



THE
General Counsel
In-house Legal Solutions

Strategies for Reducing Legal Expenses

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About The General Counsel, LLC.

The General Counsel, LLC is a new breed of legal services firm created to answer the unique challenges facing emerging and mid-sized companies. Our high-value general counsel services make it possible for growing organizations to enjoy all of the advantages of having a top notch in-house attorney on-site and actively contributing to your management team and organizational strategy. Whether retained on a part or full-time basis, having an experienced, business savvy lawyer will help keep your organization running smoothly and prevent any legal surprises. Detailed information about the firm is available at www.thegeneralcounsel.net.

1. Executive Summary.

In the current financial crisis, most companies are focused on cost cutting in order to survive. Those that do it successfully will emerge stronger and in a better competitive position.

One cost that companies today should clearly be targeting is their legal costs. Legal fees charged by outside law firm have increased dramatically during the past decade or two. Rates at some of the bigger (“BigLaw”) firms are \$500 - \$700 an hour for partners. The most profitable of the BigLaw firms boast profits per partner of a whopping \$2,000,000. The legal fees relating to a simple transaction or garden variety litigation matter can be staggering.

During the boom years, many companies paid little attention to their legal fees. When credit markets were flush, corporate managers did not balk at paying large legal bills. Exorbitant bills were simply treated as a cost of doing business.

In order to adapt to the current harsher business climate, businesses today must adapt by breaking out of a “business as usual” approach. This paper sets out some tools for reducing a company’s legal expenses and achieving greater efficiencies in the utilization of legal resources.

Companies of all sizes can benefit from tools that reduce legal expenses. Larger companies with in-house legal staffs have broad experience in dealing with the issue. This paper is intended for the smaller company that does not have internal legal resources and is largely dependent on outside law firms.

2. Situational Challenges.

There are a number of situations that lead companies to pay excessive legal fees, and which also make such fees difficult to reduce. Most are a direct result of the relationships that the company has with its legal services provider. Here are some:

A. Entrenched Relationships. Some companies have long term relationships with one or a few law firms. Company executives and/or board members and law firm partners may have deep and loyal ties, both professional and personal, that have developed over many years. The relationship with the law firm might appropriately be characterized as one of great trust, resulting in the company’s over-reliance on the firm and reticence about raising questions about billings.

B. Institutional Inertia. Institutional inertia exists when the company has been referring all of its work to one or a few outside law firms because that is what it has always done. The law firm has had a good, long-standing relationship with the company and has developed referral relationships with its mid-level managers. The managers refer work to the law firms almost reflexively, with little thought given to the type of matter, the cost of the services, whether alternatives exist that can provide similar services or better at a lower cost. It is the path of least resistance.

C. Use of the “Big Name” Law Firm. Company management may hire a law firm on the basis of its well known name. Senior management may feel that they need a “big name” law firm to evoke a favorable impression within the investment, banking or other communities in which they operate or to intimidate an opponent in a dispute. The company’s investors or lenders may insist that it hire the big name firm because of the relationship between the investors and the firm. Senior management may think that using a big name firm on matters will shield it from future criticism by the board of directors or investors if something should go wrong. In litigation, the big firm may be hired to send a message that the company will spare no expense to pursue its opponent or defend itself from an attack.

D. Cultural Predisposition toward Conflict. The company may have a combative or conflict-prone culture. This is otherwise known as the “my way or the highway” mentality. Communication with employees, customers, and suppliers may be poor, leading to frequent misunderstandings. Those who interact with the company have few or no channels for conflict resolution beyond litigation. Within its industry, the company may be viewed as arrogant. Senior managers tend to operate in crisis mode and react to mistakes or problems rather than develop well thought out resolution strategies at early stages.

E. Conflict Avoidance Culture. The company may have a culture in which managers are uncomfortable with conflict. They will avoid dealing with any situations where conflicts may arise. Instead, they tend to dump issues and problems into the laps of their lawyers to avoid having to deal directly with them. The lawyers will spend weeks or months collecting facts, doing analyses, preparing memos and correspondence, and otherwise generating fees. Eventually, the matter lands back into the laps of the managers because the lawyers cannot really make the business decisions needed to bring matters to an end.

The situations described above usually lead to an over-reliance on outside counsel and inflated fees. Legal resources have not been rationally employed. Assumptions have gone unchallenged and relationships are unquestioned.

3. Law Firm Economics.

A big part of the problem is that the typical law firm business model is based on hourly rate billings, and therefore is not capable of addressing the client’s need for efficiency in a down economy. Although law firms are starting to reduce expenses by laying off unproductive staff among other measures, their basic business model is archaic. Law firms are compelled to maintain the traditional billable hour fee structure in order to cover their high overhead, and to earn high profits for partners in order to prevent their major producing partners from jumping to competitors.

Some features of the law firm model that make it inefficient from a client’s perspective are as follows:

- Firms compete with one another for a limited pool of graduates from top tier law schools with little if any practical legal experience, paying them upwards of \$165,000 in salary in some cases.
- Firms retain a high ratio of associates (junior, less experienced attorneys) to partners, all of whom need to be kept busy.
- All lawyers are required to bill a large, minimum number of hours to clients, putting pressure on them to bill hours even when the project or task may not justify it.
- Law firms use a team approach in which they use multiple lawyers on projects when a single or fewer lawyers may be sufficient. On a recent monthly billing statement that I reviewed for a client, I counted four lawyers who billed time ranging from \$450 to \$595 an hour on a single litigation matter.
- Associates work and bill more hours on matters because of their inexperience, so the client is effectively paying for the associate's learning curve.
- No incentives exist to perform work efficiently. The firm is rewarded for spending more time performing tasks rather than less, and for increasing the number of tasks that are performed in each engagement.
- Projects/tasks are referred to subject matter specialist-attorneys within the firm, which can multiply the number of attorneys within the firm that have billing opportunities.
- Litigation matters have long shelf lives due to the economic disincentives that attorneys on both sides may have for an early resolution.

4. Overcoming the Resistance to Change.

As the mandate to reduce expenses accelerates, senior management may now have the leverage they need to overcome resistance to change. Board Members who are insisting on expense cutting can hardly complain when the CEO proposes to reduce the company's reliance on the board's law firm of choice. In this climate, the CFO should be more comfortable saying to the law firm partner, "I just can't afford to pay your rates anymore." This is an opportunity for companies to rethink old relationships.

It is also an opportunity to change corporate mindsets. Companies with conflict avoidance tendencies or that are conflict prone have an opportunity to shift out of these operating modes. New policies can be adopted and managers can be trained to be more effective in dealing with conflict. Companies can retain resources that are more adept at efficiently dealing with conflict.

5. Legal Services Management and Fee Reduction Tools.

While cultural shifts can go a long way, there are a number of concrete steps that management can take to more efficiently allocate legal resources and gain more control over legal fees.

A. Assessing and Reducing Risks. The old saying, "an ounce of prevention is worth a pound of cure" is every bit as true in a business context as in others. It is less expensive to

avoid problems in the first place, especially legal ones, than have to hire lawyers later on to fix them.

As companies expand, they are often so focused on growth issues that they do not keep a watchful and cautious eye on risk. As the demands on the company's infrastructure increase, risk analysis and mitigation often play a minimal role in the decision making process. The larger and more visible a company becomes without adequately addressing their risk issues, the more vulnerable they become to attack by outsiders seeking to bite off a piece of them. Ideally, the growth company should continuously be developing its infrastructure to support its growth, thereby minimizing or avoiding undue risk.

One of the ways it can do this is to assess its operations and find out which of its policies or practices create unacceptable risk. The company can then implement risk mitigation and management tools to reduce the scope of the risk. This may involve new policies and procedures, new personnel, employee training, new transactional documents or any number of other measures. Reducing risk will eliminate the types of problems that attorneys are needed to resolve, resulting in legal fee savings and piece of mind.

Many firms perform risk assessments. To assess legal/business risks, an experienced attorney should be engaged. An attorney with in-house experience has a notable advantage since he/she better understands the internal workings of a company and has dealt with a broad range of risk issues in a business context.

B. Conflict Resolution. The road to success in business is a bumpy one and abounds with conflict. Conflicts arise between employee/company, supplier/company, customer/company and in every other possible relationship a company can have. Those companies that resolve conflict easily, quickly and efficiently will have a straighter and smoother growth curve. Those that do not will have to pay lawyers.

Here are some tips to become more adept as resolving conflict:

- Remove the person involved in the conflict from the situation and assign the responsibility for dealing with the other party to someone else. Individuals with an emotional stake in the outcome are less capable of bringing the matter to an early resolution and may be prone to exacerbating the situation. A more objective actor without emotional baggage is usually better positioned to deal realistically with the situation.
- Gather all of the facts. This means reviewing all of the applicable documents, emails, and correspondence and interviewing those who played a role in the situation. Understanding the facts and circumstances from which the dispute arose is critical.
- Analyze the facts to determine whether your company (or the other party) may be at fault (i.e., have any liability). If so, make an evaluation to realistically estimate

the amount of the liability. Assess the relationship issues that may impact the way in which the matter is handled.

- Discuss your conclusions internally and determine the approximate cost or cost range that you believe may be necessary to pay the other party to the conflict in order to resolve the matter. These discussions should conclude with an agreed-upon strategy for engaging the other party, including who will make contact, what form of communication will be used, who within the other company should receive the communication, and what will the message/offer will be.

These steps should be followed as soon as possible after the dispute comes to light. It may not be prudent to quickly engage the other party in every situation, but all of the steps leading up to that should be followed. An opponent who feels ignored will escalate the matter to litigation out of frustration if the other party refuses to voluntarily engage.

C. Use and Management of Outside Counsel. When legal fees charged by outside counsel regularly exceed \$250,000 per year, there are usually a number of opportunities for fee reduction.

(1) **Use of In-House Counsel.** Lawyers that have had in-house experience at major, widely known companies can be hired to work at far less than the rates charged by most law firms. They excel at performing the day-to-day legal activities (e.g., contract drafting, negotiation and review, employee policies and issues, corporate governance) that most business regularly require. These tasks do not require a big name law firm.

Determine which of these activities outside counsel is now performing that could be shifted to an in-house attorney at a lower cost. If you are concerned that there is not enough work to hire a full-time attorney in-house, there are companies that can provide experienced former in-house attorneys to come to your business on a part-time basis with no long-term commitment.

(2) **Major Transactions.** Merger and acquisition transactions typically generate high legal fees because they are usually complex, require a great number of documents and are subject to tight deadlines. This work generally requires the services of a law firm that can throw a number of bodies into action quickly. However the firm's attorneys and work load can be managed to achieve greater efficiency and fee reduction:

- Ask for a detailed budget showing the costs and fees the firm expects to generate. A ballpark number or range is not sufficient.
- Find out about the level of staffing that the firm intends to use. Ask for the number of associates, their experience level, and the number of partners (including those from other departments within the firm) as well as their billing rates. Determine whether there are more efficient alternatives.

- Consider hiring a part-time, temporary attorney with M&A experience to (i) manage the law firm's work, and/or (ii) help do some of the work to reduce the expense. Firms specializing in providing project-specific, temporary counsel can be used to find talented attorneys.

If the company acquires other businesses on a regular basis in a similar format (roll-up strategy), it should be able to negotiate a fixed fee rate for each transaction after the first one or two. The documents prepared for the first deal serve as templates, significantly reducing time and expense. It may even be worthwhile for the company to hire an in-house attorney to take over for the law firm, who may only need to play a minor role, if any, for successive deals.

(3) **Litigation.** A CEO friend recently told me that he has seen the owner of his company spend \$2,000,000 in litigation to collect \$1,000,000 rather than compromise. While there are those with the bankrolls to support such spending, few critically thinking investors would invest capital for such a negative return. If a 4X multiplier is used to value the company, the \$1,000,000 of extra expense turns into \$4,000,000 loss of the company's value.

For those seeking a more rational calculus, a risk/reward analysis should be applied to all potential litigation using a detailed budget of expected litigation expenses. An early and thorough assessment of the facts as described in Section 5B (Conflict Resolution) is an important part of the process. An objective evaluation of the strengths and weaknesses of the case and its long term costs will force a more critical view of the viability of litigation as a strategy for achieving a business objective.

The client in a litigation matter rarely ends up happy with the result. Even a victory comes at great cost. If early conflict resolution strategies fail and litigation is the only option to accomplish the business objective, the best approach is to prepare for a trial, but continue to look for or create early settlement opportunities.

(4) **Litigation Management.** Most companies are concerned about minimizing litigation expenses. There is a hidden expense that can be just as costly – management time. Outside firms require management's active participation in the lawsuit to explain the details of the case, assist with gathering and providing information and documents, coordinate meetings with personnel, identify witnesses, etc. This can consume a great deal of time which distracts management away from operating the business. The goal of a well-managed litigation matter should be twofold: legal expense reduction and reduction in management time spent on the case. Both can be achieved if the litigation is effectively managed, as follows:

- Selection of counsel. Hiring the right attorney is critically important. Some attorneys do a better job, are a better fit, have more experience with a particular type of case, work for smaller firms that are less expensive but of a high quality, want future business, and are cost sensitive, etc. To find such an attorney, get referrals from trusted contacts. Conduct interviews. Ask for proposals, including budgets.

- **Budget.** As mentioned elsewhere in this paper, a detailed budget is critical for setting expectations as to the estimated total cost of the litigation. Although some firms are reluctant to provide one, most will if pressed. The budget will provide an opportunity to review and challenge assumptions about the case. It should be updated at least every quarter and include actual against budgeted expenses. In other words, litigation should be handled in a similar fashion to any other undertaking of the company in terms of cost control.
- **Strategy.** An initial strategy should be established collaboratively by litigation counsel and management. The centerpiece of the strategy should be determining the company's primary objective. It is surprising how often this fails to occur. The result is that the case drifts, creating a momentum that is difficult to stop. Legal expenses accrue with no clear picture as to the gain or benefit that the company seeks to achieve. Another aspect of the strategy should be to establish the manner in which the case will be litigated, e.g., a full court press, do just enough to move the case forward, be reactive to the opponent's tactics, etc. This will be based on the objective of the matter as well as the identity and nature of the opponent. It is important to determine the desired approach to the litigation and stick to it as much as possible.
- **Plan.** This addresses how the strategy is to be carried out and pins down some of the nuts and bolts of the litigation. The issues covered are the number and types of claims to be brought, the counterclaims a defendant company may have to bring, the motions the company should consider bringing, and the discovery plan (number of depositions and interrogatories, potential witnesses and experts, etc.). Since the litigation cost is tied to the plan, it should be done in conjunction with the budget.
- **Monitoring.** The company should periodically and closely monitor the litigation to determine whether:
 - the primary objective of the case is likely to be met;
 - the case is on-budget;
 - the litigation strategy is being adhered to; and
 - it is proceeding according to the plan.

If any of these items are not proceeding according to the original understanding, the company should reassess and make appropriate adjustments.

(5) **Legal Expenses of Public Companies.** Since the passage of the Sarbanes Oxley Act, filings with government regulators required to satisfy securities regulations are more numerous and detailed and face closer scrutiny. Public companies have had a greater need for legal services to ensure compliance. As a result, their legal fees have grown dramatically.

If the outside firm is exclusively preparing the non-financial reporting aspects of these filings, the company's legal expenses will be sizable. To avoid this, large companies with in-

house legal staffs usually have one or more staff attorneys dedicated to doing much of the preliminary drafting work required to produce the filing documents, leaving it to the outside firm to polish and “bless” the finished product. Since the cost differential between the staff and law firm attorneys is significant, this can result in great cost savings.

A public company without in-house legal staff can accomplish cost savings in a similar fashion. A former in-house attorney with securities experience can be hired on a part-time basis to work with the company’s accounting and finance department to prepare the filings. Her work product, done under a reasonable, lower-cost fee structure, reduces the work that a law firm would otherwise have to do, cutting the total cost of the project.

E. Hiring an In-House Attorney. Mention has been made of the use of in-house attorneys (part-time or full-time). As companies and their legal needs and expenses grow, they are often faced with whether and when they should bring in an attorney to act as their general counsel. The decision makers often do not know what factors to look to in making this decision or the role the in-house attorney can play in their organizations.

Here are some considerations:

(1) **Cost.** As stated elsewhere in this paper, it is usually less expensive to hire an attorney in-house than continue to rely exclusively on outside law firms, given the significant cost differential between an attorney-employee and a firm.

(2) **Experience.** A general counsel will typically have broad-based, industry specific experience. She will do much if of the routine and recurring types of legal work that the outside law firm was doing, reducing reliance of the law firm and its multiple attorneys and their varying levels of experience.

(3) **Business Skill.** Attorneys who have worked as business insiders in their respective in-house roles generally;

- excel at balancing legal considerations with business needs;
- are skilled at providing pragmatic solutions to everyday business and legal problems; and
- have an appreciation for the company’s culture, ways of doing business and appetite for risk.

By way of contrast, law firm attorneys do not tend to be as intimately connected to their client’s business and often do not have the same level of business understanding.

(4) **Senior Management Team.** The in-house general counsel is part of the company’s senior management team, thereby providing accessible and ongoing counsel to the CEO, CFO, and other key managers. By comparison, there are usually less regular contacts between the law firm attorneys and the company, resulting in less frequent legal input.

(5) Risk Mitigation. The in-house attorney is focused on ferreting out and mitigating enterprise-wide risk as part of her role in company's operation. For instance, she will point out overly aggressive sales practices and recommend that they be modified to be legally compliant. However, law firm lawyers are only exposed to those risks relating to the project or transaction on which they are working and are not in a position to deal with other risks.

(6) Maintaining Outside Counsel Relationship. The company may still wish to maintain a relationship with its outside law firm for larger and more complex matters (e.g., litigation, an intellectual property matter or large M&A transaction) when technical expertise and more boots on the ground are required. A general counsel is self-directed and can act as a single point of contact to manage that relationship. As an attorney, he is in a better position to manage other attorneys to achieve cost savings and efficiencies, which is especially important for companies that use multiple outside law firms. Companies that do not have an in-house attorney generally do not manage their outside law firms as well, resulting in unnecessary legal tasks and excessive billings.

6. Conclusion.

One of the most common complaints one hears about legal services is how expensive they are. There is a feeling of powerlessness: The fees are outrageously high but there is little I can do to reduce them.

This paper demonstrates that this perception does not need to be a reality. There is much that can be done to change or prevent the situation. With a firm hand and strong resolve, a senior manager can apply some of the tools suggested above to immediately reduce legal costs while increasing quality of service at the same time.

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