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GUIDE TO VALUE-BASED FEES

Association of Corporate Counsel

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Guide to
ACC Value Challenge
Value-Based Fees

www.acc.com/valuechallenge

ACC GUIDE TO VALUE-BASED FEES

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THE BUSINESS CASE

Companies are changing the way they buy legal services – gradually in some instances, drastically in others. The hourly rate billing model that has ruled for decades is giving way to a greater focus on terms emphasizing value delivered instead of time spent. This is evident from anecdotal accounts at legal industry conferences, and is defined even more clearly in recent client survey data.

- In a 2009 survey, 43% of legal departments reported spending more than 10% of their budgets on non-hourly billing arrangements – up from 27% of legal departments that did so in 2008.[1]
- In a front-page article, the Wall Street Journal reported that alternative fee arrangements totaled $13.1 billion in 2009 vs. $8.6 billion in 2008, citing another client survey,[2] effectively moving the focus away from the internal chatter of the "legal trades" and onto the C-suite's radar.

This growth is not surprising when you consider the reported benefits. Savings estimates range from 15%[3] to over 30%,[4] along with corresponding benefits like reduced administrative burdens (in not having to scour the minutiae of hourly rate invoices), better-aligned incentives (when law firm compensation is correlated with results achieved for the client), and increased productivity/efficiency accompanied by more predictable and desirable results.

These financial and management benefits have come so prominently to the fore because of the perception in many circles that legal fees have spiraled "out of control," largely due to the impetus of firm-driven profitability expectations, rather than market exigencies. This, too, is borne out by the numbers.

Over the past ten years, overall costs to U.S. companies rose 20%, while legal costs rose 75%.[5] In fact, legal fees have continued to escalate through the recent recession. While the global economic crisis forced many producers to hold prices flat or even reduce them, on average U.S. law firms actually increased hourly billing rates during the "Great Recession" of 2009.[6] Moreover, in a recent survey, approximately 90% of law firm respondents said they will raise rates in 2010.[7]

What impact is this having? Corporate counsel describe their "single largest unmet need" as "better value from law firms."[8] And the concerns are not limited to the General Counsels' office. Fifty-four percent of CEOs / CFOs in another survey stated they are "very highly" or "highly" interested in reducing outside counsel costs.[9]

Against this backdrop, value-based fee structures are seen as an effective way to manage cost. But it goes beyond just the dollars. Many have described it as an improved approach to management necessary in a more competitive global business environment. This is especially true in companies where other divisions have increased productivity via innovative use of technology, knowledge sharing and similar management tools – all to improve the company's bottom line. The refrain that "legal is different" is increasingly falling upon deaf ears.

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This, in a nutshell, represents the "business case" for value-based fee structures. It creates incentives to:

- reduce inefficiencies
- increase productivity
- improve the way legal services are purchased and delivered, and
- focus on results and outcomes that add value for the corporate client.

If you have not yet been asked to focus on these goals, chances are the request – or mandate – will come soon. That, precisely, is where this resource can help.

Whether you are new to value-based fee structures or have already implemented aspects, this resource can help improve your approach and strengthen your results. The potential benefits are immense.

A word of caution, however, is also warranted here. The initial shift to value-based fee structures is not easy – few worthwhile things are. This "how to" document assumes that your organization has already evaluated the potential ROI and approved the investment of time and effort required to achieve these larger goals. If you have not done this – if you lack broader commitment and "buy in" – then seeking to implement value-based fee structures on a broad scale is a tricky proposition. Instead, the advisable approach would be to pick one or two matters and build success more gradually. Either way, if you invest the time to do this correctly, you can deliver great returns to your company while maintaining high quality legal services. And you will become a better manager and guardian of your client's resources and trust.

THE BASICS

While these issues can be sliced and diced in any number of ways, we would offer this paradigm as a practical frame of reference and starting point to taking action. We've divided this complex issue into six key steps that we believe offer a path to successfully executing value-based fee structures in the context of legal services, and suggest accomplishing them in a particular (logical) order. These are:

- **Defining** . . . value
- **Scoping** . . . the work to be performed
- **Assessing** . . . who is best-suited to perform this work, on what terms
- **Implementing** . . . effective fee terms and management processes
- **Managing** . . . the legal work and the project coordination, and
- **Evaluating** . . . the quality of results and processes

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One of the benefits of following this framework is that it allows you to identify distinct roles and requirements to guide both inside and outside counsel and their teams as they jointly focus on legal and management issues. There are also roles for additional support resources, like project managers, vendors, and others, who may assist in managing the financial and operational components of value-based fee structures. *But the core principles apply regardless of who is performing the tasks and whether additional support resources are available.* If both in-house and outside counsel are willing to engage in candid dialogue and to execute on this approach to value-based fee structures, then success is within reach.

This ACC Guide to Value-Based Fees will provide a step-by-step approach to help those new to the process get started and to help those who are veterans of the process consider whether there may be opportunities to improve what they already do. The checklists, flow-charts and tables are designed to help in assessing a particular matter to determine which of the following value-based fee constructs would fit best, as well how to best implement and carry out these terms.

The table below elaborates on these value-based fee constructs, defining them first before addressing implementation.

Value-Based Fee Matrix

The table below lists common types of value-based fee arrangements, provides some examples of when they might be used, and describes situations for which the fee structures may be ideally suited. *This ACC Guide to Value-Based Fees is evolving as practices evolve. If you have successfully implemented other value-based fee structures not listed below, please* contact us *at* [*accvaluechallenge@acc.com*](mailto:accvaluechallenge@acc.com) *so we may consider adding your practice to the list.*

VALUE-BASED FEE MATRIX **			
Type	**Description**	**Example**	**Ideally Suited For**
Fixed Fee per Deliverable	Affixes an "all in" price for a distinct piece of work, encompassing all of the law firm's ancillary preparation and effort.	▪ Pay X for a law firm to draft and argue a summary judgment motion; ▪ Pay Y per deposition taken; ▪ In the transactions context, pay Z to produce an initial draft of a license agreement.	Situations in which certain component pieces of work are distinct and measurable such that client and law firm can agree upon a workable fee schedule, even if the number of "units" of work may vary going forward.
Fixed Fee Per Matter	Sets a fixed price for all legal work relating to a particular matter.	▪ Pay X to handle a particular type of commercial real estate transaction; ▪ Pay Y to handle the defense of a single-plaintiff employment litigation up to trial, with an additional fixed amount to try the case.	Situations in which matter recurs in a defined and predictable way so that the client and firm can agree on a reasonable fixed fee to handle that matter, barring any unforeseen developments.
Capped Fee	Commonly used to set a ceiling on what the client will pay the law firm in a particular matter, or for a particular piece of work. Resembles a fixed fee, but with certain drawbacks (discussed in the "Assessing" section below.)	▪ Legal fees for this matter, in this calendar year, not to exceed X; ▪ Fees for drafting and arguing this appeal not to exceed Y; ▪ Fees to handle this transaction not to exceed Z.	Situations in which the client is most comfortable with the hourly rate billing model and favors greater predictability (by capping fees on the high end) as opposed to lowering fees (by sharing with the law firm a portion of savings generated under fixed fees).
Flat Fee per Period	Typically covers distinct categories of services during the course of a specified period.	▪ Monthly flat fee to cover advice and counsel requests on regulatory issues of a certain type; ▪ All-in "per diem" fee for trial representation for whole trial team; ▪ Monthly flat fee to handle administrative management during certain phases of litigation; ▪ Quarterly flat fee for handling all intellectual property litigation of a certain type or in a certain area; ▪ Quarterly flat fee for handling a certain volume of commercial agreements.	Situations in which distinct pieces of work need to be performed on a recurring basis, and the client wants to create an economic incentive for the law firm to staff and perform the work more efficiently (i.e. reducing its own cost to increase its margin).

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Type	Description	Example	Ideally Suited For
Portfolio Fixed Fee	Represents a broader application of the fixed fee approach by assigning a large portfolio of work to a single firm for a fixed fee, usually after a competitive bidding process. Duration can vary, but generally a multi-year term (2 or 3-years) is common; payment schedule may be monthly, quarterly or on another set period.	▪ All employment litigation for a fee of X; ▪ All product liability litigation of a certain type for a fee of Y; ▪ All transactions of a certain type for a fee of Z; ▪ All securities portfolio filings for a fee of XX.	Situations in which a group of matters is sufficiently similar, recurring and predictable so as to lend itself to relatively consistent year-over-year patterns in terms of activity and fees.
Per Capita Fee / "Ad Agency" Model	Fixes a set price to "purchase" on a discounted basis the full-time or half-time services of a certain person or team, who then produces the work required.	For the coming year, pay X to purchase 50% of the billable hours for lawyers 1, 2, and 3 to work exclusively on this client's identified matters.	Situations in which a client wants particular outside lawyer(s) to be available and the law firm is willing to provide a discount in exchange for the certainty of revenue in advance – and the volume of work is sufficiently predictable so as to keep these folks busy.
Incentives/ Performance-based Hold Back/Success Fees	Aligns interests by tying a portion of law firm compensation to outcomes achieved. (Can be used in conjunction with any of the value-based fee options described above).	▪ Percentage (e.g., 20% or some other number) of fees billed will be set aside by client and paid to the law firm subject to a multiplier (e.g. 0, 1, 2) depending upon the extent of success achieved (e.g. win a motion to dismiss, win a jury verdict, resolve a matter below a specified amount, close a deal by X date, etc.); ▪ Without a holdback, opportunity for bonus based on results achieved and value delivered (e.g., resolve a matter below a specified amount, close a deal by X date, reduce number of new cases in litigation portfolio by certain percentage, etc.). Bonus could be calculated based on some portion of the costs avoided or value delivered.	Situations in which the client is able to define success (entirely or in part) according to objectively measurable markers that the law firm can help attain via strong performance.

Pure Contingency	Law firm compensation depends entirely upon achieving certain outcomes.	▪ Law firm fee is equivalent to X% of the client's recoveries in a particular matter; ▪ Reverse contingency can also apply where, e.g. defense law firm gets paid only if it wins a dismissal or jury verdict.	Situations in which client seeks recovery and/or is cash-strapped and is therefore willing to forego a larger portion of its upside stake in exchange for protection on the downside (i.e. pay large fee for a win and no fee for a loss). This is higher risk and higher reward for the law firm.
Hybrid	Combination of one or more of the above approaches on a given matter or for a portfolio.	▪ Flat fee for handling litigation plus per diem for trial and success bonus for outcome.	Situations where client and firm wish to be flexible to address various touch points differently and reward results.

**This matrix does not include certain approaches that are not typically considered value-based fee structures (but which some may still use and find helpful on their own or in conjunction with these value-based fee approached), including discounts off hourly rates, tiered volume discounts, and use of blended hourly rates. While helpful in part, none of these fit the definition of a value-based fee structure as a construct that assesses the value of the service from the client's perspective. *This ACC Guide to Value-Based Fees is evolving as practices evolve. If you have successfully implemented other value-based fee structures not listed below, please* contact us *at accvaluechallenge@acc.com so we may consider adding your practice to the list.*

DEFINING

The first step on the path to value-based fee structures is, well, defining value. This is an obvious point, but one still worth emphasizing. The fundamental shift: move away from "how many hours will it take" to "what is the value to be delivered." From the client's perspective, answering this question requires some additional effort at the outset, -- and then requires the client to communicate that value to those who are on the team -- but it is a worthwhile investment.

So what does this valuation analysis entail? It requires going beyond vague notions of success like "effectively resolving the litigation" or "closing the deal." Rather defining success in this context means drilling more deeply to establish a measurable benchmark of performance, either for the matter as a whole or for discrete pieces of it. It means putting a stake in the ground to say – this is what we are striving for, and if we achieve it or better, then we will have succeeded in delivering value.

There are two core components here, quality and cost – as well as a decision on how to measure outcomes achieved. Addressed in detail, these components of valuation could fill a book. But for purposes of this practical Guide, the list of questions below are designed to help you start the process of framing your own definition of value added, even before considering which particular fee structure to implement.

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Defining Value According to Outcomes Delivered

1. Is it reasonable to expect a particular outcome in connection with this matter?
   Examples –
   - complaint dismissed
   - patent issued or upheld
   - infringing product removed from the market
   - financing obtained
   - deal closed
   - positive decision from a regulatory or government agency
   - volume of transactions/commercial agreements handled
   - or even, client's brand-strength or reputation preserved

2. Is the desired outcome measurable in terms of dollars or timing?
   Examples –
   - Litigation settled for less than x
   - Recoveries obtained in excess of y
   - Deal closed within z months

3. Should a portion of outside counsel's compensation depend on delivering that result?
   Examples –
   - Portion of the fees set aside, to be paid if the outcome is achieved
   - Potential bonus if firm achieves measurable success beyond expectations

4. Should the definition of success be more comprehensive to encompass legal fees as well (i.e. focusing on total resolution cost)?
   - Net recoveries, less fees, should exceed X
   - Net liabilities, less fees, should not exceed Y

5. If there is not enough information in hand to do this now – what additional info in needed, how do we get it, and when do we revisit? (Many companies use Early Case Assessment ("ECA") to produce this information.[10])

Defining Value According to Cost of Comparable Services

1. Where outcomes are difficult to measure, how can we define value delivered relative to the cost of comparable services from similarly qualified firms?

2. Do we have enough data, and is the matter sufficiently predictable, to focus on the cost of the entire matter? (e.g., Pay x to handle single plaintiff employment discrimination case from beginning to end, through trial.)

3. Alternatively, would it be better to price distinct components or stages of work? How do we break it up? (See examples in the chart on page 6.)

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4. Can we analyze the structure and cost of a portfolio of similar cases? Is there a large enough number of cases, with sufficiently similarity and predictability year-over-year so as to bundle them?

5. If the foregoing approaches are not feasible, can we analyze the hourly cost of law firm labor and later adjusted it in light of outcomes produced or success achieved? Can we measure this objectively via results and/or subjectively via client evaluation? (See FMC Technologies ACES approach for an illustration based on hourly, along with sample templates.)[11]

6. How much would it cost for the company to hire internal talent to handle this matter or line of matters, versus "going outside" to retain services?

Defining Value in Terms of Cost to Produce, Plus Reasonable Profit

1. Where outcomes and comparables are hard to assess, does it makes sense to define value in terms of the law firm's "cost to produce," plus a reasonable profit margin?

2. Some clients report success having gone down this path, after having asked familiar law firms to "unpack" the hourly rates charged to show components of overhead, cost of labor and profit.

Case Studies & ACC Resources:

What Do Hours Have to Do With Value?
ACC Docket, October 2009. (Provides a framework for defining value in the context of legal services.)

How to Conduct an Early and Periodic Case Assessment
www.acc.com/legalresources/resource.cfm?show=779199

The bottom line is this: The client should outline a preliminary definition of measurable value with respect to the legal matter(s) at hand, and then refine it by discussing objectives and desired results with outside counsel. Clients can and often do ask a law firm or vendor being considered for the work to develop proposals backed by internal research on specific metrics that the client has identified as the markters of success. A tool to get started: use the attached Value/Scoping Checklist in the Appendix.

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SCOPING

After defining value to set a general benchmark for success, the next step is scoping the work to identify what needs to be done to achieve that success. Again, this states the obvious, but "the devil is in the details" in terms of proper execution.

The shift here is beyond a gut feeling that the budget "looks right," to a more exact level of detail enabling sound project management within a legal matter. This may represent more administrative effort than some of us are accustomed to or comfortable with, but the two concepts are inextricably linked. You cannot achieve effective value-based fee structures without effective project management. If you don't know the various components of what you are buying, how do you know how much they should cost as a finished product?

PRACTICE TIP – Scoping and project management are concepts that many in-house counsel already apply in an informal way. Heightened success comes from doing it more rigorously so that the various aspects of work can be tracked and adjusted to improve value. Internal resources to help manage this include paralegals, operations managers, project managers or support personnel from Finance or Procurement. External resources include consultants and value-based fee specialists.

Many law firms are already familiar with the higher levels of scoping and project management required for value-based billing. For those who are newer to these practices, a continual focus on the long term benefits (i.e. stronger results, happier clients, better/more predictable staff deployment, and opportunity for more business) can help smooth the transition.

Getting Started

Where do you start in defining the scope of work to be performed for a particular matter? Existing information within your Legal Department is a good place.

Step 1- Existing Information: If your Department has handled several of these matters in recent years, with a good degree of similarity, then you have some reference points, including:

- the work to be performed
- the size of the outside counsel team
- type of resources required
- how things unfold in terms of timing and duration
- the sequence of steps in terms of project management, and
- the price you have paid for these services in the past.

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Depending on how your department functions, you can **gather this information by**:

- speaking with your colleagues who have worked on these matters,
- mining technologies/databanks that have captured data that can be useful, or
- diving into summary documents that were used to manage those matters.

Examples of summary documents include status reports, budget templates, forecast updates, staffing plans, and project management documents. Sources include: paper within your office, and some of them can be requested from your law firm(s) that worked on those prior matters. If you use electronic matter management and e-billing systems, those are good sources to check as well, depending on how effectively they are used in tracking key components of matter activity.

PRACTICE TIP – If you struggle to locate this information and you do not use summary management documents like those listed above, consider how you can improve your approach to gathering and keeping this information for future use. Ask outside counsel to provide this information in an effective way, and then store it so it can be retrieved later. And look at automated options that make the capture and future retrieval and manipulation of this information easier.

Step 2- Tap other sources: If you are facing a new matter and existing information does not exist in your company, tap other sources – like other inside counsel – to discuss their experiences and expectations. You can benchmark value with other companies and ACC members, but we remind you to think very carefully about how to make sure that what you discuss in terms of their experiences does not run afoul of either legal or professional concerns, such as waiving confidentiality or price-fixing.

Step 3- Consider law firm input: After you have gathered all of your existing sources of information about the scope of the matter, you must determine whether you are going to assign the matter to a law firm without further input on scope. This is a key decision. If you as the client already have the core information on scope of work to be performed, then you may determine that you do not need to involve law firm(s) in the scoping process. But if your efforts to scope the matter produce gaps in what exactly needs to be done, or if you are hiring a firm precisely because you have limited experience with this kind of work (and they've done it many times over for many different clients), then you should consider involving the firm(s) being considered to perform the work in the scoping process. Doing this will also produce greater "buy in" and commitment to project plans and budgets if the firm(s) ultimately assigned had a hand in crafting these plans.

From a client's perspective, effective scoping and cost conversations with law firms often occur when multiple firms are involved before the assigning decision is made. In this context, there is greater validation of the assumptions and price points. For an illustration of how this is effectively done, see the resource below.

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Case Studies & ACC Resources:

ACC Value Practice: GE- Successfully Using Alternative Fee Arrangements for Complex IP Litigation.
(Illustrates strategic use of competitive bidding among known and trusted firms.)
www.acc.com/legalresources/resource.cfm?show=776846

Bottom line: The scoping process asks "what needs to be done" and "what is the most effective way to perform the work" – and thus begins to outline a plan for effective execution. Critical to this process is identifying tasks that are "marginal" and which may not add sufficient value so as to justify doing. It is about properly allocating resources – not so you can save every dime on cost (being penny wise on fees and pound foolish on outcomes), but so you can strategically re-invest in stronger legal services to increase your chance of getting desired results and winning where it counts most.

PRACTICE TIPS

- In defining the scope, focus on both legal work and what is required to properly manage it, and discuss both with the law firm(s), emphasizing the joint long-term benefits for both client and firm.
- Keep in mind the key questions: What are we buying? What should it cost? Is this changing at all as the matter progresses? How do we readjust?
- Effective value-based fee arrangements require provisions to address changes in matter activity assumptions. A hidden risk of flat and fixed fees is an unanticipated decline (or increase) in matter activity, which would produce a windfall (or shortfall) to the law firm if the original terms anticipated a higher (or lower) level of activity. Per unit tracking is one remedy (adjusting up or down as necessary), and shadow hourly rate invoicing is another.
- Make or Buy decision. Decide what is best done internally and externally. Some clients don't have certain operational resources (e.g. to fully manage e-discovery) so they outsource that to law firm or even a third party vendor. This might be the right decision, but you only know after assessing.
- Concept of unbundling. De-constructing an aggregate bundle of work, focusing on component tasks and costs, can help identify opportunities to assign more effectively either to: (1) other lower cost firms or vendors who would deliver the requisite quality, or (2) to the same firm or vendor that is performing most of the aggregate work, but at more effective price points for the less specialized components. Yes, this analysis requires increased administrative efforts and coordination, but net savings are worth it.

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ASSESSING

After defining value and scoping the work, the next step is assessing who is best suited to perform this work, and on what terms.

Who Should Perform the Work

Most inside counsel have extensive experience in selecting law firms – the "who" part of the equation – and much has been written on this topic. This piece will not go into great detail here, other than to note two brief points.

- ***First, it is important to consider not just quality but cost***. How do you assess cost? It is not just about rates – that's only half of the equation. Rather, you assess law firm cost via: comparative all-in fee constructs, willingness to put "skin in the game," and via track record on prior value-based fee arrangements the firm's offered you or for other clients. If you simply send a new matter to a firm and don't thoroughly assess comparative budget or cost info up front, there should be little surprise if costs are not ultimately well managed.

- ***Second, consider who the right service providers are to handle the matter (or components of it)***. Some matters may require the best-known experts in the world and others may not. Perhaps you want multiple law firms or vendors in the mix -- or only associates or only partners. As clients increasingly "unbundle" work, the market is seeing extensive experience across the spectrum of providers, including bringing certain pieces of the work in-house, assessing how to get the highest use from each contributor to the matter, and stretching overseas for the right types of projects.[12]

On What Terms

The other half of the "assessing" equation – "on what terms" – raises a host of options in terms of value-based approaches. There are a variety of possibilities, depending upon how the work is segmented and whether outside counsel compensation is correlated in some way to outcomes delivered.

At the outset, though, it may be helpful to distinguish some commonly used approaches that are not typically considered value-based fee structures, including discounts off hourly rates, tiered volume discounts, and use of blended hourly rates. While helpful in part (because they're an "easy" short-term triage) none of these fit the definition of a value-based fee structure as a construct that assesses the value of the service from the client's perspective – apart from law firm-centric measures like profitability, utilization rate, hours worked, or cost to produce. A list of options that do fit this definition is set forth below.

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Value-Based Fee Options

- ***Fixed fees*** are used to affix a price to a "deliverable" or a distinct piece of work, with all ancillary preparation and effort reflected in that price. Data can come from multiple sources (historical information, other items in the portfolio, bids or price quotes from existing firms or new firms). Litigation examples include paying X as the "all in" fee for a law firm to draft and argue a summary judgment motion, paying Y as the "all in" fee per deposition taken, and paying Z per page or per gigabyte for first level / responsiveness review on a document production. Transaction examples include paying X to produce initial draft of license agreement; Y to negotiate outstanding issues with other side; and Z to finalize documents and conduct closing.

  Of course, not all matters or all deliverables are equally complex. As a result, what is ostensibly a similar piece of work – a summary judgment briefing and argument – may cost very different amounts across two different matters based on complexity. That is as it should be. Increasingly, sophisticated clients are capturing their data over time to build fee schedules for pieces of work based on degrees of complexity. This enables them to compare prices of "like" projects or deliverables with similar complexity profiles to arrive at apples-to-apples assessments on cost. This requires and investment of time and effort, but the case studies below illustrate the larger benefits.

  >>Advantages: This approach accommodates uncertainty and provides flexibility in the future scope of work by pricing "units," which allows for fee adjustments as the number of units rises or falls.

  >>Drawbacks: It takes time and effort to properly craft the numbers and adjust for changes in case activity.

  Case Studies & ACC Resources:

  ACC Value Practice: De-constructing Legal Services - Calculating Unit Costs & Component-Based Pricing Structures - Johnson & Johnson's Approach to Alternative Fees
  www.acc.com/legalresources/resource.cfm?show=738996

  ACC Value Practice: Confluence Law Partners: Deconstructing IP Litigation Matters
  www.acc.com/legalresources/resource.cfm?show=379009

  ACC Value Practice: Aligning the Interests of Client and Firm in Complex Litigation and Complex Transactions- Practices Implemented by Womble Carlyle Sandridge & Rice
  www.acc.com/legalresources/resource.cfm?show=750208

  ACC Value Practice: Class Action Defense Via Flat Fees & Performance Incentives... Nationwide Insurance and Fowler White's Different Approach
  www.acc.com/legalresources/resource.cfm?show=742577

- ***Capped fees under an hourly rate approach*** are commonly used to set a ceiling on what the client will pay the law firm on a particular matter, or for a particular piece of work. Examples include payment of not more than X to prepare and argue a summary judgment motion, and payment of not more than Y to close an M&A transaction.

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>>Advantages: When executed properly, this approach resembles a fixed fee (discussed above), but in theory gives the client the added up-side of paying less if the law firm bills fewer hours than anticipated, thus not reaching the cap.

>>Drawbacks: While that sounds good, many observers have noted that the interests remain unaligned. The law firm does not have the incentive to invest in approaches that would reduce the cost of producing that piece of work, because it does not share in any upside for doing so. And since firms know they can bill until they reach the cap, many don't attempt to control their costs until they are approaching the limit. There is also a concern about overpaying if the client selects the wrong ceiling, not having done enough comparative assessment.

Still, this approach provides a stronger level of management as compared to unbridled hourly rate billing.

Case Studies & ACC Resources:

ACC Value Practice: Clorox: Value Matrix for Intellectual Property Matters - Alternative Fee Structures Based on Level of Difficulty, Staffing Mix and Billing Guidelines and Informal Training. (Illustrates the use of capped fees of varying amounts based on complexity of underlying work.) www.acc.com/legalresources/resource.cfm?show=458576

- ***Flat fee per month (or some other period)*** is typically used to cover services delivered during the course of a specified period. Litigation examples include: monthly or quarterly flat fee to cover strategy or case management in the course of litigation and/or a "per diem" fee for trial. Other examples include: monthly fee to address advice and counsel requests in addressing a particular issue of law. This resembles the "retainer" approach used more frequently in years past.

  >>Advantages: Provides certainty and sets the price based on the value to the client (and presumably based on market reference prices for what other law firms of similar quality would charge for this period).

  >>Drawbacks: Some have argued that efficiency incentives may not arise if the flat fee amount per period is not actively managed. Without further prodding from the client, does outside counsel really have the incentive to adopt process improvements to reduce the monthly figure and share some of those savings with the client?

- ***Portfolio fixed fee.*** Some clients have implemented a broader application of the fixed fee approach by assigning large portfolios of work to a single firm (or a given volume of work to a firm) for a fixed fee, often after a competitive bidding process. These engagements also commonly provide for separate ways to address "one off" matters outside the normal scope of the portfolio (e.g., class action lawsuit), and also provisions to verify that scope/activity assumptions proceed as planned. Examples include: All employment litigation for a fee of X, all product liability litigation of a

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certain type for a fee of Y, all transactions of a certain type for a fee of Z, handling all securities portfolio filings for a fee of XX.

>>Advantages: This larger pool of work enables client and firm to better manage and "cover" or "self-fund" individual outlier matters where the activity and budget assumptions proved to be off. It also provides the firm with a greater incentive to help the client reduce legal risks and problems since the firm is paid to service a portfolio (e.g. HR and employment litigation) and can make more by preventing problems rather than rationing services. In fact, many clients build in an explicit provision linking outside counsel's compensation to maintaining or decreasing total liabilities paid in connection with that portfolio of work.

The assigned firm often pays local counsel and manages vendors under this arrangement. To successfully execute a portfolio fixed fee, the client must perform due diligence, including assess 2-3 years of historical data on: scope of work, fees paid, outcomes / liabilities / recoveries.

These engagements also commonly provide for separate ways to address "one off" matters outside the normal scope of the portfolio (e.g. class action lawsuit), and also provisions to verify that scope / activity assumptions proceed as planned.

>>Drawbacks: Properly implementing portfolio fixed fees requires time and effort to analyze historical data regarding matter activity and spending patterns. It also requires an assessment of how repeatable these patterns will be in the coming year or two. Not everyone is equally comfortable with making such projections and committing in advance to assigning to a single law firm.

The case studies below illustrate these portfolio fixed fees in action, within larger and smaller legal departments.

Case Studies & ACC Resources:

ACC Value Practice: Ford Motor Company: Value-Based Fees for Litigation- Annual Engagements for Product Liability Matters on a Flat Fee Basis
www.acc.com/legalresources/resource.cfm?show=919336

ACC Value Practice: Implementing a Portfolio-Wide, "All In" Fixed Fee with a Single Law Firm... Pfizer's Employment Law Arrangement with Jackson Lewis
www.acc.com/legalresources/resource.cfm?show=739110

ACC Value Practice: Alternative Fee/Value-based Arrangement Implemented by Smaller Law Department - Securities Portfolio Work for Wolverine World Wide, Inc.
www.acc.com/legalresources/resource.cfm?show=599874

ACC Value Practice: Employment Litigation and Counseling Portfolio Services on a Flat Fee Basis- Value Practices Implemented by Toyota Motor Sales, USA, Inc.'s Law Department
www.acc.com/legalresources/resource.cfm?show=537543

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- ***Per capita fees / Ad agency model.*** While the fixed fee model described above focuses first and foremost on the project / deliverable, the *per capita* approach focuses on the professional(s) performing the work. The "ad agency" model fixes a set price to "purchase" the full-time or half-time services of a certain person or team of people, on the presumption that they effectively produce all the work required.

  >>Advantages: Savings, from the client's perspective, are calculated vs. "rack rates" for an equivalent amount of that person's time.

  >>Drawbacks: But the model is arguably flawed in that it does not measure efficiency, or create incentives to produce the work in less time.

- ***Performance-based holdback.*** Any of the approaches listed above can be supplemented with a provision tying a portion of law firm compensation to achieving pre-defined outcomes or success metrics. This can (and is) also done in more conventional engagements structured under the hourly rate model. The holdback amount (e.g. 20% of fees billed) is typically subject to a multiplier (e.g. 0, 1, 2, or 3) depending on the extent of success achieved. Examples of pre-defined outcomes or success metrics include:
  - Winning on summary judgment, at trial or on appeal
  - Resolving a matter at or below a specified amount
  - Closing out a matter within a specified period of time
  - Completing a merger, acquisition or deal
  - Managing the entire matter at or below budget
  - Reducing the overall number of new cases filed
  - Successfully achieving transaction results (e.g., shifting certain risks, etc.)

The case studies below provide more details on how to correlate outside counsel compensation with outcomes generated.

Case Studies & ACC Resources:

ACC Value Practice: FMC Alternative Billing
www.acc.com/legalresources/resource.cfm?show=40256

ACC Value Practice: Aligning the Interests of Client and Firm in Complex Litigation and Complex Transactions- Practices Implemented by Womble Carlyle Sandridge & Rice
www.acc.com/legalresources/resource.cfm?show=750208

ACC Value Practice: Outcome-Driven Fees in High Stakes Litigation . . . Bartlit Beck's Alternative Approach
www.acc.com/legalresources/resource.cfm?show=743837

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- **Pure contingency**... is a more intensified form of the performance-based hold-back. Under a pure contingency arrangement – most easily envisioned and applied when recoveries are sought – the law firm would be compensated via a portion of the amounts recovered, and would receive no compensation if no amounts are recovered. The terms can be adjusted and tempered to better manage the down-side risk, and the model can also apply to the defense contexts (earn X if you win, earn zero if you lose) – but that is harder to do.

  >>Advantages: The interests of client and law firm are closely aligned under this structure. The more the client succeeds, the more the law firm gets paid – and vice-versa.

  >>Drawbacks: Under a contingency approach, a law firm could earn much more than it might under a conventional hourly rate approach. Some clients are not comfortable with this.

The diagrams below are intended to help facilitate the analytical process of sorting through the various options.

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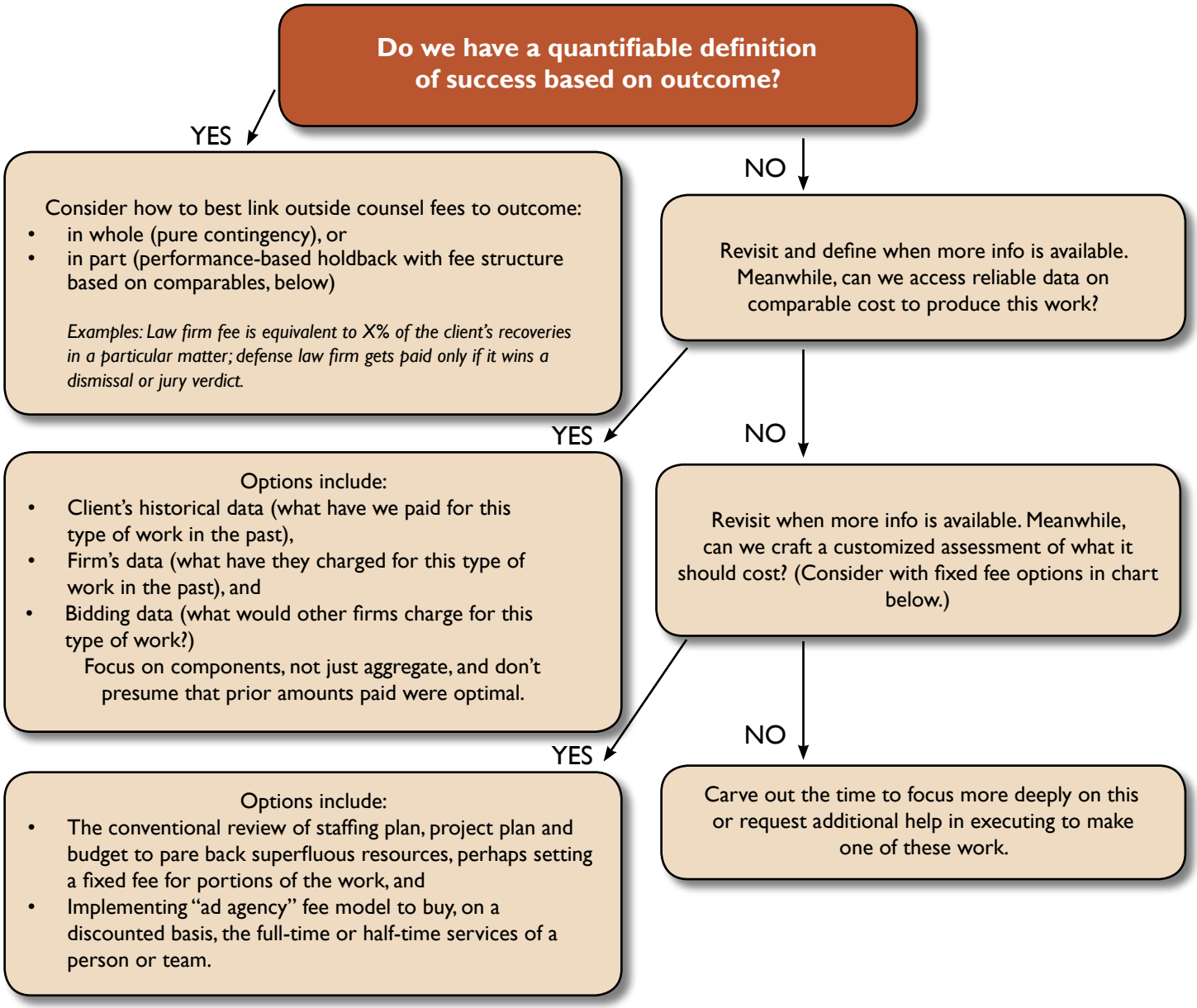
Flowchart: Client Focus on Outcomes & Comparable Costs in Defining Value

The chart below helps in answering two fundamental questions as a precursor to selecting the right value-based fee structure.

- First, can success in this matter be defined by a measurable outcome, such that it makes sense to correlate outside counsel's compensation, in part, on achieving that outcome?
- Second, what data points are available to assess the comparable costs of producing similar quality work in this matter?



Having addressed these issues, there is a foundation in place for selecting the right value-based fee terms (via the next flow chart).

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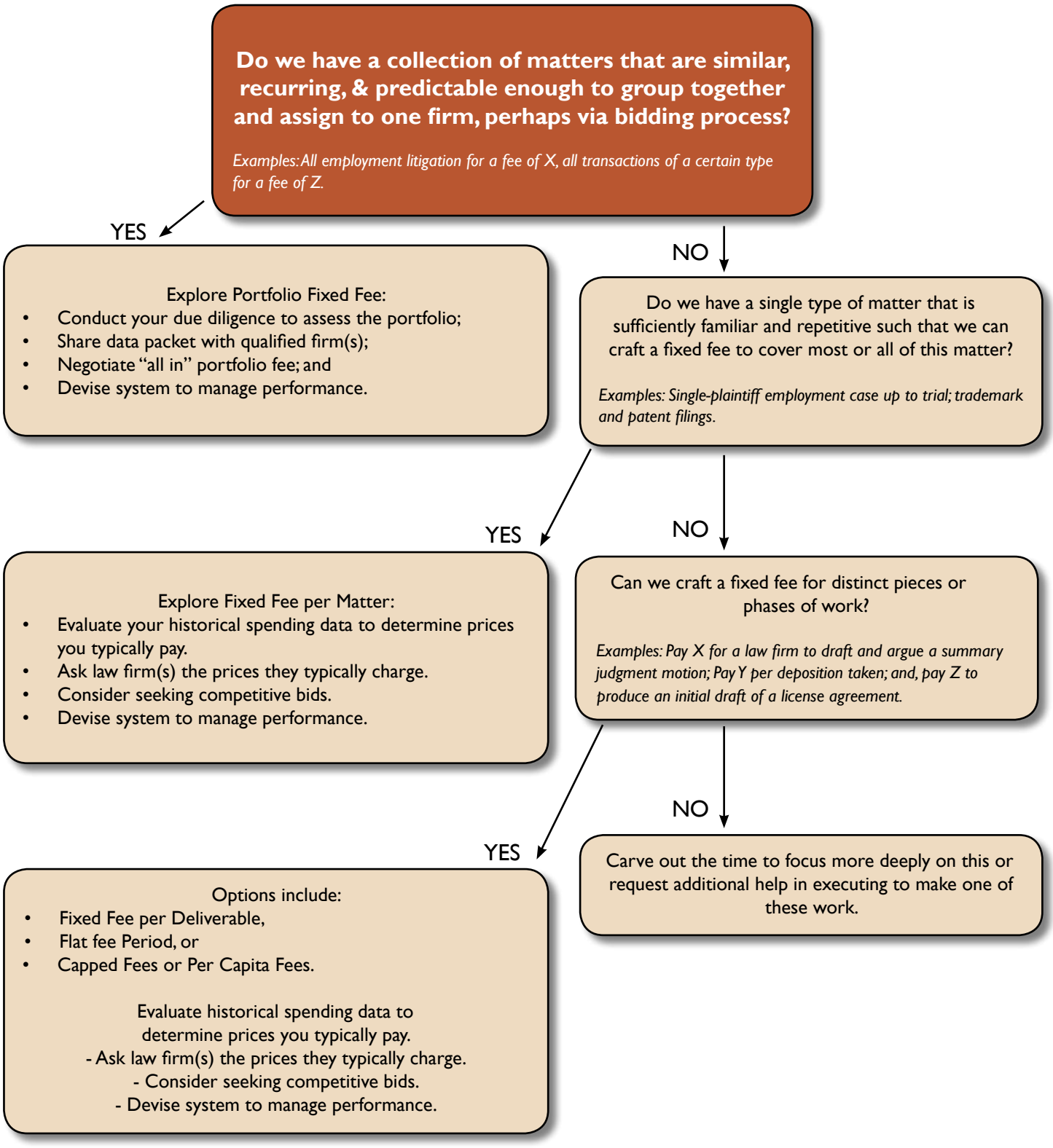
Flowchart: Selecting the Right Value-Based Fee Terms



For all of these, savings = reduction in historical spending patterns with same or better outcomes. Ideally part of law firm compensation will be tied to outcomes, even within these fee structures.

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Practice Tips – Consider:

- Do you have a preferred law firm list already in place? If so, what types of value-based fee structures terms have your outside counsel shown familiarity with?
- Look over your outside counsel performance reviews to see who has the strongest success and track record on value-based fee structures. If you don't track written reviews, talk to your colleagues to gather this feedback.
- Check out the ACC Value Index at www.acc.com/valueindex to see how ACC members evaluate firms on value.
- How much competition will you interject into the process to assess which firms would deliver the best value on a particular matter? This can range from informally speaking with a couple of trusted firms, to issuing an RFP and soliciting terms from multiple firms (including some "brand new" firms) to identify the best mix of quality, staffed talent, and cost.
- Some law firms may object to higher levels of competition, but there is a very reasonable conversation to be had about: (1) the economic and commercial realities facing your company, which have likely increased competitive pressures internally and externally across the board, and (2) the opportunity for additional business for those law firms that continually deliver the best value. t is also helpful to note the emphasis on long-term value (i.e. quality, cost and outcomes) – not to be confused with just the lowest price. Executed correctly, value-based billing is a management approach focused on success in the long term, with deeply rooted incentives built on trust and mutual understanding.
- Must ask – how reliable or believable is this proposal? Think about this firm's ability to meet budget historically. If warranted, adjust the figure to an expected value that properly reflects the real likelihood of achieving it.
- Must determine whether the budget will be viewed as an estimate or a quote. To what extent will you hold outside counsel accountable? Does the plan include pre-agreed contingency or "safety valves" for unlikely but possible deviations based on how the matter unfolds? This can be one of the biggest determinants of value and savings.
- In the end, trust is a key component in making these arrangements work. Do client and firm believe that each will honor its commitments, behave fairly and be able to work together in good faith to address unanticipated issues?

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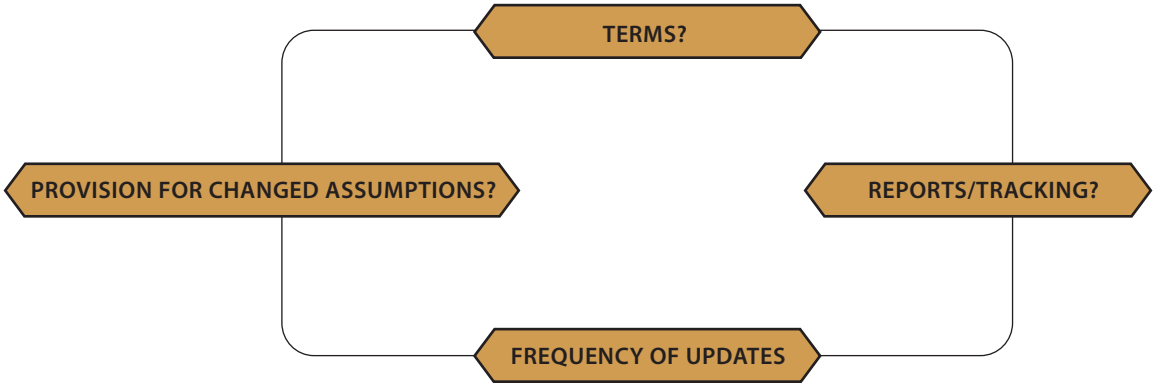
IMPLEMENTING

After assessing the options, the next step is to implement your value-based approach, assigning the various pieces of work to the right firms and vendors, under the right fee structures – all with a mechanism to monitor progress.

There are four key items to focus on in terms of implementation – terms, tracking, frequency of updates, and provisions for changed assumptions. Each is addressed in more detail below.

Four Key Aspects of Implementation:



What terms?

- Pricing. Is it all value-based fee structures or a hybrid approach retaining some hourly rate billing? (See flow chart on p. 21 on selecting the right value-based fee terms.)
- Payment. How should payment be phased for value-based fee structures? It is equally apportioned across a certain number of periods, or does payment flow depending upon the completion of the underlying projects or the achievement of certain targets?
- Outcomes. What happens to the outcome-driven portion? (Set aside by client? Paid, but credited back by the law firm if necessary?) Both parties must pay close attention to this point since a common problem for some firms has been either: 1. professional concerns about setting arrangements that could raise ethical problems (see, e.g., ABA Model Rule of Professional Conduct 1.5 that precludes firms for charging fees "not earned") or 2., clients setting an outcome-based fee, but then suggesting that the firm should split the difference when the "windfall" was larger than expected or the matter resolved earlier than anticipated.

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- Look-back. Is there a "look back" provision using "shadow invoices" to compare flat fee amounts to what would have been paid under an hourly rate approach? (See Appendix for sample retainer agreement language.) If so, what rates should be used – rack rates or discounted rates? Or are the look-back fees only tracked to allow a better assessment/re-negotiation of the pricing for future matters?
- Structure. Is one outside firm responsible for managing the expenditures of another to make it all come in on budget? Are there concerns about fee-sharing?

What reports / tracking mechanisms?

- Staffing plan. Who will be working on this matter? Is it the right mix of seniority, experience and resources, with limited turnover? (This can be important, as some clients fear getting the law firm's "B team" on a flat fee. This can be remedied, in part, by focusing on long term benefits, and emphasizing that success on this flat fee matter means opportunity for more business in the future.) In the end, the assessments of how to best perform the work necessary to increase value should yield more effective staffing arrangements. Sometime that may mean fewer people performing certain tasks and more people performing others. Some tasks will call for more senior resources and others more junior. But undoubtedly there is a strong correlation between the right staffing mix and the right outcome under a value-based fee structure, and the goal here is to illuminate the best "fit."
- Project plan – what will they be doing, and when? How does each step connect to each other and to the budget?
- Budget and forecast – how much will it cost (piecemeal and total) and how updates flow regarding progress vs. budget (covering both dollars and activity assumptions)?

What frequency of updates?

- Deciding frequency. The frequency of updates should vary depending upon what is being tracked, and how important is the need for sufficient time to "course correct." Examples: every two weeks for items like progress vs. budget on key matters that are moving; quarterly for items like progress vs. budget on routine matters, and bi-yearly for items like performance reviews.
- The fact that updates for the plan take place on a certain schedule does not mean that other kinds of communications cannot be scheduled: e.g., an email every week noting developments or milestones in cases where the action is faster paced, or a voicemail from the partner in charge every two weeks to report on emerging challenges or to simply check in to say "nothing new to report." But while these kinds of more frequent touch can be informative, they should be supplemental to the plan's more "formal" approach of monitoring the terms. They should be based on

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the client's appetite for communication: some love frequent interaction; others don't want to be bothered unless it's urgent and only want the plan in written report updates.

- Periodic updates. Must also plan periodic updates on: substantive legal issues, activity assumptions, project plan, staffing plan, and financial forecast.

What provision for changed assumptions?

- What is the definition of material change in assumptions requiring revisions to budget (up or down)?
- Is there a formula for revising the budget?
- Who is involved in that discussion and how will decisions be made?

MANAGING

Managing is a corollary to implementing, requiring time and attention as an engagement unfolds to ensure quality execution of the agreed-upon terms. Good managing also involves, where necessary, changes to ensure that performance stays on track. This may mean changing the way work is done (to be more effective), changing the timing of tasks (to stay on schedule or budget), changing or reviewing the performance of contributors/players (to assure that the right workers do the right work), or changing the scope of the project plan (to better reflect changed assumptions around matter activity).

This step – effective management of legal services – is another one that could fill a book in and of itself, and much has been written on this topic. Highlighted below are key points that are particularly relevant to value-based fee structures.

The core management questions to answer on a consistent basis include:

- Are we effectively executing against the plan? If not, why not?
- What changes are necessary?
- How strong is the quality of the work produced?
- How strong is the process of producing the work? (On time, with advanced notice?)
- How strong are the information tracking and communication processes? Are periodic updates provided in timely fashion, with the right level of detail? Are unanticipated developments communicated effectively so as to avoid unnecessary "big surprises"?
- How are things faring according to both quantitative measures (wins / losses, timely completion of work and deliverables, on budget) and qualitative measures (client satisfaction, responsiveness, creativity etc.)?

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- How did we do? Did we achieve the desired results? Are there lessons learned so we can improve next time (e.g., After Action Reviews)?

Practice Tips- Project Management:

- If you are score-carding law firm performance, consider sharing the criteria with the firm(s) up front and schedule periodic meetings to discuss progress.
- Emphasize accountability by addressing non-performance early on (especially around budget management) to avoid later pitfalls.
- Consider master calendar and dashboard in shared electronic work space.
- Build the **ACC Value Index** *(www.acc.com/valueindex)* into your evaluation process: compare the firm's performance for you to other members' experience with the same or similarly expert firms; post evaluations you do of your firms so that you can stay abreast of what others are saying of them; search for metrics on firm performance in that area of expertise, that geographic market, etc.; and then collect and track all of your firms' performance data in one place on your "account" page on the Index.

Case Studies & ACC Resources

ACC Value Practice: Value-Based Fee Arrangements - The Body Shop's Approach to Structuring Relationships. (Addresses management of outside counsel performance.)
www.acc.com/legalresources/resource.cfm?show=611756

ACC Value Practice: FMC Technologies: After Action Reviews
www.acc.com/legalresources/resource.cfm?show=40522

EVALUATING

Thoroughly evaluating performance at the end of a matter will shed light on the quality of all the preceding efforts to answer important questions:

- How well did we do as in-house partners / managers? How well did the firm do?
- How well did the team collaborate? Stay on track or on budget?
- How well did we do on our metrics, targets and goals?
- Where did we succeed most strongly?
- How can performance be improved next time?

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- How does this matter "stack up" again other matters with similar features? Are there cross-matter lessons to be learn or that inform other work?

Of course, some of these issues would be identified during the life of the matter, as part of quality management. But a more formal evaluation at the end ensures that the questions will be answered and information gathered across the board.

Particularly helpful – the information will be preserved for easy access in the future to help drive effective decisions on future matters. This would include performance and pricing data to select the right law firm on the right terms when matters like this arise in the future.

There is an incredible amount of emphasis being placed on firm evaluation issues, and that's great, but remember that evaluating firms without evaluating the department's handling, planning, collaborative effort, performance to goals, and improvement is like one hand clapping. In-house counsel must be just as focused and critical of their own performance as they are of their firms if they wish for their representation teams and results to improve. So whatever limelight you're thinking of throwing on your firms, think about also casting on yourself and even asking your firms to help evaluate what you could do better to assist them: it will create the 360 that every good team relies on.

Practice Tips – Issues to Address in Evaluating

- Consider conducting a formal after action review.
- Evaluate both law firms and vendors[13] – perhaps carving out time for annual meetings to discuss performance and improvements. Identifying areas for improvement and giving firms the chance to show how they grow in these areas can go a long way toward better management and better results.
- What do the clients think (business people and business unit counsel)?
- How did the fixed fee work? What changes or improvements would you make for next time? Was the firm any less responsive because of the fixed fee?
- What per unit data points might be helpful for next time?
- How well did inside counsel manage performance and partner with outside counsel to increase value delivered? Increasingly, Legal Departments are assessing this formally as part of inside counsel's annual performance review and bonus criteria.
- What suggestions do outside counsel have for improvements in the future?
- Consider adjusting invoices based on the client's reasonable perception of value received (see Valorem example below).

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Case Studies & ACC Resources

ACC Value Practice: ABC Value Assessments, Billing Practices and Convergence-Value Practices at Zurich North America
www.acc.com/legalresources/resource.cfm?show=717135

ACC Value Practice: Valorem Law Group: Maximizing Value in Fee Relationships
www.acc.com/legalresources/resource.cfm?show=323972

ACC Value Practice: FMC Technologies: After Action Reviews
www.acc.com/legalresources/resource.cfm?show=40522

ACC Value Practice: Assessing Legal Performance at Allstate - 'Closing the Loop' on Performance of Premier Law Firms and In-house Lawyers
www.acc.com/legalresources/resource.cfm?show=189752

ACC Value Practice: Outside Counsel Review Committee Adds Value for Southern California Edison's Law Department
www.acc.com/legalresources/resource.cfm?show=378916

ACC Value Practice: Liberty Mutual Law Department's Enhanced Approach to Metrics: Business Focused Effort Includes Quantitative Assessments and Quality Audits
www.acc.com/legalresources/resource.cfm?show=313898

How to Formally Evaluate Outside Counsel's Performance to Improve Service
www.acc.com/legalresources/resource.cfm?show=709546

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Appendix: Value & Scoping Questions (checklist to discuss with law firms)

Defining Value

- What are the desired results? What is a reasonable definition of success on this matter, based on what is currently known?
- Are there dollar ranges, timeframes or other measureable outcomes associated our definition of success?
- If not, what information is needed in order to arrive at a more specific, measurable definition of success? When would we be in a better position to assess?
- Are there matter milestones during which we should re-group and consider any adjustments to the definition of success? Which milestones?
- What would the law firm suggest in terms of mechanisms or fee structures to tie a portion of compensation to outcomes delivered on this matter?
- What experience does the firm have with type of fee structures suggested? Which service providers in their firms are most expert at delivering services within those structured fee relationships?
- Would other firm client(s) be willing to speak with us about their experience with the firm's value-based fee structures?

Scoping Generally:

- What service items are we buying in connection with this matter?
- What are the component projects or deliverables?
- What is the timing? When do these need to be done?
- By what type of resource?
- What interdependencies?
- Who would be managing all of this?
- What vendors and additional resources are required? Can they be deployed in this project to save money, time, improve results, create new capacities?
- How about local counsel or boutique counsel who can take on defined slices of the work more efficiently?
- How about external experts or other service providers?
- What are the lines of communication (Front-line in-house lawyer to Engagement Partner? Senior in-house lawyer(s) to Relationship Partner? What about other support personnel like project and finance mangers?) In what manner should communication be maintained: regular conference calls, on a virtual project platform, via email? What is everyone's appetite to talk/ consult regularly?

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Scoping – More Detailed:

- In order for us to achieve our goal(s), what work is required over the next 12 months?
  - More detailed for months 1-3
  - Moderately detailed for months 4-6, and
  - Less detail for months 6-12?
- List the assumptions around drivers. E.g., How many witnesses to be interviewed? What parameters of due diligence?
- Duration and cost of various phases?
- Likelihood that B will follow after A? Where are you more confident and less confident in the assumptions?
- What contingency plan if one aspect heats up? (Mandatory vs. discretionary work)
- What project management approach? Let's see the sample reports and tracking documents.

Metrics and Improvement

- What metrics should we use to measure success?
- How should we gather metrics data and build it into the process?
- How can we 'bake' improvement processes into the relationship?

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Appendix: Advantages & Drawbacks of Various Value-Based Fee Arrangements

Type	Advantages	Drawbacks
Fixed Fee per Deliverable	▪ Uses "comparables" data to set price more effectively; ▪ Data can come from multiple sources (historical information, other items in the portfolio, bids or price quotes from existing firms or new firms); ▪ Accommodates uncertainty and flexibility in the future scope of work by pricing "units," which allows for fee adjustments as the number of units rises or falls; ▪ Will increase competition over time to drive down price.	▪ Requires time and effort to track; ▪ Existing e-billing data does not lend itself to this type of analysis without further refinement; ▪ Reference to just historical data will likely include junk data and sub-optimal billing practices; ▪ Law firm may have incentive to skimp if it underbids. Client has to keep an eye on quality and think about long term incentives.
Fixed Fee per Matter	▪ Sets price more effectively by analyzing past data on similar matters; ▪ Allows for supplemental client assessment of value underlying matter in setting price; ▪ Offers predictability and simplicity when executed on the right types of matters.	▪ Investment of time is required to assess parameters and costs of similar historical matters; ▪ Unforeseen changes in activity or complexity can pose challenges; ▪ Reference to just historical data will likely include junk data and sub-optimal billing practices.
Capped Fee	▪ Provides predictability by setting an outer limit on fees; ▪ Manages costs better than unbridled hourly rate billing; ▪ Can produce savings if the number is set correctly.	▪ Not easy to pick the right number. Doing so requires investment of time and effort; ▪ If the wrong ceiling is selected, client may pay more than it should; ▪ Creates limited incentive for efficiency, since outside counsel does not share in the value it would otherwise generate.
Flat Fee per Period	▪ Predictability; ▪ Savings if the number is set correctly; ▪ Creates incentive for law firm to be more efficient (because it can earn a greater margin).	▪ May overpay if number is set incorrectly; ▪ Hard to determine whether change in activity warrants an upward or downward adjustment (unless you track hours, which gets back to the hourly billing rate concerns).

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Type	Advantages	Drawbacks
Portfolio Fixed Fee	▪ Predictability; ▪ Savings if the number is set correctly; ▪ Reduced administrative burdens for client; ▪ Law firm builds deeper working knowledge of client operations, which should increase efficiency; ▪ Proper terms increase incentives to reduce both fees and liabilities.	▪ Requires time and effort to properly assess portfolio, interview / select firm, and implement effective terms; ▪ Locked into one firm; ▪ May need a provision to deal with one offs; ▪ May see some unfamiliar faces at law firms (junior lawyers, training opportunities).
Per Capita / "Ad Agency" Model	▪ Predictability; ▪ Client gets desired staffing mix; ▪ Discount can work well if client uses that many hours; ▪ Some would say this is hourly rate billing refined.	▪ Not clear that this creates incentives for efficiency; ▪ Challenges ensue if the client predicts the volume incorrectly (either low or high); ▪ Some would say this is hourly rate billing refined.
Performance-based Holdback	▪ Strong business case for law firm compensation being tied in part to outcomes, value delivered; ▪ Aligns incentives, rewards efficiency; ▪ Flexible enough to enable adjustment along the way (e.g. outside counsel fee for trial work can be finalized as trial approaches, when more information is in hand).	▪ Requires time and effort to define value; ▪ Lawyers are not always so comfortable with decision tree analysis and calculating expected value; ▪ Can be challenging without the proper foundation of trust and long-term incentives.
Pure Contingency	▪ Stronger correlation between law firm fees and value generated; ▪ Lots of potential upside.	▪ Lots of potential down-side; ▪ Harder to craft effective terms outside the context of recovery-type work.

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ENDNOTES

[1] "In Survey, GCs Say Firms Are Bluffing When It Comes to Service, Cost," The Legal Intelligencer, July 02, 2009.

[2] "Billable Hour Under Attack," The Wall Street Journal, August 24, 2009, Page A1.

[3] Id.

[4] 2008 ACC/Serengeti Managing Outside Counsel Survey.

[5] Corporate Executive Board, 2009.

[6] See "Top South Florida Lawyers' Billing Rates Rise in 2009," Daily Business Review, October 14, 2009 (citing nationwide figures from Hildebrandt).
www.law.com/jsp/law/careercenter/CareerCenterArticleFriendly.jsp?id=1202434518144.
See also, The National Law Journal, "The recession took its toll last year, yet Global 100 firms still managed to eke out an increase of 2 percent in gross revenue." The Global 100: Most Revenue 2009," National Law Journal, www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202433980888.

[7] "Despite Down Economy, Law Firms Say They'll Raise Billing Rates," Fulton County Daily Report, January 15, 2010 (citing nationwide figures).

[8] "Benchmarking In-House Counsel Management Practices, 2008" BTI Consulting Group, page 55.

[9] "The New Model for Law Firm Performance Management, Research Initiative Summary," Corporate Executive Board / General Counsel Roundtable 2007, page 9.

[10] See How to Conduct an Early and Periodic Case Assessment www.acc.com/legalresources/resource.cfm?show=779199. ECA practices can help enable client and firm to jointly construct historical cost data, then build a value-based fee from that experience.

[11] ACC Value Practice: FMC Technologies Alternative Billing: www.acc.com/legalresources/resource.cfm?show=40256.

[12] ACC Value Practice: Sourcing Legal Work in India Leads to Significant Savings- Sun Microsystems (www.acc.com/legalresources/resource.cfm?show=120834).

[13] See "Effective Partnering Between Inside and Outside Counsel" ACC Docket, November 2008, pp. 97-98.

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