scenario that is prototypical of what • This could be refined from case studies used at Legal Services Management seminars ("Thorny One-Off" may be a point of reference.) • Bake 'n' Bake scenario 	Kate

		<p>Tools to use: Examples: -- Goal-setting tool -- Value matrix to use in setting fees (based on considerations such as strategic outcomes, potential liability, reputational risk and more) -- When to use AFA's (decision tree/checklist) -- Short-form RFP to select outside counsel, align pricing -- Sourcing checklist to consider for different areas of the litigation process</p> <ul style="list-style-type: none"> • --Discussion guide about questions you should ask outside counsel in pursuing a value-based fee structure. 	
11:55	20 min	Teams work on scenario strategies and set fee structure	Audience with roving panel facilitation
12:15 p.m.	10 min	Report-outs	Panelist
12:25	5 min	Close	Kerry

HANDOUT FOR ATTENDEES: STARTING A VALUE-BASED DISCUSSION

Questions you should anticipate from the law firm

How pivotal is this engagement in terms of the company's business goals and strategies? Routine? A one-off? Critical? More urgent than strategically important?

As it applies to the matter or engagement at hand, what takes highest priority -- the outcome (e.g. A trial victory), timing (a quick settlement), or ensuring cost-efficiency?

How would you define value in this effort? What criteria will help you determine if fees are in line with the outcome you receive from our services?

What work has been done to date?

From a service level, what are your expectations on how this matter will be handled? For example, how closely do you want to be involved, how in-depth and frequent should our communications be?

What have been some of your specific 'pain points' in working with outside counsel generally or on similar matters?

What has been your experience with any form of alternative fee structure? Have you had greater/lesser success with one form (e.g. a success fee) than another?

Would it be helpful to go over the various forms of alt fee structures and the best applications for the different kinds of structures?

What resources might be available within and outside your legal department that we could tap into? Is there one point of contact within the legal department that could help us navigate your organizations, as necessary?

Are there resources (e.g. consultants) outside the organization might be worth considering? What perspective could they provide?

Questions you should ask the law firm:

Please provide a detailed discussion on what work, if any, your firm has previously done in the areas described above relevant to the Company's legal needs.

What special talents and expertise do you have, and over and above what other top tier firms possess in this regard?

Please provide a detailed alternative billing plan or set of plans or options that you would propose as to how to provide services other than on an hourly basis limited (e.g., a flat fee or success fee). If you are proposing a fee structure other than a flat fee, please also include the billing rates for any proposed members.

What types of reporting do you offer regarding fees?

How do you utilize technology to enhance value for your clients?

What processes and technologies has your firm invested in recently which have increased the productivity of your lawyers and paralegals and/or reduced your internal costs in ways that have benefited your clients?

What are examples of metrics you use to evaluate your firm's performance?

Which alternative fee arrangements do you believe are most successful for clients?

Which metrics do you think are most effective for performance-based fee arrangements?

What do you believe is a best practice for relationship management?

How do you integrate continuous improvement into your approach?

Do you utilize project management in your delivery of services?

What is your approach to matter management?

How does your firm deal with instances where it exceeds an agreed budget amount?

Scenario: The Bake 'n' Bake Company

It's been six months since you took the helm as General Counsel of Bake 'n' Bake, a publicly held manufacturer of commercial kitchen equipment. Well-known domestically, and now gaining a foothold in emerging global markets, the company built its reputation and success on a track record of product quality and reliability. As of this year, more than 6,500 oven units are in the field; its premier product line accounts for \$60 million in annual sales and represents the lion's share of company revenue.

After a couple of financially turbulent years, the company and its legal team are now moving ahead with cautious optimism, although both are a bit leaner in terms of people and operating budgets. In fact, as your dedicated AGC, Dana, has pointed out a bit too frequently, your predecessor -- nicknamed 'Freewheelin' Fred' by the CFO -- never had to manage to **any** budget, much less one that was reduced by 15% from last year's spend. Also, as dedicated Dana reminds you, the legal team is a bit smaller than it used to be -- now a total of 8, including the department admin assistant.

While you and your team have become adept at doing more with less, it's the infrequent surprise matter that disrupts the team and prompts a few prompts from the C-suite.

Consider this morning's surprise:

You receive a call from a plaintiff's lawyer, representing a chain of high-end restaurants named for its celebrity chef. Less than 48 hours ago, a fire broke out at its flagship Las Vegas location. According to counsel, there was no question that the Bake 'n' Bake premier ovens were the source of the incident, and that your company was at fault. The plaintiff is seeking more than \$10 million to recoup the costs of property damage, business interruption and lost market share.

The VP of Marketing beats the CFO to your office, pointing out how Freewheelin' Fred would have put reputation above all else and would have spent whatever it took to protect the company's good name. The CFO arrives in time to question the amount that was historically spent to resolve any previous similar situations. The CEO would like it resolved in 60 days.

Afterward, AGC Dana notes that your legal team has general litigation experience, but not in-depth product liability specialization that may be needed. Also, since this situation isn't frequent, she questions what kind of bargaining power the company would have with outside counsel.

Team challenge:

Determine a fee and working arrangement for handling the Bake 'n' Bake case. Consider the following:

- Define how the company will reach a consensus that the engagement was a success.
- Scope how the work would be performed.
- Consider staffing options (e.g. LPO vs. law firm review of doc's; the role of inside vs. outside counsel)
- Identify keys to success in managing processes, metrics, communications
- Articulate the core elements of the fee arrangement

Use tools that have been provided. Panelists will act as roving facilitators.

ACC ANNUAL MEETING 2011
Value-Based Fee Structures for Litigation
Toolkit for Attendees

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How to Migrate from Traditional Billing to Alternative Fees

Following is an excerpt from a document in the ACC Value Challenge Tool Kit. The full content is available online at: www.acc.com/legalresources/resource.cfm?show=745109>

Defining the goals

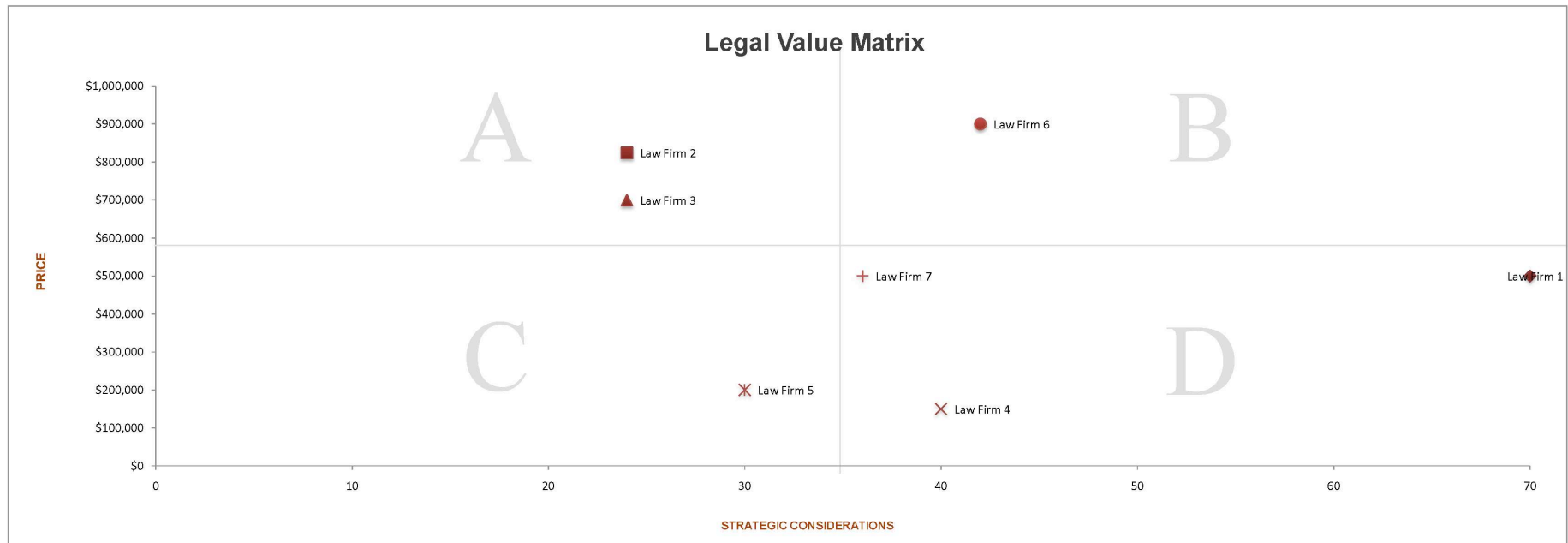
- Begin with the end in mind. What do you seek to achieve? The most commonly cited answers are listed below, along with key strategic questions to consider.
 - o Savings: How will you accomplish savings? . . .
 - By working with your current firms in essentially the same capacity, but under a different billing structure? By looking for cost control measures that are NOT rate reductions or billing discounts (which are by nature temporary and may not lead to bottom line cost reduction.) If so, do savings for the client automatically mean reduced profit for the firm?
 - Can you work with your current firms differently to deliver the same quality, but with better approaches to accomplishing the work? What would this look like in terms of better management of process and resources, and improved utilization of technology? What kinds of efficiencies can firms adopt that cut the fat but not the bone (e.g. leaner staffing structures, better knowledge management to avoid reinventing the wheel, pushing to others work that lawyers don't need to do, etc.)?
 - By working with some new firms that might bring fresh approaches and more experience with alternative fee structures? To what extent will you engage in strategic use of competitive bidding to identify the respective strengths of different firms in these areas? Or even to gauge if costs at other firms might be lower because of geographic location or different business models in place?
 - However you choose to approach it, the potential savings are real — 15% and up based on published survey data and case studies.¹ And these savings are not rate discounts that don't really reduce overall bottom line and aren't sustainable year after year; rather these savings are true cost control measures that last and create a platform for further efficiencies.
 - o Focus on results, risk sharing & greater alignment of interests:

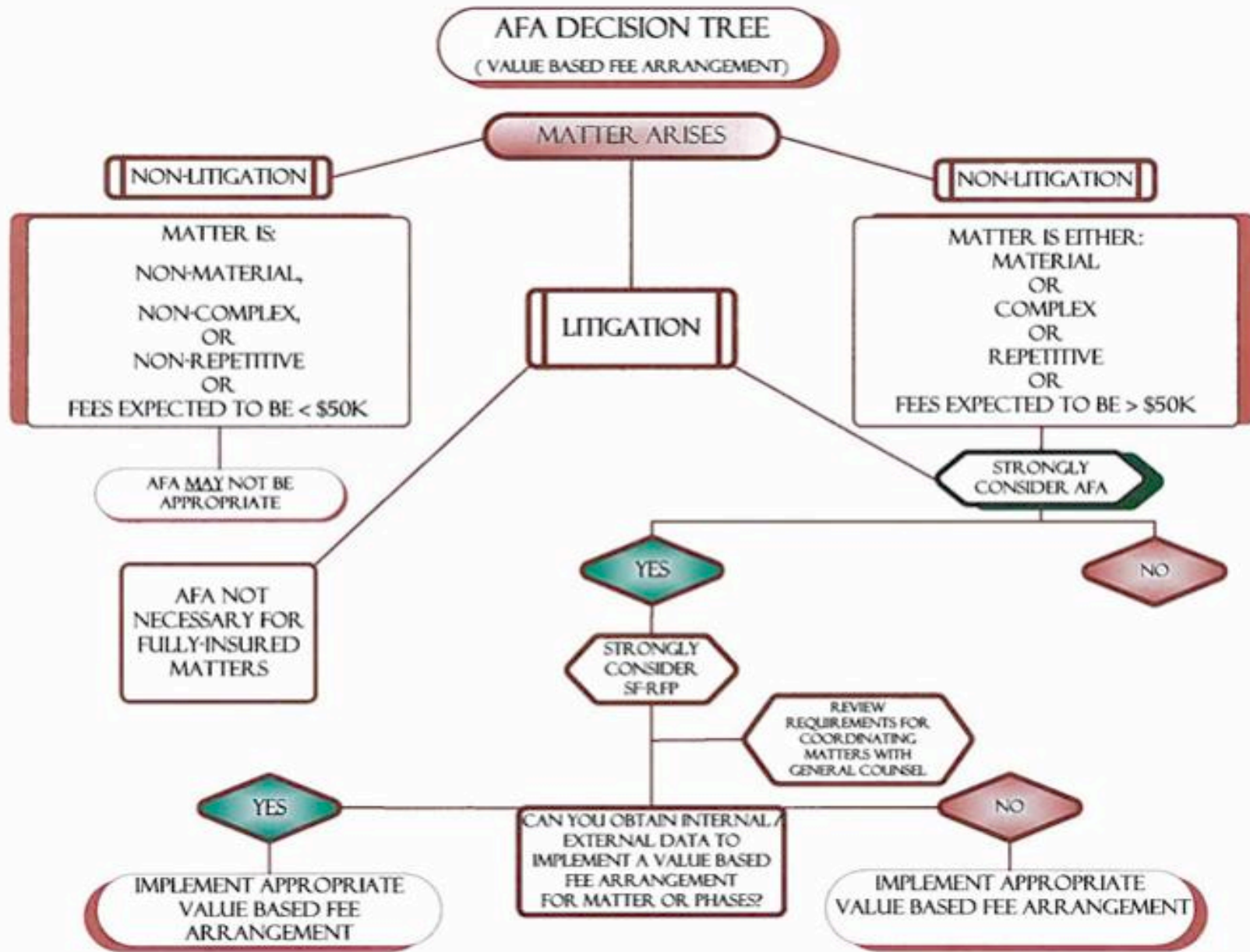
¹ See, e.g., WSJ: "Billable Hour Under Attack," August 24, 2009, Page A1. In a survey (n=370), in-house counsel reported average savings of 15% from alternative fee arrangements.

- Are you interested in having a portion of law firm compensation depend on achieving successful outcomes that are pre-defined by the client? What would this look like?
 - Who will bear the risk of new pricing and staffing structures? What should you expect the firm to “ante up” to control costs, and how will you either share the risk or reward it in your work? Incentive fees? Bonuses? By offering a larger portfolio of work to make the improved process more profitable for the firm?
 - How can you assign matters among your firms to better increase their alignment with your cost control efforts? For example, you can offer them a retainer to make them responsible for an entire arm of legal services, which encourages them to help the client avoid problems rather than minimize the amount of counseling/service they must provide to remediate problems? How can you link firm fees to matter outcomes and success?
 - If your law firms are willing to put a larger portion of compensation “at risk” via correlation to successful outcomes, are you willing to position them to earn higher fees than they otherwise would if they deliver greater economic value by reducing the liability / total resolution cost or by increasing potential recoveries or gains?
- o Predictability & administrative convenience:
- How much do you value the predictability and administrative convenience that comes with paying a set fee for the work delivered?
 - To achieve this, are you willing to invest some time and effort in properly crafting the terms up-front to verify that the fee amount is “right” for the work delivered and can be adhered to?
 - Are you willing to invest additional time later on to revisit the arrangement as necessary in light of changed circumstances around matter activity assumptions? Can you create a process for re-evaluation in the event of named contingencies (something of a decision tree) that allows a safety valve but still plans and delivers predictable costs and outcomes related to alternative paths

Legal Value Matrix

LAW FIRM	PRICE	Strategic Considerations (0-5)														STRATEGIC CONSIDERATIONS
		Expertise	Legal Advice	Responsiveness/ Accessibility	Familiarity with Business	Early Case Assessment	Industry Knowledge	Project Management	AFA Experience	Budget/ Timeline	Communication	Technology	Peer Firm Relationships	Focus on Efficiency	Geography	
Law Firm 1	\$500,000	5	5	5	5	5	5	5	5	5	5	5	5	5	5	70
Law Firm 2	\$824,000	1	2	0	2	4	5	1	0	3	2	1	1	1	1	24
Law Firm 3	\$700,000	0	0	1	1	1	1	1	5	3	2	0	3	3	3	24
Law Firm 4	\$150,000	3	4	5	3	2	1	5	5	4	3	2	1	1	1	40
Law Firm 5	\$200,000	2	2	2	2	2	2	3	2	4	4	5	0	0	0	30
Law Firm 6	\$900,000	3	3	3	3	3	3	3	3	3	3	3	3	3	3	42
Law Firm 7	\$500,000	4	5	2	3	5	2	2	3	1	1	2	3	2	1	36
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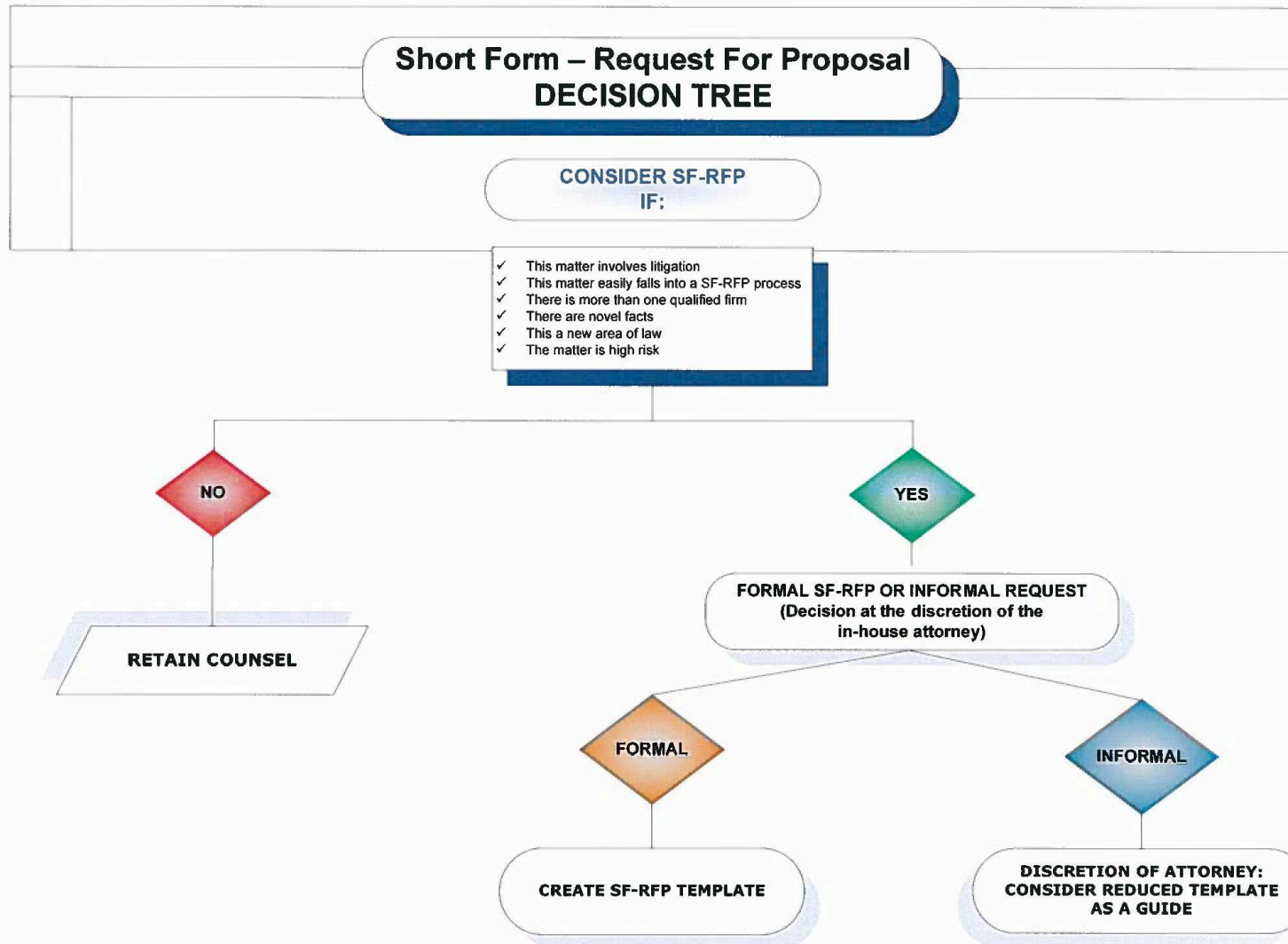




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Checklist for AFA Discussion with Outside Counsel

- Has Outside Counsel engaged in AFAs previously?
- What types of AFAs has Outside Counsel used?
 - What percentage of the Firm's matters are handled as AFAs?
 - Has the proposed lead counsel for our matter used AFAs?
 - What types, and in what percentage of lead counsel's matters?
- What kinds of experience has Outside Counsel had with AFAs?
 - Successful?
 - Unsuccessful?
 - As perceived by the Firm?
 - As perceived by the Client?
- Why were Outside Counsel's previous AFAs perceived to be successful or unsuccessful?
 - By the Firm?
 - By the Client?
 - Is Outside Counsel able to provide Client referrals for us to speak to?
- Is Outside Counsel willing to engage in an AFA for this matter?
 - If not, why not?
 - If so, what kind of AFA matter would your firm recommend?
- Does Outside Counsel have historical data available reflecting average costs for this type of matter?
 - For the matter as a whole?
 - For specified projected phases of the matter?
 - Is Outside Counsel willing to share such data?
- Does Outside Counsel recommend that any particular factors be used for determination of "success" in a success fee arrangement?
 - If so, why would those factors be appropriate?



Value-Based Fee Structures for Litigation October 2011

Short Form — Request For Proposal

This letter (and the confidential information contained in it) constitutes a request to your firm to provide to _____ (the “Company”) a Short Form Request For Proposal (“SF-RFP”) to represent it and certain of its subsidiary and affiliated entities as counsel. This representation pertains to *[insert type of matter and brief description, consider attaching documents if necessary]*. We very much appreciate your participation in this evaluation process.

The purpose of this request is to ensure the selection of the most appropriate counsel to represent our Company’s interests. The submission of a proposal by your firm enables the Company to evaluate objectively the capabilities of your firm, and consider your approach to this matter.

Please respond in writing to this request in accordance with the SF-RFP and attached bidding assumptions [to be created by the company’s hiring attorney] by [date], and direct your responses to: [contact info]. Please be advised that in this selection process, we may invite selected firms to present their written response in person.

In order to assist in our selection of counsel, please provide the following information:

1. *[For a litigation matter, consider including the following.]* Please provide a brief discussion of your proposed litigation strategy for trial; including such items as overall strategy and objectives, record of success, and experience with opposing counsel and the forum.

Or

[For a non-litigation matter, consider including the following.] Please provide a brief discussion of your proposed methodology on how your firm will efficiently and effectively conduct the assignment.

2. A bio for each lawyer you propose for assisting us in this matter as well as a short description of any cases/matters handled by the those lawyers you believe are similar to this matter. Please also include information as to diversity of staffing.
3. Please provide a detailed discussion on what work, if any, your firm has previously done in the areas described above relevant to the Company’s legal needs. What special talents and expertise do you have, and over and above what other top tier firms possess in this regard? If relevant, please detail any recent and noteworthy accomplishments (awards, writings, etc.) and/or rulings received by your firm in these areas, including whether this work was performed by the dedicated team of personnel who would participate in the Company work.
4. Please provide a detailed alternative billing plan or set of plans or options that you would propose as to how to provide services for Company other than on an hourly basis limited

(e.g., a flat fee or success fee). If you are proposing a fee structure other than a flat fee, please also include the billing rates for any proposed members.

5. Anything else that you think may be relevant to our decision to retain your firm to represent our interests in this matter.

Insert one of the following:

If _____ has already established with your firm the Company's Terms and Conditions of Engagement, you are reminded that you will need to adhere to these terms in this engagement.

or

If _____ has not established with your firm the Company's Terms and Conditions of Engagement, you will need to adhere to these terms in this engagement. Please find attached the Terms and Conditions of Engagement and Billing Guidelines [*attach a copy of your company's document*].

Your willingness to invest time to submit a thoughtful proposal for the representation of the Company is very much appreciated. A limited number of outside counsel have been invited to participate in this evaluation and selection process. Your participation in this process demonstrates your desire to work together with the Company in the effective management and handling of its legal work.

Please submit a written response as soon as possible, but no later than _____ 20_. I greatly appreciate your assistance and look forward to reviewing your response.

Regards,

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Sourcing Checklist

Outside counsel paralegals

Outside counsel associates

Outside counsel partners

Outside counsel staff (non-billable)

Contract attorneys

Offshoring (e.g. India attorneys)

Graduate business school students

Law school students

Paralegal program students

In-house teams from other departments (e.g. HR, IS, business areas)

Multiple law firms (e.g., small firms for certain pieces, primary deal counsel for other pieces)

Retired lawyers (in-house, law firm)

Retired businesspersons

Accounting firms (doesn't have to be one of the Big Four)

Consulting firms (doesn't have to be a major firm)

Temporary staffing agencies

Investment bankers

Freelancers knowledgeable about your industry

Public relations/investor relations consultants

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Starting A Value-Based Discussion

Questions you should anticipate from the law firm

How pivotal is this engagement in terms of the company's business goals and strategies?
Routine? A one-off? Critical? More urgent than strategically important?

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What work has been done to date?

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What has been your experience with any form of alternative fee structure? Have you had greater/lesser success with one form (e.g. a success fee) than another?

Would it be helpful to go over the various forms of alt fee structures and the best applications for the different kinds of structures?

What resources might be available within and outside your legal department that we could tap into? Is there one point of contact within the legal department that could help us navigate your organizations, as necessary?

Are there resources (e.g. consultants) outside the organization might be worth considering? What perspective could they provide?

Questions you should ask the law firm

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What types of reporting do you offer regarding fees?

How do you utilize technology to enhance value for your clients?

What processes and technologies has your firm invested in recently which have increased the productivity of your lawyers and paralegals and/or reduced your internal costs in ways that have benefited your clients?

What are examples of metrics you use to evaluate your firm's performance?

Which alternative fee arrangements do you believe are most successful for clients?

Which metrics do you think are most effective for performance-based fee arrangements?

What do you believe is a best practice for relationship management?

How do you integrate continuous improvement into your approach?

Do you utilize project management in your delivery of services?

What is your approach to matter management?

How does your firm deal with instances where it exceeds an agreed budget amount?



Extras from ACC

We are providing you with an index of all our InfoPAKs, Leading Practices Profiles, QuickCounsels and Top Tens, by substantive areas. We have also indexed for you those resources that are applicable to Canada and Europe.

Click on the link to index above or visit <http://www.acc.com/annualmeetingextras>.

The resources listed are just the tip of the iceberg! We have many more, including ACC Docket articles, sample forms and policies, and webcasts at <http://www.acc.com/LegalResources>.