

Are GCs Ready To Pay Wholesale Rather Than Retail?

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Law firms increased billing rates for both partners and associates by an average 4.3 percent in 2008, and according to a Wachovia survey, firms are expected to increase billing rates in 2009 as well. When you consider that companies are paying between \$500 to \$1200 per hour for partners, and \$450 to \$820 per hour for associates at the nation's top 250 law firms – you have to wonder how long GC's will continue to absorb these rates. In the face of this economic downturn, are GCs ready to pay wholesale rather than retail for legal services? Companies will be under pressure to control costs in 2009, and according to a 2008 Altman Weil survey of chief legal officers, GCs are planning to decrease their use of outside firms, which will translate into more work in-house.

While bringing more work in-house has proven to be cost-efficient for companies, the majority of GC's seem nevertheless reluctant to hire additional in-house counsels. Doing more with less appears to be the preferred approach. However, the majority of in-house legal departments are already thinly staffed (declining from 4.2 to 4.7 lawyers per billion dollars of U.S. revenues to 3.8). An onslaught of legal work may not only create inefficiencies, but also expose companies to a myriad of problems associated with understaffing. Moreover, companies' reliance on outside counsels will not be substantially reduced if in-house legal departments are ill equipped to handle the increased workload.

If companies are considering growing their in-house legal ranks in 2009, questions regarding how many, when, and how remain. Most surveys and reports provide conflicting results as to the number of companies planning to hire in-house counsels in the coming year. Throughout May and June, Altman Weil surveyed chief legal officers and one of the questions was about hiring new attorneys in the next 12 months. At that time, 49% percent said they were looking to bring on new attorneys. However, during a flash survey conducted by Altman & Weil on department cost control in November, only 25 percent said they would add new attorneys.

Why more companies are not adopting the basic cost-benefit approach of hiring more lawyers in-house is disconcerting. Management may be understandably reluctant to outlay the financial resources to recruit and hire more attorneys in time of budgetary constraints, but adding in-house lawyers is cheaper in the long run than paying increasingly rising outside attorney fees.

Companies can hire experienced in-house lawyers for an average of \$150,000 to \$200,000 per year – that's 236-314 hours for the use of a law firm associate on average, or 176-235 hours for the use of a law firm partner on average. Assuming your in-house counsel works 50-hours a week, the hourly cost of your in-house counsel comes to about \$57 per hour (compared to an average of \$635 for a law firm associate, or \$850 for a law firm partner). Your in-house counsel can also provide your company with an average of 2600 hours of legal services per year, or about ten times what your outside counsel can provide for the same amount of money. You do the math; the savings are considerable.

In addition to the compelling cost-analysis argument for hiring more in-house lawyers, the addition of in-house counsels can provide companies with other added benefits. In-house counsels typically understand a company's business and overall strategy better than outside counsels who are one step removed from the decision makers. As a result, they understand the context of the legal issues that affects their companies and can provide more value in their abilities to formulate solutions and choose courses of actions that are designed to further company goals. In-house counsels retain institutional knowledge and are invested in their company's success. They are typically better suited to provide the kind of legal advice that will assist a company meet its business objective in the most cost-effective and efficient manner.

Can companies completely do away with outside counsels? Not likely. In certain instances, companies are still better off relying on law firms. Companies should continue to turn outside counsels in highly specialized practice areas or with respect to substantial litigation matters (i.e. high-stakes, bet-the-company patent matters, or IP litigation). Most legal departments, including the largest ones, generally do not have the capacity or the

infrastructure to handle either large-scale litigation or large M&A matters completely on their own. This too could change in the future, but for now, companies should continue to seek the assistance of law firms with respect to these matters on negotiated rates.

The cost-benefit analysis is clear: hiring more in-house lawyers means considerable savings on legal expenses. Can your current legal department handle more work with fewer resources? GC's and management need to be realistic about what an increase in the quantity of work will mean in terms of quality. Moreover, there has never been a better time for companies to hire attorneys – legal positions are scarce, law firms are shedding associates and non-equity partners, bonuses are down and salaries are flat. Making an investment now in the company's legal department may be one of the smartest moves to be made.

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