

# CORPORATE COUNSEL

## Taming the Legal Spending Behemoth

**Bob Barker**

It's a major challenge for many companies' legal departments: finding a way to do more with less. Workloads have expanded as a result of stepped-up compliance and regulation demands, and shrinking budgets have meant a shortage of staff to execute required work. Fortunately there are some proven methods for increasing efficiency and decreasing costs that can make general counsel and their staff more productive while adhering to spending constraints.

This doesn't mean pulling the plug on outside law firms entirely, but rather maintaining guidelines on when to use them versus in-house resources, judiciously and for the right job. It all takes a good deal of planning, some creativity and a bit of chutzpah.

You won't need a chair and a whip to tame this beast, but you may want to consider the following suggestions on how to gain control of legal spending.

### Take the reins

The days of law firms dictating the terms for clients and their legal departments are but a memory, and unchallenged retainers have pretty much gone the way of the manual typewriter. That is not to say there aren't a few holdouts that refuse to budge from hourly rates, but even top-tier firms that have been around for many decades see the writing on the wall and understand the shift from a sellers' to a buyers' market.

Negotiating reduced fees, once considered unseemly by the most prestigious law firms, has become commonplace in recent years. "Reducing the number of outside counsel, concentrating the work with them and securing discounts have accelerated since 2008," says John MacCarthy, executive vice president, secretary, and general counsel at Nuveen, referencing



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the year of the financial meltdown, when many companies accelerated belt-tightening efforts.

Legal departments are sorting through what might have become a large roster of outside firms with an eye toward decreasing the number and deepening the relationships. The idea is to right-size and ensure firms are being retained for the right reasons.

The whittling-down process has worked well for many companies' legal departments, including ITT's, which recently implemented a Preferred Provider Network for law firms retained. After the spinoff, Burt Fealing, GC and corporate secretary at ITT Industries, says ITT was able to consolidate to half the number of outside firms it used.

### In-house or outside counsel?

In matching up the legal task to be performed with the right resource, internal or external as well as the right level, it's a good idea to establish a reliable process. As a first step, Sam Khichi, GC of Catalent Pharma Solutions, recommends identifying the legal department's core competency. "If your core competency is fundamental to the business, which it should be, you need to develop it, and your business shouldn't have to go to outside lawyers for related

needs," he says. That is not only because it is far more cost-effective to rely on internal talent to perform core competency-related work, but because the business will be better connected to in-house expertise.

Another way of deciding how and when to use outside counsel is to establish criteria that must be met to go outside rather than rely on internal legal staff. Some companies even prohibit people in the businesses from retaining outside counsel, making it an exclusive responsibility of the legal department.

Khichi says Catalent has three criteria it applies to determine whether outside counsel is required:

- **Capacity Issue:** Is the in-house legal team unable to handle an important matter because it is tied up meeting other commitments?
- **Unique/Discrete Issue:** Is the matter related to something for which there is no in-house capability, or is it a distinct area of expertise for which you generally rely on outside counsel?
- **Jurisdictional Issue:** Is it a unique jurisdictional issue for which the company cannot practically maintain internal capability?

"We use the term 'decision use criteria,'" says Khichi, "and each attorney must affirmatively indicate via a matter code justification before using outside counsel." With regard to the competency, he further explains, it is important to establish business-driven metrics and tools—for example cycle time for contracts, use of playbooks and suites of templates and negotiation guides—and constantly measure performance against them.

Although some companies aim to cut back on the use of outside counsel, many recognize the need for specialized expertise and hope to hold costs flat, or may even

find it cost-effective in the long run to rely more on outside counsel where needed.

Fealing observes, “If we can effectively bring more legal work in-house we will, but we also recognize that we are an extremely lean organization. So we have to outsource a good deal of work to our counsel, and that will likely become more of a factor as we become increasingly global. As a smaller organization of a dozen lawyers, we need the resources of a law firm to help in matters like anticorruption and privacy worldwide. You cannot do some of these things on your own.”

## Leverage the relationship

As a result of the ability to focus on the needed few firms and drive additional revenue to them, relationships between client and outside counsel can deepen, adding value for the client. “We now have closer ties with those firms, so that we can pick up the phone and talk to them at any time,” says Fealing.

Make sure you’re not pennywise and pound-foolish: The spend on outside counsel is completely justifiable if it requires expertise not found in-house, and the work can be done more effectively and efficiently.

“There are going to be some relationships you are obviously going to want to keep for big bet-the-company matters. But there are others where you say, ‘Hey, it’s really not that critical that we have that relationship and pay that kind of money.’ That’s where you are willing to consider alternatives,” says Kirkland Hicks, general counsel of Towers Watson.

Ricardo Anzaldua-Montoya, GC of MetLife, sees it in terms of “protecting the company and performing our fiduciary duty to shareholders.” He explains: “We need to make sure that we’re being efficient about the way we spend our outside counsel dollars, which requires a lens that goes beyond simply making sure that we’re getting the best hourly rate on each item.” That includes maintaining good institutional knowledge in the outside counsel MetLife uses.

The need to rely more on in-house resources also enables legal departments to build excellence internally. Anzaldua-Montoya wants MetLife to be known for the quality of its legal department, and that starts with creating opportunity for development and advancement. “It helps me build a future leadership pipeline, and also gives individuals who are currently

in the organization opportunities for advancement as we let people percolate up the chain to assignments and roles of increasing responsibility.”

Some legal services fall more into the category of commodity, where the firm that performs them is less of a concern. But when high-level expertise and knowledge of the client are required, there is no substitute for a long-term relationship.

An important benefit of an established relationship with select outside counsel is that the work may be performed more expertly and efficiently. When counsel knows the client, says Anzaldua-Montoya, they don’t have to familiarize themselves with the basics of the institution each time they take on an assignment. “I have learned through painful experience that the learning curve for advising a corporate client can be quite steep, especially when there is an assignment that touches on more than one area of the company and it is not easily circumscribed into a discrete piece.”

Anzaldua-Montoya recommends maintaining sufficient depth in relationships with law firms and enough redundancy in key areas to reap the benefit of institutional knowledge to the greatest extent possible. But, he emphasizes, the use of outside counsel should not sabotage the efforts of the legal department and the company at large to incubate talent and provide professional development opportunities for all. So careful thought should be given not only to whether work is performed inside or outside, but if the work is to be done inside, what level of professional is most appropriate—Attorney? Paralegal? These decisions, too, have attendant cost considerations.

When seeking to build relationships with law firms, look beyond the usual suspects—that is, the large firms that have customarily served large corporations and may still balk at alternative fee arrangements. “General counsel generally don’t think the traditional big law firm model is sustainable in the long run,” says Hicks. “We’re seeing partners leave some big law firms for other firms that may not be in the same tier, but they still practice law at a very high level and charge their clients a more reasonable rate.” There are organizations that match corporate legal departments with experienced but more reasonable outside counsel alternatives, often beyond the big cities. These firms are vetted and may prove a cost-effective

solution for more generic work, where there is not a premium on institutional knowledge. “It’s possible to get very good lawyers who are up to speed on the issues without paying New York rates,” says Hicks. MacCarthy adds, “In the more commodity areas, we have found that flat fees work well.”

Another practice that further leverages the relationship between corporate legal departments and law firms is “secondment,” and it can be a win/win: A seconded lawyer, whose primary employer is a law firm, may work on site at a client for a reduced rate for a brief period, or even many months. It enables the lawyer a more in-depth understanding of the client, gives the law firm a more entrenched relationship, and provides the client a savings in fees and the solution to a staff shortage.

According to Fealing, ITT has made effective use of secondment from one of its law firms for a corporate secretary role. The attorney worked out of ITT’s offices for a number of months, and remains the go-to when coordinating legal work with partners at her firm.

To further stretch the legal buck, some firms even offer corporate clients a certain number of hours where they have access to a sort of “hotline” for answers on matters that do not require expensive partner time.

## The bottom line

Given the changing nature of the legal profession and a more consumer-oriented approach to retaining legal services, there is much that can be done to manage expenses. Companies should implement an effective triage system to ensure the appropriate legal professional, whether internal or external, is paired with each matter. With some persistence, and even a measure of old-fashioned bargaining, legal departments can keep costs from spiraling out of control.

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