

FMC Technologies, Inc.

JEFFREY CARR

Vice President and General Counsel, FMC Technologies Inc, Texas, USA

1⁺ Law™

Leveraging hardware, software and human technology to create new legal service delivery systems for a complex world

The FMC Technologies legal team is relentless in trying to find new and better ways to deliver legal services to our customers – the FMC Technologies business units. Key tenets of the team’s approach are to focus on three core functions: acting as the trusted strategic advisor to the business, managing risks and protecting assets while maintaining the company’s ethical compass, and delivering cost-effective legal services appropriate to the business. This is done by looking at strategic alignment of services with objectives, value rather than just cost savings, proactive practices, and continuous improvement. These value-adding initiatives implemented by the legal team have substantially changed the way the legal team works and have delivered good results, including winning more cases, reducing case cycle time, reducing total dispute resolution costs, reducing IP cost, driving more consistency, and streamlining processed.

Delivering cost-effective legal services for a \$4 billion publicly traded, NYSE listed, international company in a changing and complex world is a challenge. While our business has grown by over 50% since 2001, and external legal costs have risen an average of nearly 10% each year, we have kept total legal costs essentially flat. We’ve done that by throwing out the playbook of conventional wisdom used by the more traditional in-house and external counsel. Our programs and practices were initially developed to find a way to do more with less. Some tools had to be invented, while others required the adaptation of off the shelf tools and systems to our unusual focus. Some processes had to be turned upside down while disciplines traditionally not applied to law were adapted and embraced wholeheartedly. We’re now convinced that these systems can change the way legal services themselves are delivered while providing better, more cost effective, and strategically aligned results.

Perhaps the most important aspect of our approach is that it promises a win-win relationship for our law firm and other legal services alliance providers if they too adopt similar approaches and disciplines.

The approach is called 1⁺ LAW -- where internal and external lawyers, paraprofessionals, staff and preferred service providers work together in a seamless, technologically enabled environment to leverage systems, knowledge and human resources to deliver legal services to the corporate client.

The backbone of the system is two-fold – (1) an integrated and holistic matter management and financial management, ASP delivered, software package known as Serengeti Tracker™ used as the information and collaboration platform; and (2) our homegrown performance based pay alternative billing system known as

ACESTM (ACES stands for Alliance Counsel Engagement System). With these two core principals at the center, the 1st Law Program embraces four management competencies, connected by a techno-philosophical backbone as follows:

- **Financial/Administrative Management:** All external counsel interface with the company through the Serengeti Tracker system. Each firm has agreed to the company's "Covenant with Counsel" that sets forth the alliance concepts governing the relationship and stating each party's commitment to the other philosophically, culturally, promotionally and symbiotically. Each firm has one engagement letter posted to its firm profile that serves as the master services agreement between the company and the firm. "Work orders" for individual matters are in the form of opening a new matter and granting the external firm access to it, thus eliminating repetitive engagement letters and confusion between multi-city firms. All engagements are a variant of the ACES alternative fee arrangement where firms are rewarded for efficiency, economy, success, and customer satisfaction. All invoices are submitted and approved electronically through this platform eliminating paper shuffling and reducing process steps and time. Most payments are made through a VISA purchasing card facility resulting in 4 to 15 day processing time. Budgets, both at the matter and annual level, are created and administered through the system. This also provides metrics and historic data for benchmarking, performance review and continuous improvement. This system has also been incorporated into our SOX section 404 control for identification and management of contingent liabilities. As further described below, all matters, whether handled by internal counsel, external counsel or mixed teams, are integrated into the Serengeti Tracker system, thus fostering efficiency, collaboration and information leveraging by all members of the Legal Team.
- **Matter Management:** All Legal Team members use the Tracker matter management system provided by Serengeti. Lawyers (both inside and out) are required to input and update all matters in the system. This system includes all litigation, intellectual property and general matters and may be sorted in various combinations to provide current and historic data. The General Counsel has direct and real-time access to all matters within the system, and the other lawyers have the same access to matters for their specific business units and other matters within their specialty area. Using technology in this way as an information platform and collaborative tool eliminates the need for lawyers working on matters to write separate reports and/or schedule meetings to discuss case status, and enhances overall efficiencies. In addition, key internal consumers of legal services such as business managers and controllers have access to matters involving their business on it as well.
- **Relationship Management:** The main objectives for this competency are to understand business priorities and strategies and align law department activities with them, and to manage outside counsel in a way that encourages efficiency and cost-effectiveness while also allowing them to be profitable. Serengeti Tracker provides the platform for collaboration and for continuous evaluation and performance feedback while the ACES program links compensation to performance. Serengeti Tracker also permits reporting and flexible work teams by business unit or subject matter area and therefore serves as a work flow process portal. All matters require a evaluation by outside

counsel at least once each year, or at the end of the matter, whichever is earlier. These evaluations form the basis for payments of at risk amounts and bonuses under ACES, but more importantly, they provide a framework and structure for attorney feedback meetings to calibrate service with expectations. Finally, the system can be used to provide directors and board committees with briefing materials more efficiently and more cost effectively than either traditional hard copy board books or new wave, single purpose internet services.

- **Risk and Knowledge Management:** Probably the most important competency of the four emphasizes the need for a “holistic” approach to providing legal services, with an overall goal of managing risks to avoid disputes. Litigation is an irritant, and takes business people’s focus away from the things they do that are core to the business – making new law and trying cases are not and should never be, core competencies of the company.

The risk management, competency focuses on several types of risk: contract risk, operational risk, compliance risk and dispute risk. The systematic approach has three components: (1) conflict avoidance through compliance training, better contracting practices, design review, human factor analysis, IP management, and relationship tools; (2) rapid and efficient conflict management and resolution when situations do reach a dispute stage; and (3) performance of after action reviews to close out transactions, litigation, and administrative matters to determine what can be done better, and how to avoid the situation in the first place. This last element closes the circle with the first – learning from situations and processes to avoid repeating the past. Web-based and other training platforms extend the reach of the legal team while ACES provides the economic levers for efficient and successful dispute resolution. Contract and document assembly programs provide consistency in forms as well as customer empowerment thus freeing lawyers time to be counselors as opposed to data and document processors. Decision tree software and early case assessment disciplines enforced through the Serengeti Tracker system ensures accurate and systematic risk appreciation, recognition, and management. The system enhances FASB and SOX accounting compliance as well. Finally, Tracker’s ability to require after action reviews before a matter can be closed helps ensure that this formal and critical after action review actually occur so that the lessons to be learned can be captured and inventoried. Ultimately, this enhances and promotes the core value of sustainable continuous improvement in business performance.

On knowledge management, the system helps the legal team avoid the time wasting activity of answering the same question twice, or worse, paying outside firms to answer the same question twice. The goals behind the knowledge management competency include having a system that allows for retrieving and re-using information, and for managing and extracting value from what is in the overall portfolio. Structured properly, this system also facilitates the addressing of the current hot issue in litigation – electronic discovery. Once one realizes that virtually all information in the corporate realm is in a digital form, virtually all issues associated with that data management must consider the same questions – what to keep, where, how long, how to find it, how to package and deliver it. Addressing electronic discovery questions is simply an output issue. In case assessment, the use of these tools early on to determine the strength or weakness of

positions facilitates rapid resolution. In this area, use of emerging technology such as data mining tools from Google or Microsoft, or artificial intelligence tools from Stratify MH5 provide a platform for revolutionary change in traditional legal process.

ACES MODEL

The FMC Technologies legal Team invented the ACES program because of the lack of workable and effective alternative fee structures and the resistance of both in-house counsel and law firms to adopt some form of value based billing. The underlying principles of this alternative fee model are to achieve service relationships based on partnering and sharing risks and rewards. Traditionally, the law firm business model is designed so that firms make more money by billing more hours. ACES links pay to performance by placing a portion of fees at risk and paying bonuses for efficiency and results. The program encourages law firms to align their interests with the FMC Technologies legal team's interests and to create a system that allows the firms to make more money per hour while having FMC Technologies buy fewer hours. In other words, the FMC Technologies ACES model increases both the firm's per hour profitability and frees up their inventory of hours to sell to another customer -- permitting both top line and margin growth. FMC Technologies is satisfied with this structure because its objective is not to buy hours but rather to obtain legal services that enable it to achieve a stated result efficiently -- in other words, value. There are two basic versions of the ACES model -- ACES and ACES LT.

As noted above, through the standard or ACES LT model, perhaps best described as a "report card system," outside lawyers are paid eighty cents on the dollar for their services, with twenty percent of the fees being placed in an 'at-risk' bucket for payment depending upon performance. Using an evaluation matrix integrated with the law department's matter management system, law firms are rated on their performance in key metrics areas that track the law department's core values: : Responsiveness; Goals Achievement/ Effectiveness; Knowledge; Predictive Accuracy; and Efficiency. Depending upon performance, law firms may receive zero to 200% of the at-risk fees (i.e., 80%-120% of the face amount of the firm's invoice). This model can be used for any type of engagement -- fixed fee, hourly, retainer, etc.

The more complex ACES model is used for outside litigation services. Our legal team's goal is to resolve these matters expeditiously and avoid the big ticket expenditures of discovery and trial. The model requires that law firms provide an initial assessment of the case, including defining objectives, target budgets by each phase, work plans, and success. As with the other ACES model, law firms are paid eighty cents on the dollar up to the matter target level. Up to the phase target, twenty percent of the overall fees are placed in an 'at-risk' bucket. If the firm determines that additional work is required above the phase budget target, they are free to do that work, but now 80% of those fees are placed in the 'at-risk' bucket. This avoids the 'stop-work' problem when a phase target is exceeded, but encourages the firm to do only that work which will materially contribute to success. If success as agreed is reached, the 'at-risk' amount is paid out using various multipliers depending on at what phase of the litigation process success is achieved. The multiplier is higher for resolving cases in the earlier phases. In addition, the

model includes a “second level adjustment” which increases the multiplier for resolving matters for less than the total target budget – or reduces it if the total budget is exceeded. Finally, a “third level adjustment” increases or reduces the success multiplier for differences in resolution from the “expected value.” In other words, a firm could theoretically recover its at risk amount plus nearly 300% under circumstances of extreme efficiency and success. While this theoretical bonus way, on first blush, seem unduly rich, one must recognize that the amount at risk at the earliest stage is relatively small. While the risk bucket grows, the bonus multiplier recedes. Our goal is to encourage rapid resolution.

The system works incredibly well. It pays law firms for success, rewards efficiency, and aligns interests because law firms are focused on success and total disposition costs. Under ACES LT, our firms receive an average of 107 percent of their invoice. Under ACES for litigation the firms generally receive higher effective hourly rates. We cannot measure the “avoided costs” savings from hours not billed, but we are convinced such savings are real.

ADDING VALUE THROUGH TECHNOLOGY – The 1^o Law program helps the FMC Technologies Legal Team deliver results. Case cycle time has been reduced, disputes resolved below expected value, law firm evaluations improved, customer service enhanced, and expenditures flat lines in absolute terms and declining in relative terms. This holistic hardware/software/human technology solution has achieved the important goal of aligning the Legal Team’s outside service providers with the values of FMC Technologies. Finally, and most importantly, the 1^o Law program and its embedded ACES models have also been instrumental in demonstrating to internal business clients the value that the legal team brings to the business. These practices require up-front discussions with business clients to understand their objectives. The legal team is very integrated with the business functions, and all of this leads to better results for the company.

CHALLENGES – The longest impediments to adoption of these competencies are resistance to change, trust, inertia, individualistic “professionalism” and low-risk tolerance. Adopting systematic and standardized approaches to the delivery of legal services is anathema to many lawyers. Indeed, the internal resistance to change by in-house counsel may exceed the outside counsel’s aversion to risk. Constant experimentation coupled with a willingness to revise, adapt and adopt new approaches and embrace new disciplines are required to successfully adopt the approaches we’ve taken.

LEADING PRACTICES – Adopting these technology tools for delivery of legal services can create a revolutionary change in the way in-house legal teams operate and the way law firms deliver their services.

Jeffrey Carr, Vice President and General Counsel, FMC Technologies Inc, Texas, USA

About FMC Technologies Inc

FMC Technologies is a \$3.8B global supplier of highly engineered and high performance products, services and solutions for the energy, airport and food processing industries. We have 11,000 employees in 33 manufacturing facilities in 19 countries. For more information, please see our website at www.fmctechnologies.com