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# MIM Reporter

THE REVIEW OF  
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FOR LITIGATION

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## FROM THE DESK OF ELIZABETH B. JULIANO

I opened LMI when I was 27 years old, and I just turned 56. This means that the time spent running my company has eclipsed the time that preceded it. More importantly, it means that LMI and I are growing older, together.

During the past 30 years, technology has caused seismic changes in the way we operate. As you know from your own practice, each year brings a new, how-did-we-ever-function-without-this advancement. From 1984, when state of the art was an IBM typewriter and a Lanier Dictaphone, we've come to this year when, among other things, we develop apps for our clients who use iPads and Smartphones. Yes, the advancement has been staggering.

However, closest to my heart is what *hasn't* changed over these decades: the strength of our client relationships. Most of them have lasted from the very beginning of LMI, when some attorneys and in-house counsel took a flier on giving me and my fledgling company a chance. At that time, the concept of what LMI provides was brand new to the legal industry. It took vision and fortitude for those first clients to make a change from the normal path. These many years later, I remain profoundly grateful to them, and am proud that those early clients (and many more along the way) are now my longtime friends.

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## Reversing the Wal-Mart Approach: Rollback Pricing Does Not Always Equal Value

As the economy continues to ebb and flow, law firms, legal vendors, and corporate counsel alike agree that law is as much a business as it is a practice. The recent past has highlighted a general consensus that money must be saved and the legal industry's shift towards value-based billing.

Alternative fee arrangements (AFAs), a major component of value-based billing, are part of the vast majority of law firms' arsenals - 96 percent of firms report that 1 percent or more of their billings come from

Many who were associates when I founded LMI became partners, then senior partners, and some have already retired. We grew in our professions together, because the more difficult the project, the closer became our bond. Therefore, most gratifying has been the opportunity – and honor – to collaborate with some of the finest counsel, and the finest companies, in America.

As LMI has grown older, wisdom accumulated over time has taken the form of refined processes, experience derived from years of litigation management at all levels and all situations, and depth of talent in our staff. Many of my contemporaries are heading into the mentoring stage of their careers, and so am I. The younger professionals at LMI bring a unique vantage point and delightful enthusiasm to their work. This includes important familiarity with how the world communicates now. I am therefore comforted to know that while I am savoring my longstanding client relationships, LMI's younger professionals are developing the same relationships of their own.

Because time has gone so quickly, I confess that I am a bit astounded to be writing a piece that reflects on so many years in this business. LMI conducts rigorous strategic planning processes, through which we continually adjust what we are doing and how we are doing it. But the underlying theme that provides our inspiration is the goal to improve and strengthen our relationships with those we serve. We will continue to work, each and every day, to earn and maintain your trust.

**THANK YOU,**

Elizabeth B. Juliano

## Reversing the Wal-Mart Approach: Rollback Pricing Does Not Always Equal Value (*cont.*)

alternative fees<sup>i</sup> - but that does not mean parties to AFAs are only focused on dollars and cents. Most agree that AFAs are about more than just saving money – AFAs promote communication and relationship development between a firm and its corporate client, encouraging the parties to collaborate and find the most efficient and effective way to handle a matter.<sup>ii</sup>

Although the drive to save money remains strong, industry leaders have started reflecting on how costs may be reduced long-term without sacrificing quality. The fact that the legal industry as a whole is searching beyond a “quick fix” indicates support for the belief that cost reductions are not always the best or only way to obtain value from an engagement.



## MEASURING VALUE - BEYOND DOLLARS AND CENTS

The word “value” has different connotations based on the context within which it is defined. A traditional, mathematics-based definition is the monetary worth of an asset, service rendered or good sold as represented by numbers. “Value” has also traditionally been defined as “a fair return or equivalent in goods, services or money for something exchanged.”<sup>iii</sup>

*From a marketing perspective, “value” could mean the extent to which a good or service is perceived by a customer to meet his or her needs, completely dependent on the customer’s perception of the worth, utility or importance. The telecommunications industry’s definition of “value” is most similar to the legal industry’s definition: value-added services are often complimentary services secondary to core service offerings that benefit both the consumer, who receives additional services, and the company, who builds a greater rapport with the consumer, often translating into additional business.<sup>iv</sup>*

In calculating value, a distinction must be drawn between hard costs, soft costs, and associated savings. Hard costs are charges substantiated by an actual invoice for services and then passed through to a client at face value. Traditional soft costs include items such as copies, facsimiles, and long distance charges, but may also include big-picture items like corporate training, staff development, and process improvements. While hard dollar savings like discounts or budget cuts are immediately attractive and tangible, equal attention must be given to soft savings that will convert to hard savings in the future.<sup>v</sup> For example, downsizing may result in immediate bottom-line dollar savings but the likely impact of the cuts on staff’s future ability to work productively or to use innovation to meet client demands must also be considered. Stated differently, whereas hard savings are exemplified by actual bottom line savings, soft savings are best reflected as the potential for bottom line savings in the future, ultimately resulting in long-term success.

It follows that the legal industry’s goal should be to create long-term value rather than immediate cost savings. A prime example of how to achieve this goal may be found in the DuPont Legal Model. DuPont first implemented its well-known legal model in 1992. The model is a “convergence process” aimed at encouraging law firms, vendors, and corporate law departments to improve the “quality, cost and efficiency of legal services.”<sup>vi</sup> Of course, part of the model incorporates alternative fee structures that further the financial success of both the corporation and service providers (law firms and legal vendors, collectively). The model’s ultimate goal, though, is to create and build relationships for the long-term so that resources are reused rather than recreated.

## VALUE THAT ENHANCES THE BOTTOM LINE

While discounts are appreciated and look great on paper, discounts only make a certain amount of difference in terms

of value: “a discount may ameliorate a couple of years’ run-up in rates, but it doesn’t . . . bring greater visibility of or control over litigation . . . it doesn’t require real change in [business models].”<sup>vii</sup> In other words, a discount does not add meaningful value that enhances the bottom line.

*To illustrate the growing importance of finding value that does enhance the bottom line, the Association of Corporate Counsel established the ACC Value Challenge, “an initiative to reconnect the value and the cost of legal services.” As a component of the Value Challenge, ACC named several “Value Champions,” either law departments or law firm/client collaborations, who successfully cut spending, improve predictability and achieve better outcomes through the use of value practices.<sup>viii</sup>*

Value Champion Whirlpool uses a team/partner approach to handling legal matters in which outside counsel switches from performing task-based services to engaging as a true collaborative partner.<sup>ix</sup> Medtronic’s senior vice president and general counsel, an ACC Value Champion and proponent of value-based billing, stresses the need to align “the interests of outside law firm[s] with the interests of the corporation.”<sup>x</sup> Similarly, Cleveland-based Value Champion Sherwin-Williams provided technical product training for inside and outside counsel, eliminating repeat training costs, affording outside counsel an in-depth knowledge of Sherwin Williams’ operations, and eliminating the need to hire additional business people.<sup>xi</sup>

Generally speaking, a valuable service provider is one educated on its client’s business, creative and innovative, efficient, and able to put to use best practices learned and developed from working on various projects. Service

providers add value when they reuse knowledge gained over the years rather than reinventing the wheel for each project. For example, in 2007, Merck & Co., Inc. recognized LMI for being this type of valuable partner.<sup>xii</sup> LMI worked with in-house counsel, outside counsel and other vendors to strategically align processes relative to the Vioxx litigation. Merck presented LMI with its Outstanding Operational Award for being a flexible partner that provided the company with innovative, calculated solutions, ultimately resulting in long-term cost savings for Merck. As a result, LMI remains a strategic supplier member of Merck’s Supplier Value Management Program.



A partner-approach is most valuable where both sides are willing to collaborate and invest in the relationship initially – this in turn fosters long-term growth that translates to dollar savings. There are a number of practical ways a service provider may add value to its relationship with corporate counsel.<sup>xiii</sup> One way a service provider can demonstrate its commitment to investing in a relationship is to hire a well-regarded customer service trainer to provide service excellence training to the provider’s staff – beginning in 2010, LMI engaged Mary Gober International to impart the “Gober Method” philosophy of outstanding customer service to LMI staff and management. LMI made this investment in

training to ensure LMI's clients experience top-notch service at all levels of contact, and to ensure that LMI staff is always in a solution-finding mindset focused on achieving results.



Actions that demonstrate accountability may also express commitment to the relationship – creating a detailed service plan for clients, assigning project managers, working with the corporate financial group to develop benchmark efficiencies, and providing clients with real-time cost data against budgeted figures are all ways to become a valuable partner.<sup>xiv</sup> LMI frequently provides clients with dashboard reporting that illustrates litigation statistics (plaintiff population make-up, for example), as well as budget data and how much work is remaining on a project along with estimated costs. This data provides LMI's clients with project insight that can be used to develop long-term strategies and cost savings, thus creating a value-based partnership.

Knowledge exchanges are another way to add value to a relationship. A law firm or vendor could assign an employee to work at a client's corporate facility one or two days a week at no/little charge in order to gain a greater understanding of the client's business objectives; periodic meetings with the client's business team are also critical to understanding the entire corporate picture, not just litigation strategies. Service

providers may conduct client focus group meetings to establish and develop client service standards. At a minimum, law firms or vendors should initiate yearly meetings with clients to discuss the provider's performance, the client's goals and pain-points, and the client's anticipated future needs.<sup>xv</sup>

Other important value-added services that educate general counsel, such as newsletters, legislative updates, and e-alerts, should be regularly provided free of charge. Not only do these services assist general counsel in performing their job, the services also help improve communications and the overall relationship between the corporate organization and the service provider while ensuring that the service provider stays abreast of emerging needs and issues in the corporation's industry.

Service providers who provide value to general counsel in turn help general counsel provide value to the corporation they serve - general counsel must preserve this value by providing cost-effective support to the corporation in the management of legal risk, and by finding ways to add value to the business through intelligent and innovative application of laws and regulations to the opportunities presented to the business sector.<sup>xvi</sup> The service provider-corporate counsel relationship's goal should be to learn how to successfully do more with less in order to create value for the relationship as a whole.

## CONCLUSION

Value-added services involve more than fixed fees or discounts that last only a few years. Collaborations that result in value involve all parties becoming intimately knowledgeable about the business from both an operational and strategic perspective, and understanding what goals need to be achieved. Law firms, legal vendors and corporate counsel must partner together and equally work to actively build, manage and reuse knowledge to create future efficiencies and enhanced responsiveness for future success.

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