

Cost controllers Firms pursue alternatives to find more predictability of legal fee expenses



Robert Wilson and Henry Doggrell at the offices of GTX Inc., which has used the same outside counsel for patent issues since 1997.

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Predictability is a rare thing in business, but for in-house corporate counsel and outside law firms working through the fallout of the recession, it's a characteristic that has become increasingly sought-after.

As illustrated in a November 2011 survey by national legal consultants Altman Weil Inc., cost control was the highest management priority among survey respondents. Cost control was again the chief concern this year, according to the firm's 2012 Chief Legal Officer Survey.

"(Chief legal officers) are taking change into their own hands in 2012 to create a new internal value proposition," Daniel J. DiLucchio Jr., a principal with Altman Weil, said in a release accompanying the survey.

Affecting that value proposition can be achieved through a host of strategies, not least of which includes negotiating price reductions from outside counsel. Other businesses might choose to establish an

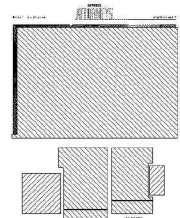
in-house legal department, or decide to do away with personnel.

Memphis-based biopharmaceutical developer GTX Inc. has been through the

latter, having been forced to lay off an in-house patent attorney in late 2009, according to general counsel Henry Doggrell.

"We're just like any other business in that we plan out our budgeted expenses versus actual expenses and then determine what types of resources we'll need to expend," says Doggrell, who is also vice president and secretary at GTX. "There's no exception for the legal department any more than there is for any other department in the company."

Thanks to the high volume of patent work commanded by the pharmaceutical industry, GTX spends more of its legal budget on patent protection than in any other area. Year after year, Doggrell calls on the same patent attorney he has worked with since the company's inception in 1997.



Even if fees do go up, familiarity is worth more than a lower rate with uninformed outside counsel.

"He knows us very well, and more importantly, he knows the technology very well," Doggrell says. "If I have a good relationship with a lawyer and they've done a good job and know the business, if they say they've got to raise fees, I'm going to listen to them."

Still, there are instances wherein it can be more cost-effective for in-house legal teams to add to their ranks.

Sharon Ryan, general counsel, senior vice president and corporate secretary at International Paper Co., says the company can generally hire "an experienced, top-quality, in-house counsel at a lower cost than the cost of obtaining outside counsel."

She says the company has deployed other cost-control measures, including re-negotiating fees with outside counsel as well as by increasing the use of paralegals within its own legal department.

Ryan, too, emphasizes a level of familiarity with the firms her department works with.

"IP has managed legal costs by managing the number of (outside) law firms in order to assure that counsel is very familiar with IP's business, strategy and risk profile," she says. "This increases the firm's efficiency, IP's satisfaction with the firm and the quality of service over the long-term."

On a more limited basis, International Paper has also put in place alternative billing arrangements, which are becoming more and more evident in the legal space.

Also known as alternative fee arrangements, alternative billing eschews the traditional billable hour in exchange for a more quantitative — or predictable — model of compensation.

The preference to predictability is especially evident among the largest companies in the marketplace.

"Generally, most of our Fortune 100 or Fortune 50 clients are looking for a way to better predict their legal spending year to year," says Chip Morrow, a practice group leader in the department of litigation at law firm Butler, Snow, O'Mara, Stevens & Cannada PLLC. "We've found alternative fee arrangements to be one way to do that."

In 2011, between 35 and 40 percent of the firm's billings came through alter-

native fee arrangements of one form or another. Internally, it aims to have more than half of its billings coming through alternative arrangements by 2014.

"Early on, when many people first started talking about alternative fee arrangements, a lot of people thought you couldn't do litigation that was predictable in terms of fees," Morrow says. "Quite frankly, we are doing major work for national clients, most of which is done through an alternative fee arrangement for litigation."

Still other strategies exist for capturing cost efficiency. Mark Glover, a shareholder at Baker, Donelson, Bearman, Caldwell & Berkowitz PC, emphasizes his firm's use of an internal legal project management platform. He says he has not seen as many corporate clients cutting back on the use of outside counsel as much as he has been asked to provide lower-cost services.

"Sometimes, that's an alternative fee arrangement, but more often we've been working projects through our legal project management technology," he says.

The platform gives clients remote access to constantly updated progress reports that indicate which professionals are at work on a project, how much has been billed and when various stages of a case will take place, for example.

"It's good for us and the client," Glover says. "Economic pressures over the last few years have prevented most firms from raising fees as much as they needed to. The only way to be profitable is to be as efficient as possible."

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