

Value Practice:

**Outcome-Driven Fees in High Stakes Litigation . . .
Bartlit Beck's Alternative Approach**

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Executive Summary:

Bartlit Beck handles high stakes litigation under a variety of non-hourly structures, including a hybrid fixed fee / contingent fee model. Distinct fee amounts are negotiated for various deliverables or phases within a case. The fee represents the amount to be paid for the work done or deliverable produced – not for hours spent. In addition, the firm's compensation is partially tied to the quality of outcomes generated. If the ultimate resolution is with the range of "success" as pre-determined by the client, then the firm stands to make more. If not, then the firm stands to make less. (See illustration below.)

To make these arrangements work, the Bartlit Beck has structured its operations differently on several fronts. These include: conducting strategic assessments early and often; favoring a leaner, more experienced team; focusing more intensely on recruiting, training and retention of talent; and investing in technology to leverage work product and increase the productivity of each attorney.

The benefits, according to a senior Bartlit Beck attorney, are better alignment of incentives between law firm and client (by shifting focus away from time billed in favor of a results-oriented fee structure); a better correlation between value generated and fees earned (both upside and downside); reduced administrative burdens (via streamlined invoices); and increased predictability for the client of month-to-month legal bills.

Following are additional details on how Bartlit Beck crafts these fee arrangements, how it has structured its operations to make them work, and the reported benefits to clients.

Structuring the Fee Arrangements

In structuring its fixed / contingent fee arrangements, Bartlit Beck confers with its client to create a strategic plan for the case, and defines the scope of the work to be performed. Key determinations include:

- What is the client's end goal?

- What is the most direct path to get there?
- What are the core evidentiary and discovery issues that will drive success (vs. those that are expensive, but of little value to the case)?
- What is the best way to frame issues and/or obtain key rulings early, or to otherwise effectively focus the scope of the case?
- What are the underlying assumptions about scope of work to be done, and what is the best way to revisit the arrangement if things materially change?
- What are the optimal ways to coordinate and engage with other firms and vendors?
- What is the best way to define and achieve various levels of success the client might achieve in the litigation?
- What is the best way for client and law firm to identify and share risk based on outcomes?

The answers to these questions lay the foundation for determining what work will be performed, at what price, and how much risk Bartlit Beck will share. The result is commonly a schedule of flat fees according to task, or according to phases of case. Examples of flat fees by task include: \$X to investigate facts, draft the complaint and file a preliminary injunction motion; or \$Y to investigate the case, prepare a presentation, and represent the client in a 2 day mediation. Examples of flat fees by phase include: \$X per month during the initial 2 or 3 month assessment phase, then Y per month through discovery and trial prep, and Z per month during trial.

These flat fee amounts may then be adjusted to reflect a mutually-agreed upon “at risk” component of compensation that is tied to outcomes. Variations include:

- Reduced flat fee with bonus based on result (e.g. client pays 70% of normal monthly flat fee, plus \$X if damages are less than \$10 million, \$3X if damages are less than \$5 million, and \$3X+Y if the opposing side’s patent is declared invalid)
- Reduced flat fee plus percentage of recovery (e.g. client pays 70% of normal monthly flat fee, plus 10% of recovery), or
- Flat fee with holdbacks and multipliers (e.g. Z% of the flat fee is held-back and paid only if the matter is resolved within a pre-determined range of success; exceptional outcomes earn multiples of the holdback).

Structuring Law Firm Operations to Deliver Under these Models

Bartlit Beck has configured its law firm differently to serve clients under these alternative fee models.

- Taking a different approach to staffing. The distribution of experience in the firm does not fit the common “pyramid” model. In Bartlit Beck’s view, the “pyramid” firm maintains large numbers of inexperienced junior attorneys at the base who do most of the work and bill most of the hours. According to the Bartlit Beck partner, its model is more akin to a “diamond” structure, with relatively fewer junior attorneys at the bottom, more experienced attorneys making up the largest middle segment, and a few very senior attorneys at the top. The partner describes the firm’s structure as designed to earn rewards by delivering results rather than billing useless hours.
- Increased investment in recruiting, training and retention of talent: According to a Bartlit Beck partner, because the firm has no need to constantly replenish ranks of inexperienced associates, the firm is highly selective in hiring and hires only when people the firm views as extraordinary are available or not at all. When associates are hired, they are expected to stay with the firm throughout their careers if their performance meets firm standards. The firm has the incentive to invest in new lawyers by giving them training, experience and responsibility.
- Investing in technology: Bartlit Beck uses technology to leverage its lawyers’ ability to handle cases and to improve the quality of their work as well as to improve presentation at trials and hearings.
- Conducting strategic assessments. Bartlit Beck prides itself on working “transparently” so that the client can see its work being done, who is doing it, and has an opportunity to contribute as part of the litigation team. This allows the client not only the opportunity to constructively assist the team but aids in understanding the course of the litigation, the reasons for the actions taken or not taken, and any change in case outlook that a particular litigation event may cause.

Benefits to Clients:

The benefits of this approach, according to a Bartlit Beck partner, are multi-faceted and include:

- Better alignment of incentives between law firm and client . . . by agreeing upon a measurable definition of success, and aligning interests on achieving those results (as opposed to having divergent interests around the number of hours billed). Under these alternative approaches, the firm must focus on efficient task selection and on

performing work that delivers genuine value – because the fixed fee structure will not compensate it for efforts that produce diminishing returns.

- Stronger correlation between value generated and fees earned . . . which the firm believes is absent in the conventional hourly rate approach
- Reduced administrative burdens and better visibility into fees . . . via simple predictable invoices.

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