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General Counsel To Reduce Reliance On Firms: Survey

By **Denise Oliveira**
Law360, New York (December 09, 2008) -- General counsel have announced their plans for legal spending in 2009, and law firms will have to change the way they do business if they want to stay in the game and retain their clients, according to industry insiders.

“We're expecting our law firms to find ways to be efficient and to deliver services that are much more cost-effective,” said Jeffrey W. Carr, general counsel for Houston-based FMC Technologies Inc., a provider of technology for the energy industry that reported third-quarter 2008 revenue of $1.1 billion.

Almost 75 percent of 115 general counsel recently surveyed by legal consulting firm Altman Weil Inc. said their law department's budget would be cut in 2009.

And to deal with the budget cuts, the general counsel said they would keep more work in-house, use lower-priced lawyers for some of their legal needs and turn to alternative-fee arrangements, according to the survey, which was conducted in November and released on Tuesday.

As the new year approaches and the economic crisis continues, the general counsel said their top three concerns were the cost of outside counsel, the lack of predictability in the size of their legal spend and their company's litigation risk.

“We want our law firms to be profitable,” said Carr, who serves on the board of directors of the Association of Corporate Counsel, an industry group that includes the vast majority of Fortune 500 companies. “But we want them to be profitable based upon efficiency and reducing costs, and not just on top-line revenue growth,” he said.

In light of the Altman Weil survey results, which confirmed what several industry experts already suspected, the experts outlined what law firms should expect from corporate counsel in the coming months — including requests for lower or alternative fee arrangements, pressure for increased efficiency and a willingness to sever long-standing relationships in exchange for cheaper legal services. They also advised corporate counsel on ways to control costs in-house.

Legal departments have already started asking for discounted fees, and that will continue, the experts said. But there will also be added pressure for firms to yield to new forms of billing that break away from the traditional hourly system, including fixed fees, flat fees and success-based fee structures.

The billable hour system doesn't afford general counsel the predictability they need, said Pamela Woldow of Altman Weil's corporate law department group.

“In a down economic time, having predictable legal costs is very important, even more so than usual,” Woldow said.

Particularly when it comes to routine legal work, often in areas including product liability, trademark and employment litigation, law departments are likely to increasingly solicit fee proposals from law firms and turn to the best bidder, Woldow said.

These are fields where law departments can more readily predict work volume and hand their entire portfolio for a certain period of time to a law firm that offers an attractive fee package, she said.

“There needs to be more recognition that we have alternatives,” Carr said, noting that law departments will likely start shopping around more for law firms. FMC Technologies pays practically all of its outside lawyers on a performance-based system rather than fixed hourly fee rates, Carr said.

And in tough economic times, the drive to find cheaper legal help will outweigh even long-standing attorney-client relationships, experts said.

“Most law departments have been loyal and are reluctant to let go of certain law firms, but money pushes people to take different actions,” said Rees Morrison, president of Rees Morrison Associates, which provides consulting services to law departments.

“Most work needed by law departments could be done by many lawyers in this country,” Morrison said. “It is rare to have bet-the-company, high-stakes matters for which you need a very experienced firm,” he said.

Firms that can't, or don't, accommodate clients' financial needs will increasingly find themselves losing work to smaller, regional firms that provide high-quality services at a lower cost, consultants said.

Firms might also lose business to some direct competitors, as the drive for convergence — that is, a law department's decision to let go of some firms and consolidate their work in the hands of fewer outside lawyers — picks up in these tough economic times, according to Woldow.

“It's more cost-effective for a law department to hire fewer firms because there is less to manage,” Woldow said. In addition, a law department that provides a larger share of its work to one firm is more likely to strike a more favorable fee arrangement, she said.

The key to squeezing out the competition will be for law firms to nurture client relationships, remain flexible, focus on quality services and tout their industry knowledge to their clients, the legal experts said.

And perhaps more than anything, law departments will be pressuring firms to be more efficient, taking up options like lighter staffing and offshoring work into less expensive hands.
Preventing attorney turnover is another way to operate more efficiently because recruiting and training new lawyers is extremely costly, said Stanford University's former general counsel Michael Roster, who is currently spearheading the Association of Corporate

Counsel's “Value Challenge” campaign to encourage discourse between law departments and law firms about alternatives to the hourly billing system.

In addition, clients will be more satisfied when their matters are staffed with a few well-versed lawyers who have spent a significant amount of time with a particular client than with a cadre of junior associates who are learning their business from scratch, Roster noted.

Lawyers who are intimately familiar with a client's matters end up saving the client money because they can help them stay out of future trouble, he said.

Law departments should also seriously consider how they conduct internal business if they actually intend to keep more of their work in-house to save on legal bills, the Altman Weil consultants said.

While 65 percent of respondents said they intended to bring more work in-house, only 24.6 percent of the general counsel said they intended to hire additional lawyers in the next 12 months.

So if general counsel are serious about “internalizing the work, it's going to be about working harder and smarter,” Altman Weil's Daniel J. DiLucchio Jr. said in a conference call with corporate counsel held just hours after the survey was released on Tuesday.

Corporate counsel need to increasingly delegate work to their own paralegals and support staff and devote their team's time to the most important matters, DiLucchio said. And discerning what are the most important matters requires an ongoing dialogue with the businesspeople in the company, he said.

Law departments can also keep costs down by systematically assessing the pros and cons of carrying matters through litigation instead of settling, by offshoring some work directly without sending it to a law firm, by using lower-cost virtual law firms that have appeared in recent years and by relying on temporary or contract legal staff, the Altman Weil consultants said.

The quality of temporary legal workers has improved, DiLucchio noted, and “the pricing has been excellent for many of you,” he said to the general counsel on the conference call, predicting that law departments will increasingly draw on this work force to help curb costs.

Law departments have options. “It's a very serious message this time,” Roster said. “We're in a very serious economic situation. For firms to think it's business as usual, they're missing how serious this is,” he said.