

Value Practice:

Aligning the Interests of Client and Firm in Complex Litigation and Complex Transactions- Practices Implemented by Womble Carlyle Sandridge & Rice

COMPLEX LITIGATION DOCUMENT REVIEW- FIXED FEE PLUS OPTIONAL BONUS

The Client's Problem: The legal department at a national company had to determine how to best respond to two separate government agency investigations as well as related commercial and consumer litigation cases. With much on the line, in-house counsel anticipated that legal fees would be daunting. Projected costs associated with document production remained an area of concern. The client also needed a solution that took staffing into consideration and offered judgment during document review to help assure it was responding to investigations and litigation with the most appropriate and thorough information.

Womble Carlyle's Solution: A Quality-Focused Team for Document Review on a Fixed Fee + Optional Bonus

In the spirit of the Association of Corporation Counsel's recommendation to "Meet.Talk. Act," Womble Carlyle's M&A partner learned of his client's dilemma and proposed a solution at what they describe as a fraction of the costs:

Using the firm's **document review team** and a large centralized team of staff attorneys and paralegals, Womble Carlyle crafted a **fixed-fee solution** for the company that was 60% of their existing outside counsel's estimated budgets that used traditional hourly rates. In addition to the fixed fee, the arrangement was structured to include an **optional bonus at the discretion of the client**.

Additional components of the solution included:

- **Quality control procedures**-such as statistical process control (SPC), to help ensure that the final product met the requirements for the case. Womble describes SPC as involving sophisticated sampling methods and analytical techniques. It was implemented to verify documents were reviewed accurately and consistently. Womble shares that, using SPC, the quality of the work product could be statistically verified to conform to the client's requirements.
- **Regular communications with Litigation counsel**-regular communications with the client's litigation counsel, including weekly conference calls with the entire team, to review the status of the document review as well as to involve the document review team in the overall process of the litigation.
- **Regular communications with client** –regular communication with the client to provide independent perspective on the document review process.

Benefits of Fixed Fee Approach

Benefits described by Womble Carlyle include:

- Burden of working efficiently is shifted to the law firm; to make a profit, the law firm needs to staff and run the document review project efficiently – allowed client to focus on the delivered product and larger looming issues, and not on management of outside counsel
- Client receives certainty as to its legal spend budget for this project
- Client awards bonus at its discretion and based on results
- Client has complete control over assessing results and determining value based on results

Structuring the Optional Bonus

In addition to the fixed fee arrangement, Womble Carlyle also suggested a modest bonus pool (a fraction of the fixed fee) to be paid based on the firm's performance solely at the client's discretion. Mechanics for deciding on bonus:

- Client decides in its sole discretion whether to award none, some or all of the bonus
- Mechanics modeled on grading scale for a school project:
 - Satisfactory (or C): no bonus
 - Above and Beyond (or B): some bonus
 - Way above and Beyond (or A): full bonus

Of note, the firm received the full bonus, or A for the work.

How Firms Can Structure These Arrangements

The firm's ability to offer such a proposal stems from what it describes as:

- Tightly managed and systematized methods for organizing, tracking, searching and synthesizing millions of case documents into information attorneys can use
- Customized technology
- Staff that includes experienced trial lawyers and paralegals who understand large-scale litigation
- Understanding the client's problem and aligning success with the client's best outcome

COMPLEX TRANSACTIONS- CREATIVE FEE ARRANGEMENT

Background

A financial institution and long-standing client chose to sell bundles of assets over an extended period of time in the open market. This was an unusual event. The company's in-house counsel understood that substantial legal resources would be required to complete the transaction, but there were many decisions that had yet to be finalized. Which assets should be sold? How should they be bundled? How many buyers for each bundle?

These strategic decisions were ultimately within corporate control and represented important drivers of legal cost, but the company did not have a full understanding of the market demand for these assets. In the face of such uncertainty, most clients and law firms would approach such engagements under traditional hourly rate terms. However, this particular situation demanded something different—a custom approach designed to reduce the transaction costs and drive economic value.

Womble Carlyle responded to the client's needs by first proactively conducting

a review (off the clock) of all of the different tasks that might be required under various scenarios. The firm considered which services added substantial value to the engagement, and which services did not and worked hard to understand how those tasks added value from the client's perspective. The analysis focused not only on what it had historically cost to complete each task, but also on what it should cost assuming a high degree of efficiency. Finally, the firm considered staffing and the types of attorneys who could most effectively operate under her high-efficiency model. The cost of each team member had to be weighed against their personal productivity for the kind of work that the engagement required.

Staffing and Fee Structure

Based on the above analysis, the firm proposed the following:

- **Staffing-** the firm concluded that a core group of experienced attorneys in various offices and practices were best equipped to meet the client's needs under these particular conditions.
- **Alternative Fee Structure: flat/fixed fees for tasks-** rather than bill these experienced attorneys under an hourly rate model, the firm defined tasks and presented a fixed fee for each task. Specifically, the firm charged a flat fee for each buyer, each bundle, and each asset within the bundle. There was also a short list of additional up-charges for other related tasks.

Benefits of Alternative Fee Structure

Womble Carlyle describes several benefits:

- Focused the attorneys' attention on the value-added aspects of the engagement while encouraging a high degree of efficiency.
- The real cost savings stemmed from focusing the attorneys' efforts to those services that were essential to move the engagement forward.
- Attorneys needed to think carefully about how they would complete each of the required services in an efficient manner.
- The arrangement allowed Womble Carlyle to assume responsibility for cost variations that were within the firm's control. As the client made decisions about the sale that would change legal costs (creating the need for additional or more expensive services), the firm had the flexibility to add those services to the bill (similar to the way doctors charge for procedures).
- Gave Womble Carlyle an opportunity (but not a guarantee) to earn a reasonable profit when the firm performed well and it put the client in the driver's seat when it came to deciding how much to spend and which services it would buy.

CMF PROVIDES FIXED FEE ARRANGEMENT FOR MASS TORT LITIGATION DOCUMENT MANAGEMENT

Womble Carlyle asserts that its Case Management Facility (CMF) provides cost certainty in its litigation management. ***The CMF works with several long-term clients on an annual fixed fee basis and with other clients on fixed fees per quarter.*** The arrangements are preferred by clients because it prevents surprises. Hidden expenses are recurring problems for any company involved in large- scale litigation.

In its simplest definition, the CMF is described by Womble Carlyle as an “online file cabinet” containing the attorney work product generated by the clients’ case teams every day. CMF organizes, tracks searches and synthesizes attorney work product into information in-house counsel and their outside firms can use.

Benefits of Case Management Facility (CMF)

Womble Carlyle describes the following benefits of CMF:

- For outside counsel: The CMF provides template motions, document generation services for any standard work product such as interrogatories or preservation letters.
- For in- house counsel: The CMF provides trend-spotting and identifies areas for cost savings.

The CMF uses technology to help maximize efficiency and keep costs low. The CMF is backed by a staff described by Womble Carlyle as including experienced trial lawyers and paralegals who understand large-scale litigation and what litigators need to win cases.

Types of Fee Structures for CMF Services

- Annual flat/fixed fee (for long-standing clients)
- Quarterly flat/fixed fees
- Fee structures that include using metrics and identifying benchmarks for bonuses for the derived outcome coupled with demonstrated cost efficiency

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