

COVER STORY

Law Firms Vie For ‘Preferred Provider’ Status

Fewer Firms Get Larger Chunks of Work and More Clients Opt for Flat Fees

By **Rebecca U. Cho**
Daily Journal Staff Writer

The competition among big law firms for clients is getting more heated.

As companies strive to chop legal costs, several in-house legal departments have begun pairing back the numbers of law firms they use for out-sourced work, locking firms in a fierce battle to get on their lists of so-called “preferred providers.” The lists have long been in existence - pharmaceutical giant Pfizer and chemical company DuPont, among others, have had them for years.

But now, more and more companies are adopting the practice, and those that use them are aggressively curtailing the number of firms they do work with. The trend, known as “convergence,” allows companies to reduce their legal bills by steering more work to fewer firms, and get discounts through alternative billing arrangements. For the firms that make the cut, they get a steady supply of future work and increased revenue over the long term, even if they are billing less on each individual case.

As companies have increasingly resisted the billable hour and sought alternative billing deals, it has also created an opening for mid-sized firms that previously would not have been considered.

“Some companies have gone through two rounds of converging,” said Ward Bower, a principal at legal consulting firm Altman Weil, who said the trend has become increasingly prevalent among Fortune 500 companies in the past two years.

This phenomenon, in turn, is forcing law firms to make some adjustments of their own in getting business.

“The way I see it, one positive outcome from the financial crisis is that law firms and corporate counsel are now equally motivated to work together to find more cost effective solutions to representing business clients,” said Yuri Mikulka,



ROBERT LEVINS / Daily Journal

Yuri Mikulka heads the litigation practice at Zuber & Taillieu. She said as companies shrink their numbers of outside counsel, “competition is steeper.”

a Los Angeles litigator who co-chairs the American Bar Association’s litigation committee on corporate counsel.

Mikulka, who heads the litigation practice at boutique law firm Zuber & Taillieu, said as companies shrink their numbers of outside counsel, there is more competition among firms. Firms who know how to partner themselves with clients are winning out.

“Competition is steeper,” Mikulka said. “Even though there’s a lot of litigation, [fewer] firms are getting that work.”

DuPont was one of the first corporations to converge its outside counsel when the company cut down its law firms in 1992 from about 350 law firms to just 34. Andrew L. Schaeffer, a DuPont in-house counsel who manages the company’s relationships with law firms, said a desire for legal departments to reduce costs and spending is driving the trend toward convergence.

“I do see a lot of other companies talking about it,” Schaeffer said. “Some are doing it, some are missing the point or mechanics of how

you do it, but clearly this economy is driving more people to think about it.”

By narrowing down the field of law firms, DuPont has received better quality, more efficient service from firms, Schaeffer said. Instead of looking at the company as a “short-term target” with the goal of maximizing profits, law firms on a preferred list are in it for the long haul and share the risks with the company, he said.

DuPont has increased steadily its usage of alternative fees, with about 40 to 50 percent of legal spending based on such arrangements. The chemical company has saved more than \$100 million since converging, Schaeffer said.

“Once we converged, it opened the doors to a lot of other things such as assessing cases earlier, talking about alternative fees rather than just hourly rates,” Schaeffer said. “Seventeen years later, we’ve got room for improvement, but we’re convinced our model has worked very well.”

Surveys show DuPont is not alone. Alternative fee arrangements are on the rise. The number of legal in-house departments who predicted they will have used non-hourly work for more than 10 percent of their legal fees rose to 43 percent this year, compared to 27 percent last year, according to a study by legal consulting firm Altman Weil. About 93 percent of law firms said they use alternative fee arrangements in a separate 2009 survey by Altman Weil.

In recent months, a number of companies have stepped up efforts to shorten their lists of outside counsel. These companies include Sara Lee Corp. and Kraft Foods Inc., said one source, who asked not to be named because the companies had not been public about such efforts. A Kraft Foods spokesman said the company is reducing the number of suppliers across its supplier base, but would not comment specifically on law firm relationships. Heidi Rudolph Mitchell, Sara Lee’s vice president of governmental and legal affairs, confirmed the food company was cutting down on outside legal counsel in certain areas of work.

Houston-based FMC Technologies, an oil and gas equipment company, in May sent out a call for law firms who are willing to be creative

Law Firm Competition Heats Up

about alternative fees to compete for its business. The company has been narrowing the list from about 50 respondents.

Altman Weil's Bower said the appeal for big companies in paring down their outside counsel is to have better control over the legal work and more leverage with the law firms. Before convergence, a law firm may have 2 percent of a company's business compared to 10 percent after convergence, he said.

As company choose law firms for these lists, Bower said, more companies than before are selecting midsize firms over big firms.

"We're hearing from midsize firms around the country. There are opportunities to work for big corporations that previously had not noticed them," Bower said. "[Convergence] plays more of a part in small and midsize firms because they're the ones who have been creative in coming up with alternative fee arrangements."

Not all companies who are converging their outside counsel are doing so openly through a process of forming lists. Some are conducting "panel reviews," Bower said, that scrutinize the

size of the company's outside counsel, and issuing requests for proposals as a means to form a basis for convergence.

As legal departments try to shrink the number of law firms they work with, those firms growing on a national or international scale may become more appealing, he said. With offices in several locations, one law firm can displace many law firms in several places, Bower said.

Mark Rochefort, a civil litigation partner at Alston + Bird in Los Angeles, said in the past year, companies who have not had preferred provider lists have converged their outside firms, but also, companies with such lists have gone through more than one round of convergence in the economic downturn. Rochefort, through whom Alston + Bird became DuPont's primary counsel in Southern California, described the selection process to get on the preferred list as highly competitive.

He said he believes most major corporations are in the process of adopting a convergence program, if they have not done so already.

Rochefort said a preferred provider relation-

ship with a client often does lead to discounts, but for the law firm, these cuts in rates are outweighed by the benefit of continuous future work from the client.

"The fact that there are discounts is not necessarily a bad thing," Rochefort said.

As more companies form preferred provider lists, law firms will become more stable, Rochefort said. Law firms on company's lists are assured of future work and thus can form staffing decisions and business goals.

Still, some believe the convergence of outside counsel does little to impact law firm business and that it is a passing fad. Mark Neubauer, the Los Angeles managing partner of Steptoe & Johnson, said that in the end, when hit with a multi-million dollar lawsuit, a company will still shop for the best lawyer to handle the case. He said forming preferred provider lists is just one of many ways companies are experimenting to cut down on costs.

"The picking of lawyer is still an individual choice, even for large companies, and it turns on hiring individuals," Neubauer said.