

ROUSING THE SILENT MAJORITY



In our 3rd issue (Nov-Dec 2009) we reported in depth on the Association of Corporate Counsel (ACC) on the revolutionary introduction of a Value Challenge and Index to help general counsel achieve better value for legal advice from outside firms.

In the following interview we dig even deeper into the background of the initiative and refer readers to the source of the ACC research: the annual ACC-Serengeti Managing Outside Survey Report. For nine years Serengeti has been arguably the most reliable source of hard data regarding the latest trends in the in-house profession.

Beginning in 2001 thousands of law departments have provided detailed information regarding how they manage projects handled by outside counsel. Although these companies are headquartered in the U.S., the survey covers all legal services worldwide, providing an inside view into the international oversight of legal work.

To find out more, we spoke with **Rob Thomas**, Serengeti's Vice President of Strategic Development, and the author of the 170-page report, regarding what prompted the creation of the survey.

Ten years ago the primary sources of information about how law departments were managing work with their law firms were anecdotes and war stories. This information usually came from the largest company law departments, who spoke at meetings or wrote articles for other in-house counsel. Because Serengeti provided a widely used legal matter management platform used by both in-house and outside counsel, the ACC thought that it made sense for us to create and conduct an annual survey regarding project management in the legal profession. Their membership wanted statistics on what their colleagues were doing to get better control over their legal spending. They also want to identify trends that were changing the ways that in-house and outside counsel worked together. We agreed that it was important to get an accurate view of the overall in-house bar. This meant including smaller law departments who make up the majority of the profession, which had never been done.

Describe what you've learned about the wider in-house profession during this period.

We found that there truly is a silent majority among in-house counsel. Each year we consistently see that over 80% of the law departments who respond have fewer than ten lawyers. Generally information about these law departments is hard to come by because they are strapped for time and resources. And while many of them are not in the vanguard of change in the profession, they want to learn from their colleagues in other law departments.

Over the past nine years, what are some of the key trends that identified by the survey?

Each year we see in-house counsel becoming more active in managing their work with outside counsel. Every year we see larger percentages of in-house counsel who are conducting RFPs and imposing specific retention terms on their outside counsel. Gone are the days when outside counsel have carte blanche to do whatever they think is necessary on a project, with an implicit blank check from their client. The percentage of in-house counsel who were actively managing their outside counsel used to be around twenty percent, but has grown significantly

in recent years. Approximately three-quarters of in-house counsel now get budgets from outside counsel, on average requiring budgets for half of their projects. In addition to budgets, law departments are also more regularly monitoring status updates against case plans. In-house counsel more regularly evaluate the work done by outside counsel, and terminate under-performing firms, sometimes as part of an overall convergence strategy. And relatively more work is being retained in-house – with the ratio between outside and in-house spending dropping below 2.0 where it had been for years. Finally, law departments are adopting client-centric online technologies that connect them directly with outside counsel, to streamline the tracking of all of their legal work.

This year what are some of the latest findings coming out of the trying economic environment?

This year we saw statistical confirmation on several fronts that in-house counsel are using their relatively stronger bargaining power. For the first time, the annual increase in hourly rates – 4.76% – was lower than what they predicted last year – 5.02% – and was the lowest annual increase in the history of the survey. Also for the first time, in-house counsel, who have generally predicted an annual increase of four to six percent in rates, are predicting no increase during the coming year. They also predict no increase in aggregate spending on outside counsel, another first for the survey. More in-house counsel are pushing for alternatives to hourly fees, with a 39% minority saying that they use only hourly rates. Specific techniques for controlling spending are also hitting record levels of adoption in the broader profession – for example, requiring minimum levels of associate experience, convergence, and discounts for early payment of bills. This increased level of scrutiny is being driven by necessity: reducing outside legal spending has jumped to the top of the most pressing issues facing law departments, ahead of compliance concerns which predominated for several years.

Serengeti... (continued)**Which methods in your statistical experience generate the most savings?**

The most common methods to control outside spending have remained pretty consistent year to year: budgets, discounted and alternative fees, re-allocation of work to firms with lower rates, enhanced billing guidelines and spending rules, electronic bill review and audits, use of a dedicated in-house fee manager, and evaluations of outside counsel. In addition to being the most common method, budget tracking also generates the highest rate of savings at approximately 22%. Of the above practices, the one generating the least amount of savings is electronic bill review and audits, still at a substantial 12% of outside legal spending.

What specifically are you seeing on alternative fees?

We are seeing a continuing large gap between the attitudes of in-house counsel and their law firms when it comes to alternatives to hourly billing. Nearly 90% reported resistance from their firms, compared with only 40% who had resistance within their companies. The average level of resistance at law firms is perceived to be about double that at companies. Clearly law firms have a long way to go to align their willingness to consider alternative fees with the views of their clients. The most common alternative fee structures reported this year were fixed fees for specific matters, retainers for a block of work during a specific time period, and contingency fees (tied to results). The most common types of work for which in-house counsel consider alternative fees are routine high volume matters, small litigation matters, and large business transactions.

You also mentioned the use of e-billing and matter mgmt. systems – how are law departments using such technologies to generate savings?

I hate to say it, but when it comes to management systems, many in-house counsel aren't much ahead of the age of Dickens, dealing with piles of paper and spreadsheets. Some have bought internal matter management software to provide a bit more structure. However, the biggest growth trend is in client-centric online systems that use the Internet to connect in-house counsel directly with their outside counsel. These systems collect all key information from the source for easier processing and tracking by in-house counsel – bills, budgets, status updates, exposure estimates, documents, deadlines, and results. As a result, in-house counsel can often for the first time see all of their spending and projects in one place. They can then begin to assess where their money is going, where they need to spend their time on preventive measures, and what results they are getting. Serengeti is the most widely used such system, but there are several others and more on the way. In-house counsel are using the reporting in such systems to determine which firms are their best performers, to capture lessons learned, and to find opportunities to re-use work product to cut costs for recurring work. As a result, the use of law firm extranets has declined significantly, primarily because

clients don't want to go to different law firm sites for their information.

Last month we spoke with Susan Hackett of the ACC about the Value Challenge. What aspects of the Serengeti survey relate to their initiative to add more value to legal services?

We worked with the ACC this year to add a new survey section devoted to the ACC Value Challenge. Once again, we saw much more interest in change from in-house counsel, and perceived resistance from outside counsel. Nearly 60% of in-house counsel said that the value of the services performed by some of their outside counsel, when compared with the cost of such services, had declined during the previous year. Approximately 70% had given their law firms specific suggestions for increasing the value of their services. These suggestions are described in the report and include working with in-house counsel to assess risk vs. cost in projects, more efficiently matching staffing levels to tasks, and cooperating with the use of technology to help in-house counsel better track the work being done. The response of law firms to such requests was mixed, with over one-third of in-house counsel reporting that 10% or fewer of their firms implemented their suggestions.

Regarding the ACC Value Index, ACC adopted the Serengeti evaluation methodology, which has been widely adopted by in-house counsel to assess the services provided by outside counsel. To jump start the project, some law departments who use Serengeti to manage their legal work exported the evaluations that they had done of their outside law firms in Serengeti Tracker. The ACC's goal is to provide a shared environment where members can exchange their experiences, both positive and negative, to help each other provide more work to those firms that offer the best value. Such evaluations have been created for years by law departments in Serengeti. This is the first time that in-house counsel have chosen to share this information with each other. The ACC site has the potential to become a major component in corporate clients' decisions about where to send new legal work.



Detailed information about this year's report, including articles, key findings, and the table of contents, can be found on the Serengeti website: www.serengetilaw.com

The full report is also for sale, at a discount for members of the ACC, using the order form on the website. Rob is also glad to answer any questions regarding this year's report or Serengeti's matter management system: rob.thomas@serengetilaw.com.