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MARKETING LAW FIRM VALUE: ALTERNATIVE FEE ARRANGEMENTS

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John Reed, Esq.
Senior Vice President
Marketing Consulting

AFAs: WHAT'S THE BIG DEAL?

We all know there are dramatic changes occurring in the legal profession. Some changes are the result of economic pressures; others are urged upon lawyers and law firms by the clients they serve. These days, being a lawyer is less about the practice of law and, out of necessity, more about the business of law.

At the heart of these changes is a question plaguing managing partners, practice group chairs, CMOs and marketing staff, and every service provider in the law firm – *"How do we define and market our value?"*

Many believe the answer lies in the philosophy and application of alternative fee arrangements ("AFAs"), a topic of much discussion, criticism, and confusion as more corporate counsel seek to hasten the elimination of the billable hour. A comprehensive overview of the most common AFA models is included in the Appendix.

AFAs can be a bitter pill for many firms to swallow. Prospectively, firms will have to alter the ways in which they approach the handling of cases, but they will not be able to do so, at least not profitably, without thoroughly examining historical revenues and costs to accurately forecast fees of future cases. This process may even require new roles, responsibilities, and hierarchies within the law firm.

Once a firm successfully completes this internal due diligence, it must then incorporate AFA approaches and philosophies into its Public Reputation Management Plan. In this spirit, we offer some background, analysis, and marketing planning suggestions that firms may find helpful as they re-think the value of the professional services they provide.

Responding To Market Demand

Although rarely discussed as a marketing issue, law firm billing rates have always had a marketing/business development/client satisfaction consequence, but usually not until the invoice crosses the client's desk, or worse, when the firm is trying to collect its fees.[1] As attorneys who have fielded billing calls from angry clients will attest, those situations aren't the best settings in which to promote the firm's value proposition.

Today, the issue of pricing – and law firm value in general – is one that firms face not only at the beginning of new client relationships, but also with existing clients that are weighing their options among a growing supply of legal service providers, not all of them lawyers or even located in the U.S. What topic is at the top of any client-led agenda? A requiem for the billable hour.

Take a look at the results from a joint survey[2] of 587 general counsel and chief legal officers, conducted in late 2009 by *The American Lawyer* and the Association of Corporate Counsel:

- Only 24% of the GCs and CLOs responding to the survey indicated that they paid all of their law firms by the billable hour. By comparison, 48% paid a flat fee for an entire matter, and 36% paid a flat fee for at least some stages of a matter.
- Among companies with annual revenues of $1 billion or more, 60% said they used a flat fee for an entire matter, and 46% paid a flat fee for some stages of a matter. Only 12% paid firms solely under the traditional billable hour arrangement.
- Of the GCs and CLOs surveyed, 39% paid their outside firms more money under AFAs in 2009 than in 2008.
- Fifty-four percent GCs and CLOs said they initiated their AFAs, 18% said that they were initiated jointly, and only 3% said their law firms kicked off the conversation.
- Half of those polled advised that they dropped at least one firm from their outside counsel lists in 2009, while 14% dropped four or more firms.

The main takeaway from the joint survey is that the AFA movement has traction, with 84% of those surveyed employing some form of fixed fee arrangement in 2009. Clients, not law firms, are spearheading the innovation, and the largest companies are leading the charge. In the face of unparalleled competition, and when the percentage of clients that pay "rack" rates is only 20 to 30 percent, those law firms unwilling to address clients' needs will be replaced by eager firms waiting in the wings.[3]

On the same day these survey results were released (December 1, 2009), *The American Lawyer* also published findings from its annual Law Firm Leaders Survey of The Am Law 200.[4] The most notable statistics:

- Over half of the firm leaders polled indicated seeing a "fundamental shift" in the market for legal services, while 25% said they saw no such shift.
- Of the firm leaders, 81% indicated that they expect their firms to increase hourly rates in 2010, and 77% said the increase would be 5% or less.

According to Patrick Lamb, founder of Valorem Law Group, one of the most recognized names among the AFA movement, "These two numbers don't add up. I would expect the 25% who don't see the 'fundamental shift' to pursue business as usual and raise rates. But 'more than half' seeing a 'fundamental shift' and 81% expecting to raise their rates next year cannot be reconciled."[5]

Adding fuel to the fire is the belief among in-house counsel that outside firms' specialized services aren't so specialized. "All legal services are, at least at some level, a commodity," says Jeffrey Carr, vice president, general counsel and secretary for FMC Technologies, Inc., and an outspoken advocate for AFAs. "There are always at least two lawyers who can do whatever you need to get done, but we act like there is only one. And that's crazy."[6]

THE BILLABLE HOUR UNDER FIRE

Despite so much talk surrounding AFAs, many still wonder why the billable hour has become so vilified. Also known as "cost-plus pricing," hourly billing originates from a basic formula:

$$\text{Average Billing Rate} = \frac{\text{Expenses + Desired Profit}}{\text{Realized Hours}}$$

There are variations, but for purposes of this formula, expenses refer to personnel (timekeepers and non-timekeepers), overhead, and other indirect or unrecoverable costs, and realized hours denote the number of hours annually for which attorneys can bill and clients will pay.[7] At first blush, the calculation seems reasonable and easily managed:

> Cost-plus pricing appeals to law firms for three major reasons. First, it is conceptually simple to calculate. Second, it suggests a presumed predictability of income per partner. Third, it implies a growing market for legal services.[8]

In a nutshell, determining an hourly rate doesn't require much math. Lawyer income is a primary consideration and it presumes that the demand for lawyers will regularly increase. From the firm's vantage point, what's not to like?

The problem is that this thinking reflects the law firm view from the inside looking out, and not the other way around. Absent from the formula is any express consideration of realistic demand for legal services, or the growing supply of both domestic and foreign legal service providers in the U.S. market. Economics aside, pricing has long been a core function of marketing, yet the customer, the market, and the demand curve are hardly factors in the billable hour calculation.

Which isn't to say lawyers are insensitive to the market. Certainly, law firms understand that clients' willingness to pay impacts pricing, as does competition based upon the expertise, experience, and geography of peer firms.[9] As anyone familiar with the legal industry knows, most firms have looked to these attributes to brand themselves, and hourly rate pricing has become the elephant in the room that firms don't wish to discuss.

Imagine the task of crafting a marketing message around hourly billing. By itself, the billable hour offers the client no certainty vis-à-vis budgets or anticipated matter costs. On its surface, it poses no hard incentives for a firm to streamline workflow efficiencies, outsource routine tasks to lower-cost service providers, or seek quick resolution or closure to a matter. Left to choose between promoting hourly billing or ubiquitous branding such as "excellence," "leadership," "success," "innovation," or "experience," faulting legal marketers is the same as shooting the messenger.

Compounding the problem of firm-centric thinking is the attention that's been given to law firm earnings among the largest law firms. Stephen Ellis, former managing partner of Tucker, Ellis & West, made the following poignant observation during the commencement address he gave at Case Western Reserve School of Law on May 19, 2008:

> The fact is our profession has become increasingly unhappy over the past couple of decades. I am convinced the vast majority of that unhappiness derives from a single seemingly innocuous event in the late 1980's: *The American Lawyer* magazine began publishing The Am Law 100, and listed the profits per partner of the 100 largest firms. Virtually all of the firms in this country immediately bought in to that statistic as the only credible measure of success. The game was on – we lawyers would now take our measure almost entirely from money, at least in terms of what was publicly discussed….
>
> This was a terrible mistake and now, more and more of us see its dark implications: the bragging rights on how many billable hours we charge, rates that are topping $1,000 an hour, and clients who believe their files are being worked to death by armies of inexperienced associates.[10]

Mr. Ellis' comments pertain not only to the "unhappiness" that law firm attorneys experience under the pressures of the billable hour, but also to the resentment that many corporate counsel feel toward the incomes that their law firm counterparts rein in. The combination of a suffering economy and public outcry over executive compensation has flattened the pay for corporate counsel, despite the fact that they generally work harder and deliver the same or greater value to the organizations that employ them.[11]

Salaries and compensation aside, what seems to be absent from the conversation as well as the marketing message are the *value points* most important to the client:

- Efficiency and appropriate allocation of resources
- Alignment with client risk
- Cost of legal services relative to matter results

These law firm value points are the fundamental drivers behind alternative fee arrangements and provide a meaningful framework by which we compare AFA models in the Appendix. Given today's economic environment and the outlook for legal services, embracing these value points will also be the differentiators of truly successful firms in the future.

MARKETING AND PUBLIC REPUTATION MANAGEMENT FOR AFAs

For firms that have a strategic marketing plan in place, integrating tactics for AFAs need not be taxing. For firms that haven't developed a marketing strategy or that haven't addressed AFAs within their strategic plan, AFAs provide the impetus to assess their value propositions and produce a plan accordingly.

Avoiding the Subject Is Not a Strategy

Many firms of all sizes have resorted to a head-in-the-sand mentality with regard to AFAs, hoping that if the client doesn't raise the subject, it can be avoided. **Opting not to pursue AFAs, however ill advised, is a strategy. Pretending they don't exist is not.**

As such, the threshold question any firm needs to ask itself is, "What stance are we going to take on AFAs?" and if it chooses to further explore the idea, "Are we going to be conservative or aggressive?"

According to Jim Hassett, whose surveys and research on AFAs have broadened the topic considerably, the conservative firm will treat AFAs as a defense mechanism, employing them to retain clients as necessary; aggressive firms, by contrast, also make use of AFAs to increase business from existing clients and bring in new clients.[12]

AFA Essentials: Preparation and Trust-Building

Successful AFA adoption and implementation at any firm requires two critical ingredients – thorough preparation and a dedication to building trust.

Experts agree that a firm must do its homework before beginning any conversations with clients and prospects about AFAs. Such groundwork may include the following:

- Analyzing different types of matters to determine historical costs and cost bases, possible alternative fee ranges, and savings opportunities
- Aligning compensation and recognition to AFA performance
- Gauging whether the firm is equipped with the personnel, vendor support, culture, and mindset
- Supplementing current knowledge systems – primarily, time and billing applications[13]
- Dissecting the philosophies of the leading AFA firms:

Bartlit & Beck - *www.bartlit-beck.com*
Exemplar Law Partners - *www.exemplarcompanies.com*
Raymond & Bennett - *www.raymond-bennett.com*
Shepherd Law Group - *www.shepherdlawgroup.com*
Summit Law Group - *www.summitlaw.com*
Valorem Law Group - *www.valoremlaw.com*

- Surveying the AFA initiatives at "friendly" firms, i.e., co-counsel, members of referral networks and law firm associations, etc.
- Assessing the threat to current client relationships from competitors that promote AFAs

Once the firm is well informed and well versed in AFA methodologies and practices, executing an AFA engagement that fulfills everyone's expectations requires commitment from both client and counsel:

> In whatever form it takes, an alternative fee arrangement requires an element of trust on the part of both parties. Trust is an essential component. Indeed it is the foundation on which an innovative billing arrangement must rest. Without trust – whether in the form of a long-standing history between the law firm and client or in the form of an established partnering relationship – the successful negotiation of an alternative fee arrangement that is beneficial to both sides in the arrangement is unlikely.[14]

The process for building trust begins with the firm researching the AFA movement and the thinking that is driving it. Ultimately, this will involve conversations with clients, but there is plenty of guidance available from other sources, most notably, the Association of Corporate Counsel, the principal voice behind the AFA cause.

In September 2008, the organization launched the ACC Value Challenge, "based on the concept that firms can greatly improve the value of what they do, reduce their costs to corporate clients and still maintain strong profitability."[15] Much of the material available on the ACC's Web site is geared toward law firms, with further support provided through local events and other activities, as well as ample media coverage.[16]

Your Target Audience May Also Include Your Own Firm

As alluded to in the first part of this section, AFA advocates within a firm must include colleagues and firm management as the targets of their marketing efforts. And for good reason – AFAs represent a shift in the practice of law itself.

At its most basic level, the billable hour favors thorough, if not exhaustive, representation; the more hours that are billed, the more fees the firm earns. In addition, the billable hour encourages more timekeepers to work on a matter, including junior associates, under the same rationale. Many in-

house lawyers as well as law firm attorneys find this to be at odds with notions of expediency, efficiency, and outsourcing, but continue to cling to the billable hour because it is familiar to them and is the yardstick by which law firm compensation and success is measured.

In the end, acceptance of AFAs may be more of an internal law firm struggle than a matter of persuading clients. If you envision a firm where half the people are billing hourly, trying to maximize the work to generate the most revenue, and the other half operates under flat fees, utilizing few associates and billable resources, the process of reconciling such divergent approaches poses a major challenge. "The dynamics of alternative fees pull at the fabric of a firm," says Patrick Lamb of Valorem Law Group.

Build Your AFA Marketing Strategy

Because AFAs require changes to business processes, firms are well advised to forego development of any formal AFA marketing plan until they have time to experiment and tailor AFA models to their own organizations. As a starting point, however, it is important to bring existing firm value statements or propositions in line with these key AFA value points:

- Efficiency and appropriate allocation of resources
- Alignment with client risk
- Cost of legal services relative to matter results

As firms begin down the AFA path, it is critical to keep these ideals in mind during planning and implementation.

Go to Your Best Clients First

AFA modeling cannot happen in a vacuum; rather, it is accomplished through direct experimentation and refinement. The optimal place to begin is with the firm's best clients, where it has hopefully achieved the pinnacle, trusted advisor status. In this safe harbor, attorney-client business relationships are more secure, with more open communication.

Columbia, South Carolina-based Turner, Padget, Graham & Laney experienced this when it embarked upon an AFA program in the early 1990s, years ahead of the curve. Prior to approaching a major insurance company client, the firm conducted a comprehensive analysis of its hourly billing history with the client to create a task-based, flat-fee approach.

"We came up with a certain charge for every activity – each letter, phone call, and deposition, and even trial preparation, had a dollar charge attached to it, plus a per diem charge for trial if it came to that," describes Edward W. Laney, IV, the firm's managing partner. "We had a very good relationship with the client and we took the idea to them."

Later, that same insurance carrier introduced its own AFA program, requiring outside firms to submit flat-fee bids on a per-case for all activities

short of trial. Perhaps more than other firms, Turner Padget benefitted from the knowledge it acquired from having done the cost and fee analysis previously. As a result of the firm's existing commitment to efficiency under the task-based system, says Mr. Laney, "we found we could offer a savings that made us more competitive as we bid on those cases." The firm has enhanced its AFA arsenal further, and now offers annual flat-fee representation and separate billing for individual phases of litigation as well, along with safety valves to protect itself against unforeseen circumstances.

As with any innovation, educating the marketplace is a crucial first step, and in the professional services arena, it is best accomplished through individual conversations and business development. Here are some tips for the managing partner, relationship partner, or billing attorney looking to initiate a discussion about AFAs with a loyal client:

- Arrange to meet the client in person – he will appreciate the fact that you are willing to give up billable time to seek his opinion
- Find out if the client has any experience with AFAs and any impressions for how AFAs might benefit her organization
- Inquire as to whether the client would consider an alternative fee structure with your firm
- Let the client know that this is new territory for you and the firm, and ask if he would be willing to assist you in working through a trial AFA engagement
- Discuss the various matters the client is encountering, and which might work best as a test case; it needs to be an appropriate matter, but not necessarily the *next* matter

This dialogue will draw the client into the process, demonstrate your respect for his insights and contributions, and extend the client a seat at the planning table. As a stakeholder, the client will feel a sense of ownership, as well as a greater obligation to make it work.

The conversation shouldn't stop there. Get the client's thoughts about appropriate people to staff the matter and proper vendors to bring on. Seek the client's advice regarding fee agreement language, invoice format, and managing the matter. Even though you may not consult later clients on such factors, the more you foster communication throughout the trial engagement, the greater your opportunity to confidently launch a broader AFA program later.

Put Your Communications Game Plan Together

Once you've beta-tested your AFA models and outlined the process, you need to determine the messages and means by which you will promote your AFA proficiency. This communications game plan will be split between two areas.

First, the firm needs to add an AFA piece to its internal business development training and coaching curriculum. Attorneys responsible for test cases with best clients should be enlisted to prepare or at least contribute to the following:

- Presentations to other attorneys and practice groups seeking to pursue AFA opportunities
- A brief "elevator pitch" that attorneys may use to introduce the subject to clients, prospects, and referral sources
- An internal handbook that provides talking points regarding the mechanics of AFAs, the value the client receives from them, and the importance of AFAs to the firm's current business and growth potential
- A checklist for attorneys and billing/accounting staff to evaluate new AFA opportunities prior to a formal engagement

The main thrust here is to have attorneys comprehend the business implications of AFAs for the client, the firm, and themselves. It is imperative that AFAs are endorsed by firm leadership as a strategic decision, and not painted as a sales gimmick. With the heightened attention on AFAs, especially within corporate counsel circles, attorneys that present AFA proposals to clients must be genuine and credible.

To highlight this point, United Technologies, a proponent of flat fees and other AFA models, requires outside firms to explain in detail how they determine their AFA rates, how they will profit from the arrangements, and how their attorneys will work hard on the company's behalf without the incentive of a billable hour.[17] Unfortunately, according to associate general counsel Chester Paul Beach, "Sometimes they tell me they have no idea."[18]

Next, consider revising the formal documents that clients will see first – proposals and engagement letters.

Proposals to provide legal services, including responses to RFPs, are unquestionably marketing tools, and as such, need to identify and acknowledge clients' needs while thoughtfully and adroitly explaining how the firm will alleviate that pain. Unlike a menu, where the reader is responsible for the selection, a proposal should seek to cultivate a relationship with insights and options specific to the audience's situation.

If you think about it, AFAs are inherently relationship oriented and are extremely well suited as a discussion topic in a proposal. They require the firm to match the value of its services to the specific client and matter. By comparison, trying to advocate the one-size-fits-all thinking of the billable hour in a proposal seems reminiscent of Henry Ford's famous declaration about the Model T in 1909 - "Any customer can have a car painted any colour that he wants so long as it is black."[19]

Once the firm succeeds in communicating its value with a proposal and other business development activities, the engagement letter should keep the momentum going and provide a written roadmap for the ensuing relationship. Take a look at your current engagement letter and ask yourself the following questions:

- How strenuously does the letter seek to limit the firm's liability and secure its right to payment of fees? How soon in the document does it mention these points?
- Is the letter more of a contract or a set of expectations for which the firm will be held strictly accountable?
- If I were the client, what overall impression would I be left with after reading it? Reassured? Constrained? Empowered? Vulnerable? Educated? Confused? What is its tone?

Crafting an AFA-specific engagement letter is a chance for the firm to incorporate the spirit of the key AFA value points and establish at the outset the tenor for an ongoing – and hopefully long-running – relationship.

Along these same lines, firms must consider how to design or revise content for other written and electronic communications. Some pieces can be closely controlled, while others may be disseminated more freely. As such, firms need to choose how aggressively or conservatively they want to convey the information.

A conservative communication approach relies on the attorneys to convey the AFA message personally, with supporting written material in the form of status report, event summary, and billing invoice templates consistent with the AFA value proposition. A more widespread, aggressive approach may extend to revised collateral, brochures, entire sections of a Web site, and even business cards and letterhead.

Develop an AFA Public Reputation Management Plan

A law firm's Public Reputation encompasses all of its promotional work to build, manage, and sustain its outward image and foster growth. Public Reputation management is the comprehensive blend of marketing disciplines – brand identity, business development, Web sites, media relations, Web 2.0/3.0 and social media, advertising, etc. – that allow the firm to have a greater hand in shaping and controlling its target audience's perception.

For an AFA-specific Public Reputation management plan, a firm may opt to deploy a few tactics at first, and then augment them and add more going forward. The good news is that the if firm goes through the steps to assemble a communications plan, described above, much of the hard work of developing an insular AFA Public Reputation management strategy is already done. Here are a few areas where a firm may wish to focus its attention initially:

Enhanced Business Development

Promoting AFAs at a personal level is going to have the greatest influence because it allows the attorney to map the value of the firm's services and its AFA knowledge to the particular needs of the client or prospect. In addition to arming your attorneys with training, coaching, talking points, and other skill-building tools, there are some other tactics that can support their efforts and keep the conversations going.

- **CLE Programs and Seminars** can be an effective marketing and business development tool, so consider giving a presentation on the unique aspects of AFAs relevant to your audience's needs. These programs position the speakers and the firm as experts on the subject, and the forum allows for Q&As that may uncover new business opportunities. Have others at the firm, beyond the presenters, on hand to meet and greet your guests, engage in one-on-one conversations, and support business development objectives. CLE programs let corporate counsel clients and prospects earn their credits from you rather than pay to attend a seminar elsewhere – be sure to consult the CLE rules regarding protocols, not only for the jurisdiction in which you're located, but also where your corporate counsel guests are licensed.
- **Matter Audits** are ways for the firm to bring its AFA knowledge to where clients and prospects live. Offer to review at no charge one or more concluded matters handled by other firms on a billable-hour basis, and compare each matter to appropriate AFA alternatives. This can be a delicate situation; raise your willingness to sign a non-disclosure agreement right away, and know that a self-serving analysis will probably do more damage than good. Your objective is not to judge another firm's billing practices, but to educate the client about AFA advantages and your familiarity with them.
- **Case Studies and Articles**, although less personal, are additional vehicles to promote a firm's AFA competency. Because there has been much written of late, your goal is to generate a new twist, such as a chronicle of your handling of a case on an AFA basis or an account of a matter audit and its results (protecting the name of the client or prospect, of course). Don't add to the noise – instead, address a facet of AFAs that has received little or no attention.

Many businesses contract with third-party services to inspect outside firms' bills, a cost that may become unnecessary with certain AFA models. As such, be sure to factor these savings into your presentations, matter audits, and case studies.

Traditional & Social Media

Your marketing message will gain credibility and expanded reach through appropriate media channels, and an effective Public Reputation management plan has to take advantage of these.

Traditional Media journalists and editors can contribute favorably to a firm's Public Reputation, but they won't seek you out unless you give them a reason. Generate press releases announcing your AFA seminars and presentations, or describing proprietary value-building AFA tools you create, but with some additional information that will pique a reporter's interest for a larger story. Let's look at a few examples:

- In June 2009, Saul Ewing launched its "cost certainty commitment," an AFA strategy that provides for either a flat-fee or attorney per diem rate for particular matters. *The Legal Intelligencer* picked up the story, highlighting the program and comparing it to those of other firms.[20]
- Five-attorney Smithline Jha LLP was profiled in *The Recorder* for its use of monthly all-inclusive subscription fees for the IP licensing work it does for software and Internet companies. The article described how the firm bills $5,000 for the first "exploratory month," during which time the attorneys can gauge the client's anticipated needs and negotiate the subscription rate.[21]

Both of these articles were given greater attention when they were also posted to *www.law.com* and included in that site's daily email summaries, reaching a public far greater than the firms' target audiences.

This is a good segue to **Social Media**, perhaps the most efficient, least expensive means to manage and monitor a law firm's Public Reputation. Without exception, every firm – beginning at the junior attorney level – needs to establish an appropriate social networking presence, not only for business development purposes, but also because journalists and other social media users look to these tools for their own articles.

The other important consideration is that Google and other search engines now index social media among their results, so the more prolific the firm or attorney on a particular topic (using appropriate keywords helps), the greater the likelihood that profiles and posts will appear in the rankings and results. Here are some suggestions:

- For many attorneys, professional networking sites such as LinkedIn, Legal OnRamp, or Martindale-Hubbell Connected are useful entry points, as well as excellent business development tools. Make sure that the summary section of your profile includes "alternative fee arrangements" and other AFA keywords readily identifiable to readers and search engines, and try to add new content, join AFA discussions, and post comments.
- Blogs and microblogs (such as Twitter) require more active participation, but allow attorneys to provide thoughts and opinions beyond their biographies and their firm's practice area descriptions. On Twitter, for example, start out by providing brief commentaries on billing issues and client needs with links to articles that support your thinking. Add value to the topic – nobody really cares what you

had for breakfast, so leave personal diary entries at home. Regarding blogs, investigate other "blawgs," noting their format and content before considering starting your own.

- Facebook has its place as well, although it tends to have a different following than many of the clients, prospects, referral sources, and journalists you're looking to attract.

For anyone skeptical of Social Media as a business development platform, FMC Technologies' 1° Law Litigation Value Challenge is a powerful illustration. In May 2009, FMC capitalized on Legal OnRamp's functionality and audience to launch the first stage of a "non-RFP" process to select its outside firms.[22] During that initial phase, interested law firms could download a two-page questionnaire (available only on Legal OnRamp), pose questions to FMC's legal team, and view all the submitted questions and answers in an open forum on the site. Firms that made it through subsequent phases and offered a spot on FMC's roster of "alliance counsel" were required to be AFA-friendly.[23] According to Paul Lippe, CEO of Legal OnRamp, "We believe this process will represent a significant milestone in moving toward a more transparent, value-driven legal marketplace."[24]

For additional White Papers and other advice on the use of social media for marketing and business development, please visit the Industry Insight section of *www.JaffePR.com*.

Update Your Web Site

A law firm's Web site should be a knowledge resource, not an online brochure. It is the first place that all of your Public Reputation constituents will visit, and hopefully revisit, to learn about your services, your people, and your progress. Admittedly, determining how much information you want to add regarding AFAs can be tricky – there's always the danger of overpromising or trying to address a need a client may not have – so it's important to deliver content consistent with your aggressive or conservative approach.

Kirkland & Ellis has an especially robust "Special Fee Arrangements" page on its *www.kirkland.com* Web site that educates visitors, invites them to download related articles from the firm, and designates a partner they can contact. By contrast, Bowman & Brooke lets people know about its AFA options not on its own Web site, but by means of a separate URL maintained by a litigation partner at *www.litigationcostcontrol.com*.

Bigger, Bolder Steps

Law firms seeking to establish a larger presence in the AFA marketplace will undoubtedly have to consider more aggressive strategies, especially when competition heats up. Marketing, communications, and business development tactics described above will be intensified, and may become part of a larger, overarching brand identity centered on value.

- **Firm Naming** – "Smith & Smith" and other eponymous law firm names can still be effective brand names in an AFA world, as long as they immediately conjure notions of AFA values in the minds of their target audiences. Consider, however, the firm that jettisons its partners' surnames in favor of some other name reflective of its value proposition. Compliance with naming requirements under local bar rules should always take precedence.
- **Logos and Taglines** – taking a cue from consumer and other professional services brands, a logo can be as powerful as a name in conveying a law firm's identity, becoming a familiar mark among its Public Reputation constituencies. Similarly, taglines, often indiscernible due to their use of ubiquitous or trite terms (see page 3), can be crafted in close alignment with the perception a firm wants its audiences to have of its unique services and beliefs.
- **Web Site Redesigns** – tweaking a Web site may not be enough to support more serious AFA marketing; revolutionary changes require more. Because a law firm's site is the central reference point in our online world, a complete redesign may be warranted, particularly if media relations, social media, and search engine optimization initiatives are deployed to generate traffic to it.
- **New Media** – in today's digital age, law firms have the ability to be their own broadcast channels, not only devising the content and context for their value messages, but also delivering those messages 24/7 at the convenience of its audiences. Tools such as webinars, distance learning services, and audio and video Podcasts are widely available, but relatively underutilized by law firms as strategic marketing tools.
- **Shadow Billing** – internal tracking of alternative fee billings against the hourly billings the firm might have charged will be an important process for many firms making the transition. Firms committed to maximizing client value will provide those same reports to clients, offering complete transparency and allowing clients to see the comparative costs and savings.[25]

Firms that aggressively rebrand around AFA value will find that it requires more than new marketing and messaging. Fundamental organizational and operational changes will be required as well.

- **Compensation** – because compensation drives behavior, the subordination or elimination of the billable hour will necessitate different ways to define and reward achievement. Factors such as efficiency and exceeding client satisfaction will become as valuable as revenue in this regard. To drive appropriate behavior relative to compensation, firms will need to empower their people (attorneys and professional staff alike) with modeling tools to guide AFA engagement selections and with dashboard applications that will allow them to monitor costs as matters progress.[26]

- **Strategic Recruiting & Staffing** – successful management of an AFA engagement requires proper allocation of experience and resources. Low-value or "commodity" work (discovery phases in litigation matters, document reviews, etc.) may be more efficiently staffed with newer attorneys, law school graduates, and paraprofessionals, while high-value work (trials and appeals, contract negotiations, etc.) is best handled by seasoned attorneys and teams. Further, use of temporary staff and contract attorneys allows for law firm elasticity without increased overhead and employment costs. Attracting the right talent for the right work in the right environment is an essential part of a firm's Public Reputation management strategy.
- **Firm Relaunches** – there are some experts who feel strongly that the billable hour and AFAs cannot co-exist within the same firm. The firm that embraces AFA value philosophies may find it necessary to make a radical departure and start from scratch.

As a law firm becomes more serious and committed to AFAs, the greater the need for its leadership and management to drive the change. While value propositions and pricing fall within the realm of the CMO and the marketing function, at some point managing partners and executive committees must step in.

What Not to Do

Perhaps equally as important as the strategic marketing planning a law firm should conduct relative to AFAs, there are other activities and routes it should avoid. Here are a few examples to keep in mind:

- Steer clear of price wars – there will be law firms that enter the AFA arena by trying to buy a prospect's business, undercutting other firms in the process. Though serving a client's needs is important, the first duty a firm owes is to itself, and devaluing your services to originate new business is a risky proposition.
- Remember that different clients have different goals – some want to reduce litigation costs, while others want to win at all costs. One general counsel wants to impress his CEO with a reduced budget, while another wants first-class representation. An AFA is not a panacea, nor will it work in every situation.
- Recognize that an AFA can sometimes be more expensive than hourly billing for a particular matter – if it doesn't make economic sense for a certain matter, your careful assessment of the potential costs and thorough presentation to the client regarding the basis for your projections will protect everyone against unexpected surprises later. If hourly billing is the most suitable method, vigorously advocate its value to the client.

FINAL THOUGHTS

While the idea of alternative fee arrangements has been around for decades, the call for the demise of the billable hour has reached a fever pitch. Understandably, many firms don't want to be among the first to jump into the fray, but that doesn't mean they should be the last. Handled correctly, the potential revenues are compelling – AFAs brought in a reported $13.1 billion in 2009.[27]

Without question, AFAs will change the legal profession. Interestingly, some experts predict a new set of roles within the law firm responsible not only for ascertaining the economic feasibility of fixed-fee and other AFA engagements, but also for managing the teams doing the work under those structures. Pricing specialists and project managers will have increased importance as AFAs replace the billable hour and become the new billing standard, and they will be tasked with selecting and overseeing internal and external resources, helping to guide cost-efficient strategies, and ensuring matter profitability.[28]

As with any shift in the marketplace, those that see opportunity rather than hardship stand to reap the benefits, and the law firm that recognizes AFAs as a means to differentiate itself will outdistance the competition. Every week, we read about firms that are adopting AFA policies and procedures, so ask yourself, *"Are those firms the leaders or the stragglers?"*

The answer is quite clear. AFAs offer lawyers a competitive advantage, and law firms that embrace them as marketing and management breakthrough will have the ability to lead the field through innovation, and become better businesses in the process.

APPENDIX - AFA OVERVIEW

Alternative fee arrangements come in three main categories – fixed-fee, hourly-based, and, to a lesser extent, value-added. Specific models and variations of each may be applied to an entire matter, certain stages of a matter, or across a group of matters according to the unique needs and goals of both the client and the firm. In addition, they can be combined as situations or objectives require, and reinforced with precautions and provisions to prevent unnecessary hardship or enrichment to the client or firm.

Fixed-Fee AFAs

The fixed-fee structure is what most people think of as AFAs, and as studies show, the most popular alternative fee option.[29] Requiring more creativity and planning, as well as greater awareness of client needs and goals, fixed-fee alternatives are the most effective means to address each of the key value points – optimization of resources and efficiency, alignment with the client's risk, and cost of service consistent with ultimate results – while providing greater cost predictability to the client.[30]

Within this structure, the client and firm agree to a precise fee for the matter, matter stage, or group of matters. In the absence of any billable hour framework, fixed-fee arrangements require the most amount of preparation by the law firm to ensure accurate pricing, cost control, and profitability. Additionally, regular communication between the law firm team and the client is essential.

Depending on the nature of the matter, allocation and management of law firm resources is critical for purposes of efficiency and cost control, and for the firm to demonstrate its valuable case management skills to the client. For example, more routine discovery work, document reviews, or due diligence investigation may be handled by associates and staff under a partner's supervision, or outsourced to other firms or vendors that specialize in that type of work at a lower price. Likewise, the involvement of more senior partners in key negotiations, high-stakes trials, or other important junctures needs to be considered, justified to the client, and factored into the fee. Fixed-fee work offers the firm the greatest incentive to revisit its methods and develop new best practices, which in the long run benefits the client, the firm, and the relationship between them.

Whether the risk is high stakes or de minimis, a client that clearly defines the threat – in terms of possible payouts, internal business and operational considerations, Public Reputation factors, etc. – expects an appropriate, corresponding commitment from the firm. Overstating the risk may lead to the client being disappointed with the firm's proposal or efforts, while understating the risk causes the firm the firm to feel resentment over a perceived windfall to the client. This underscores the importance of honest communication, a willingness by both sides to show their cards, and the

use of safety valves and renegotiation clauses when the situation changes sharply from either side's expectations.

Like client risk, however, lopsided results may also cause resentment, as in a perceived boon to the firm in the form of an earlier than anticipated settlement or deal closing, or a seeming windfall to the client from a prolonged litigation matter or complicated transaction.

Along with fixed-fee billing for individual matters, flat fees can be also expanded and scaled, depending upon the situation, client, or law firm:

Bundling

In a bundling arrangement, the firm receives a large number of matters that it handles for a specified fee. Perhaps the most strikingly comprehensive example of late comes from Pfizer; the 19 outside firms in its Pfizer Legal Alliance are each paid an annual fee, in monthly installments, determined by the type and volume of work each firm handles for the company. The fee is all-inclusive; every aspect of a firm's representation – "from phone calls to closing arguments" – is reflected in the annual payment, though Pifizer will adjust the fee if the firm takes on more work than originally anticipated.[31]

Tyco International Ltd. has similar arrangements with its outside counsel, assigning all matters of a particular sort to one firm. According to Tyco senior litigation counsel David Nicholas and litigation partner Michael Roberts of Shook, Hardy & Bacon (the firm that handles all of Tyco's product liability cases), the basis for success in this structure is trust. "We both have to believe that one's not going to take advantage of the other," a theme common to all AFA variations, not just flat-fee engagements.[32]

Subscriptions & Retainers

Slightly different from bundling, subscriptions and retainers allow the client to "buy" access to either certain attorneys at the firm or the entire firm itself for a monthly rate. Engagements along these lines can be written to include all types of matters, or to exclude more complex work that can be priced separately, or built into a renegotiated monthly fee.[33]

These kinds of relationships have gained momentum among boutique firms and smaller companies, which are more nimble in their ability to accept change.[34]

Hourly-Based AFAs

Hourly-based alternatives preserve the billable hour, but within a more client-oriented construct tied to attorney performance or matter outcome. Although there is greater alignment with client risk and results relative to the cost of service, "more time still equals more revenue" and there is little impetus for firms to develop new ways to handle matters.[35]

There are some who consider rate and volume discounts within the realm of alternative fee structures, presumably because the concession of law firm revenue and risk in any form qualifies it for inclusion. This not only consists of *straight discounts* (a reduced rate for a single matter) and *volume discounts* (reduced rates based on the amount of legal work a client assigns to a firm), but also *blended rates*, within which all of the lawyers working on a matter bill the same rate, irrespective of seniority or associate or partner status. Arguably, discounts may benefit clients by reducing their expenses, and in the case of volume discounts, ensuring work for the firm. They contribute little, however, to converting the focus away from the firm's objectives to the three key marketing value points so important to the client. Moreover, they endanger the firm's own value proposition.

The following are brief descriptions of various hourly-based approaches:

Fee Caps

A fee cap imposes a ceiling under which the firm bills the client hourly, but for fees above that amount the client isn't charged. Of all hourly-based AFA models, fee caps offer the most incentive for law firms to streamline workflows and make more efficient use of personnel, outsourcing, and other resources. Determining the cap is critical to the success of this approach – if the cap is overly inflated, total fees less than the cap offer the client no benefit from the arrangement, and if it is underestimated, the firm may not be rewarded for the value of its services.

Risk Collars

Akin to fee caps, risk collars require the firm and the client to agree on a target matter budget, using the billable hour as the standard work unit. Unlike fee caps, however, the firm is incentivized and rewarded for a total fee figure that comes in under the collar. If the fees exceed the target, the firm still gets paid, but at a discounted rate.

To illustrate, let's assume an arrangement involving a targeted budget of $100,000 with a 50% risk collar:

- If the firm's total fees are $80,000, the client would pay $80,000 in regular hourly rates, plus 50% of the savings [($100,000 - $80,000) x 50% = $10,000] for a total of $90,000.
- If the firm's total fees are $120,000, the client would pay $100,000 in regular hourly rates at budget, plus 50% of the overage [($120,000 - $100,000) x 50% = $10,000)], for a total of $110,000.

One could claim that a risk collar is essentially a discount, in that the firm bills hourly regardless of outcome with no restriction on its total fees. Others might suggest that introduction of a budget, along with the carrots and sticks associated with it, warrant consideration as a meaningful alternative. For the sake of argument, we've included it in the discussion.

Outcome-Dependent Holdback

With an outcome-dependent holdback, client and counsel establish a metric defining a successful outcome or range of outcomes. Work is billed at an hourly rate, but a portion or percentage of the fees billed is held in reserve for future payment to the firm according to the metric or at the client's discretion.

Because success is defined at the outset – i.e., a settlement, verdict, or arbitration award within a specific dollar range; type of disposition; favorable ruling or decision, etc. – the holdback causes more risk to be shared. The key is the amount of discretion built into the metric; in fairness to both client and counsel, it should allow both parties to reasonably predict the holdback payout and thereby provide worthwhile incentives to the firm.

Budget- or Time-Dependent Holdback

With a budget- or time-dependent holdback, client and counsel establish a metric based upon the perceived cost of the matter or the timeframe within which the client wants the matter resolved. Similar to the outcome-dependent holdback, work is billed by the hour, but some amount is held in reserve, payable to the firm for its successful achievement of budgetary or timing objectives.

Given the focus on time and money instead of outcome, there may be more incentive for the firm to optimize workflow, explore outsourcing options, and pursue other efficiencies. As with outcome-dependent holdbacks, a greater amount of risk is shared because the client has a larger role in defining successful results. Estimating the ultimate cost and timing, however, can be more difficult, especially if the firm lacks the necessary tools or depth of experience to properly forecast.

Some holdbacks have been taken to new heights. Valorem Law Group, for example, includes a line on each invoice where the client can make any adjustment it deems appropriate to the stated fee,[36] and FMC Technologies has agreements with outside firms that can result in payment of the entire holdback amount plus a bonus for achieving a successful result.[37]

Contingency Fees

Despite its historical connection to plaintiffs' firms, there is a place for the common contingency fee as an AFA structure in the broader arena, as many firms have begun to explore and profit from.[38] Threshold issues in determining whether a billable-hour firm would enter into a contingency arrangement generally revolve around comparative minimum fee estimations and a higher likelihood of success, but the results can be several times greater than standard hourly billing revenues.[39]

The traditional contingency fee model is included here because most firms evaluate the opportunity and success against standard hourly billing

revenues. Additionally, contingency cases encourage firms to streamline processes and leverage specialists to achieve workflow and cost efficiencies, and there is far greater shared risk. Results can be drastically disproportionate here – windfalls occur when the firm's share in the verdict or settlement vastly exceeds the corresponding hourly fees, or when the cost to the client is far less than the value of the representation.

AFA Combinations

Once a firm thoroughly understands the unconventional thinking and atypical infrastructure that AFAs demand, and is also comfortable proposing and implementing AFA engagements, it will then be primed to advance to the next level – mixing and matching different AFA models into even more flexible and creative configurations.

There are countless combinations and variations of AFA models, each of which is dependent upon the nature of the work, client goals, definition of success, necessary resources and expertise, etc. Perhaps well ahead of their time, James Shomper and Gardner Courson, two attorneys in the E.I. du Pont de Nemours & Company legal department, provided an introduction to this idea for a 2000 *ACCA Docket* article that has become the blueprint for AFA thought and implementation:

> Example 1: Outside counsel gives client a volume discount in return for performance awards based on various criteria (fees below a specified target, early disposition, control of local counsel fees, and so on).
>
> Example 2: Outside counsel gives client a fixed fee through some predefined period (an initial investigation phase) and then reverts to hourly billing.
>
> Example 3: Outside counsel gives client an hourly rate through an initial phase and then reverts to one of the incentive-based billing arrangements.
>
> Example 4: Outside counsel and client agree on a budget for an initial phase (or the entire case), and in return client agrees to pay law firm a bonus if the fees are below budget (the bonus might be a percentage of the savings under budget).[40]

As one might imagine, the only restriction to combining AFA models is the firm's capacity to adapt and the creative thinking it can apply to the client's specific needs.

Safety Valves & Savings Clauses

Due to the potential for unpredictability in any legal matter, firms are advised to discuss "safety valves," "look backs," and "savings clauses" when broaching the subject of AFAs with clients. To be effective, these

safeguards need to inure to the benefit of the client, the firm, or both, depending upon the kinds of unforeseen circumstances that may arise:

> Savings clauses can be used to ameliorate the risk of uncertainty. A properly drafted savings clause can prevent potential wide swings and avoid unanticipated windfalls to one party or another. They should not be used to eliminate all risks, but instead should allow a prenegotiated out if the unanticipated occurs.[41]

At the same time, the firm needs to have patience before seeking to exercise this escape device:

> [O]utside counsel should be careful not to jump the gun and attempt to capitalize on the look back provision while the litigation or transaction remains underway, as this can badly damage the relationship and spirit of joint enterprise.[42]

Escape clauses and renegotiation provisions encourage regular communication between client and counsel to avoid surprises, and where when one or both sides may be new to AFAs, they offer certain assurances to exploring AFA options with less hesitation or resistance.

Value-Added AFAs

Another AFA category involves providing additional services that may not fit squarely into the hourly-based or fixed-rate dynamic. Although less prevalent, they tend to be the most innovative, with the potential to secure a stronger law firm-client relationship.

Value-adds, best deployed as adjuncts to primary billing arrangements, benefit the client's bottom line, although not necessarily with respect to any one matter or collection of matters. Instead, they may utilize firm knowledge or personnel to help the client with a particular process or task, possibly one for which the client didn't know it had a need.

Packaging High-Value Representation with Low-Value Work

Whereas "bundling" in the flat-fee context involves a firm handling a volume of matters for a specific rate, there are other opportunities to package work in a way that benefits the client and the firm.

One example is a situation where the firm, through an AFA or even a billable-hour arrangement, secures high-value matters by agreeing to also handle lower-value work, such as reviewing all of a client's confidentiality agreements and letters of intent at a greatly reduced rate in conjunction with handling the client's mergers and acquisition matters.[43] Another illustration would be a litigation firm taking on all of a client's collection matters at no charge in exchange for handling more lucrative commercial litigation cases. This type of arrangement consolidates a larger amount of

work with the firm, offsetting any economic risk from the low-value matters with the high-value matters, while providing the client with quality representation at a savings.

Secondments

There may be times when the client's legal department is short-staffed and could use some temporary assistance. While a firm's natural instinct would be to pursue handling the work itself at hourly rates, placement of a firm attorney onsite with the client may be a wiser move.

This practice, known as secondment, offers advantages to just about everyone involved – the client receives the short-term coverage it requires from a skilled lawyer presumably more familiar with its business, the rest of the legal department doesn't bear the burden of the additional work, the firm gains an inside presence with the client while enjoying a reduction in the overhead associated with the seconded attorney, and the secondee receives valuable experience and perspective.[44]

Because most secondments generally begin with the client soliciting a temporary attorney from outside counsel, the intuitive and resourceful firm might take the initiative to propose a secondment itself, ideally as part of a larger AFA arrangement. In its most recent round of outside firm reviews, Royal Bank of Scotland sought more value-added services from its firms, and specifically cited secondment in that category.[45] And while secondees sometimes transition from temporary roles to permanent positions with the client, that may not be so bad if it generates an even stronger relationship between the client and the firm over the longer term.

Extra-Matter and Extra-Legal Services

Technology provides unique opportunities for firms to enhance the value of their services, even in areas unrelated to a particular case. Oftentimes, lending technological assistance and expertise can be as meaningful as competent legal representation, and the examples are many:

- A firm creates and hosts an extensive online repository, accessible via a secure extranet, that allows the client and its other outside counsel to exchange active and inactive matter documents, repurpose research and forms, share ideas in an online forum, and reduce the client's costs.
- A firm compares the client's litigation portfolio over the past five years to its competitors and the industry as a whole; the firm then analyzes the inconsistencies and advises the client regarding those areas where it leads and lags.
- A firm hosts a summit regarding current issues that impact the client's business, invites all of the client's other outside firms to attend, and facilitates strategic planning forums;

invitees attend the summit in person or by means of a controlled online connection.

In *The Trusted Advisor*, David Maister wrote that "[b]ecoming a trusted advisor at the pinnacle level requires an integration of content expertise with organizational and interpersonal skills."[46] As we will discuss later, trust is not something a firm can proclaim, but a bond that has to be earned. Making strategic use of non-attorney resources to assist a client is one way a firm can demonstrate other aspects of its value in pursuit of pinnacle, trusted advisor status.

Vendor Benefits

Since 1992, the DuPont Legal Model has enabled the DuPont legal department to maintain a mini-marketplace among the firms and vendors it engages.[47] Although the requirements DuPont places on its outside counsel can be onerous, it rewards their compliance by compelling its vendors ("Primary Service Providers" in the areas of court reporting, litigation support, legal staffing, document management, etc.) to extend the same discounts, service levels, and preferential treatment to its firms.

Like the secondments illustration, it is the client who drives this process, not any of its outside firms. But consider the firm whose clients may not be as large as DuPont, but which could benefit from the relationships that the firm negotiates with its own vendors:

- "Guest" access to real-time depositions and court proceedings via West LiveNote and other streaming audio and video services, paired with privileges to a secure deposition transcript repository.
- Sharing the services of a library consultant relative to legal research contract negotiating, filing and shelving, and research support.
- Utilizing media relations and other marketing consultants for client needs such as litigation and crisis communications, media training, and other Public Reputation management activities (which many Jaffe PR clients do for their own clients)

General counsel and in-house law departments, particularly in a poor economy, often feel pressure to prove their worth to the organization in the absence of any revenue-generating activity. Firms that find ways to assist their in-house clients to be more efficient and to help them validate their contribution to the business stand to gain far more than other firms that simply provide legal representation.

AFA VALUE METRIC

Resource Allocation	Alignment with Client Risk	Fees Relative to Results
Flat Fees, depending on the nature of the matter, require appropriate allocation of law firm resources, not only for purposes of efficiency and cost control, but also for the firm to demonstrate its effective case management skills to the client.	**Flat Fees** offer the most "win-win" potential of any AFA option, but they require communication and trust between the client and the law firm to fully align the firm's interest with the client's risk.	**Flat Fees** offer the closest measure of shared value between the client and the firm, with both anticipating an outcome commensurate with input and investment. Plus, they offer the biggest bonus to the firm for streamlining processes while delivering quality service.
Fee Caps offer firms the greatest incentive to streamline workflows and make more efficient use of personnel, outsourcing, and other resources. If they don't, they gamble that any work above the cap comes from their own pockets.	**Fee Caps** cause firms to share in the client's risk if the ultimate outcome exceeds the established ceiling. On the other hand, if total fees – the cap – are overestimated, the firm doesn't shoulder any client risk.	**Fee Caps** limit the client's obligation to a specific dollar figure, similar to flat-fee arrangements. The cap needs to be determined carefully; if it is inflated, total fees that are less than the cap offer the client no real benefit. If it's too law, the firm suffers unnecessarily.
Risk Collars can offer a greater incentive to the firm to seek out more efficient methods and approaches to handling the case, depending on the risk collar percentage and the budget to which both the client and firm agree. The lingering presence of the billable hour can reduce the motivation due to the possibility of partial recovery above the target.	**Risk Collars**, like holdbacks, provide incentives for the firm to an end-of-matter reward from the client for meeting the stated objective of overall lower costs. Above the target, there is only a proportionate sharing of risk.	**Risk Collars** give the client a net discount on hourly rates if total fees exceed the budget, whereas with a successful outcome, the client achieves a total matter savings (total fees less than the budget) and the firm receives the full amount of its billings (which may be based on a higher than normal rate). Budgets and targets must be realistically calculated, but the firm ultimately controls the hours, which can reduce the benefit to the client.
Outcome-Dependent Holdbacks give the firm little if any incentive to approach the work differently, including the personnel, vendors, or other resources it uses.	**Outcome-Dependent Holdbacks** causes more risk to be shared because success and failure are defined at the outset. Accurately predicting the outcome is the most difficult aspect.	**Outcome-Dependent Holdbacks** introduce client discretion. A poor outcome lets the client pay less or none of the holdback, and if results are satisfactory, the client can pay a more or all of the holdback. Fairness dictates that client and counsel establish a metric that allows each to predict the payout. In the end, the firm controls the number of hours, risking only the amount of the holdback.
Budget- or Time-Dependent Holdbacks place the focus on time and money instead of outcome, with more incentive for the firm to optimize workflow, explore outsourcing options, and pursue other efficiencies.	**Budget- or Time-Dependent Holdbacks** compel the firm to share a greater amount of risk because the client has a larger role in defining success. Projecting the ultimate cost and timing can be more difficult, especially if the firm lacks the necessary tools or depth of experience to properly forecast.	**Budget- or Time-Dependent Holdbacks** penalize or reward (up to the value of hourly-rate billings) the firm in accord with the client's goals, but the carrot and stick may only represent a portion of the total fees. The firm remains in control of the most important factor – the total hours put into the matter.
Contingency Fees provide incentives for firms to streamline processes, manage workflow, and leverage specialists to achieve cost efficiencies.	**Contingency Fees** place far greater risk, given its often "all-or-nothing" premise. Unlike hourly billing, the firm's decision to take the case is dependent upon its estimation of the client's chances of prevailing.	**Contingency Fees** create situations where the legal representation and the results can be disproportionate for both client and counsel. Better than anticipated results may yield a return to the firm far greater than the billable hour equivalent, and a poor outcome may unfairly "short" the firm. Both scenarios can generate windfalls as well as resentment for either party.

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1300 Pennsylvania Avenue, NW, Suite 700 Washington, D.C. 20004-3024
Phone: 877-808-9600 • Fax: 208-439-6173
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