

LITIGATION MANAGEMENT & ECONOMICS

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Co-Chair's Column



Your co-chairs would like to welcome all new members to the Committee. Likewise, we would like to inform everyone that Celeste Butera of Rivkin, Radler & Kremer is the new co-chair of the committee with Bill George. Bruce Drucker's term as co-chair has expired, and Celeste has succeeded Bruce. The co-chairs would first like to thank Bruce Drucker for all of his hard work and the dedication and vision that he brought to the committee. Bruce will be greatly missed on the committee. Bruce has been appointed to the Task Force on the Judiciary, and will continue his active participation in the ABA.

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The committee has continued to be quite active. We both attended the ABA annual meeting in San Francisco in August. We found the programs to be extremely informative and interesting on current issues facing the legal profession. The program entitled "*High Tech, High Stakes - Star Lawyers Conduct the Trial of a Technology Case in the Courts of the 21st Century*" was on the cutting edge of litigation. The committee co-sponsored and presented a program entitled "*Litigating the Small Case: Strategies for Resolving a \$100,000.00 Case for Less than \$100,000.00 in Fees and Costs.*" The program was widely received and engendered audience interaction and participation.

We both also attended the Fall Council/Committee Chair's meeting in Palm Beach, Florida. The meetings there were directed at the upcoming year's work facing the committee and the Association and its effective and efficient administration. The programs and meetings were thought-provoking and informative respecting the

Managing Outside Counsel In Corporate Litigation

By William J. Bowe

In the tumultuous business climate of the 1990's, corporate legal services, like other business functions, have seen their traditional prerogatives take something of a hit. As growing competitive pressures have forced companies to make every function pay, legal departments are evaluated more than ever in terms of their contribution to the bottom line. While this may be discomfiting to attorneys used to thinking of themselves as members of the corporate peerage, the new reality is one to which all corporate lawyers must awaken. Those who respond effectively will encounter new, interesting challenges and find their attitude welcome in the boardroom; those who do not will lose favor.

The win-at-all cost mentality of the past, when prevailing in court was often a matter of corporate pride, has given way to a more savvy business perspective on litigation, in which the price of winning is weighed against the real consequences of losing.

One area in which these new dynamics are especially visible is corporate litigation. Litigation was once thought to be a privileged domain exempt from cost cutting. No longer. Uppermost in the minds of general counsel today is the company's return on its investment in the legal department. The win-at-all cost mentality of the past, when prevailing in court was often a matter of corporate pride, has given way to a

more savvy business perspective on litigation, in which the price of winning is weighed against the real consequences of losing. Those consequences include not just dollar losses, but the diversion of management time and attention and the potential for adverse impact on corporate reputation.

Encyclopedia Britannica, Inc. has been very much a part of this changing environment,

having undergone dramatic changes in the 1990's in response to a changing marketplace. New technologies have transformed the very nature of Britannica's products, and they are now published mainly in electronic form - on CD-ROM and the Internet - with the printed encyclopedia no longer the only medium of

distribution. Prices have plunged, distribution channels have shifted, and the company has downsized dramatically. The legal department has been buffeted by these developments and has absorbed its share of the retrenchment. At the same time, however, the shift from print to electronic publishing has raised a host of new intellectual property issues that present new challenges, new forms

of litigation, and new opportunities to help the company meet its business objectives.

For many companies, bringing litigation work in-house to achieve efficiencies is still problematic. In an era when headcount is king, general counsel may find it increasingly difficult to add staff attorneys, even as the litigation caseload grows. At the same time, the variety and complexity of today's litigation issues drive specialization among litigators and make total reliance on inside counsel increasingly difficult. As a result, small and mid-sized companies still engage outside counsel when difficult litigation arises. How then to go about it the right way, so that the engagement works to everyone's satisfaction?

Here the old saw about hiring a lawyer rather than a law firm is as sound as ever. A firm's general reputation is no better than the lawyer or your case. Ultimately, you place your trust in one person to see that your company's work is handled professionally, efficiently and enthusiastically. Personal relationships are always key to creating the trust that your work is important and will be handled professionally. However, the adage from the Cold War arms reduction talks, "Trust, but verify," still applies. Since no single firm is likely to have that right individual for all non-litigation matters, it is common for general counsel to use different firms for different practice areas. So be it. However, consolidating litigation work with a small number of firms in order to obtain good service and favorable billing arrangements has been easier to do in my experience.

Another thing to explore is evidence that a firm keeps up with new technologies and business tools. Some law firms were slow to adopt fax machines, then voicemail, then e-

mail. Some have been slow to develop Internet savvy and some still are not there. For a technologically enabled company such as Britannica, our expectation is that our outside partners are also in tune with the times. Firms have got to keep up or risk losing the business of cutting-edge companies.

Even with first rate outside litigation counsel retained, continued close involvement by house counsel is setting strategy and budgets and watching staffing is essential. Staffing is a frequently vexing issue that often gets out of hand. You want the right lawyers at the right level matched to your work, but often you have to clarify your preferences about these things. Keep revisiting this to make sure things are being managed to your satisfaction. Is there constant turnover on your account? It could be a sign that the managing attorney isn't managing properly or enough. On the other hand, you want the work of associates to hum along smoothly day in, day out, without unnecessary involvement from the senior attorneys with higher hourly rates; that gets expensive quickly. Also, good communication with outside counsel shouldn't mean that a firm communicates so much that you get buried in petty detail.

All companies that use outside counsel in litigation face the issue of how to allocate the costs internally. Should all litigation be spread across the business units as part of the general corporate allocation, or should each business unit bear its own particular burden? The latter approach is more consistent with the current trend of allocating appropriate costs among business units to the fullest extent possible. At Britannica, we do this with most litigation. The exceptions for Britannica, however, are cases involving protection of the corporation's intellectual

property. We handle copyright, trademark and patent cases at the corporate level wherever in the world they may occur and generally do not allocate them to the business unit with the problem. These cases are vital to all of our operations worldwide as well as to the health of our corporate brand, and we don't want local managers unduly concerned about the impact of these infringement and anti-counterfeiting expenses on their profit-and-loss statements.

For corporate counsel, managing outside law firms may take more effort and attention than

in years past, but it also presents more opportunities for a wide range of successful professional relationships. For outside counsel the opportunities are also great, as long as the understand the business realities of their clients and remain committed to a high level of value and service.

William J. Bowe is Executive Vice President, General Counsel, and Secretary of Encyclopaedia Britannica, Inc. Before joining Britannica, Mr. Bowe served as Vice President and General Counsel for United Press International, Inc. and The Bradford Exchange.

AUTHORS WANTED

The Litigation Management and Economics Committee encourages all interested authors to submit articles for publication in this newsletter. The newsletter is published quarterly and contains three to five articles in each issue.

The Newsletter addresses such topics as management of litigation costs, preparation of budgets, the roles of inside counsel and outside counsel, management of legal resources, use of litigation management guidelines, alternative dispute resolution practices, the use of technology in litigation and litigation management, billing methods and practices, and other relevant topics. The Newsletter is also intended to enhance communication among the Committee members, which is comprised of both in-house and outside counsel.

The time commitment to authorship of our articles is minimal. Articles are intended to be informative but informal, short (1,000 words), and without extensive citations. Shorter pieces, statistics, and other items of information are also helpful in filling out issues.

Any and all suggestions for the newsletter, whether related to content or format, are welcomed. Questions about the newsletter, inquiries about upcoming issues, proposals for articles, or other information should be directed to William J. Egan, 2000 Metropolitan Centre, Minneapolis, Minnesota 55402; tel. (612) 340-7990; fax (612) 340-7900; e-mail: wjegan@riderlaw.com.