



# *Annual Conference & Exposition*

## **Banishing Billing Boundaries**

**Presented by**

**Matt Laws**

**FM31**

**Wednesday, 4/17/2013**

**1:45 PM - 3:00 PM**

*Your connection*  
to knowledge, resources and networking



# Banishing Billing Boundaries

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FM 31 – Financial Management  
April 17, 2013 1:45 PM

*Your connection*  
to knowledge, resources and networking

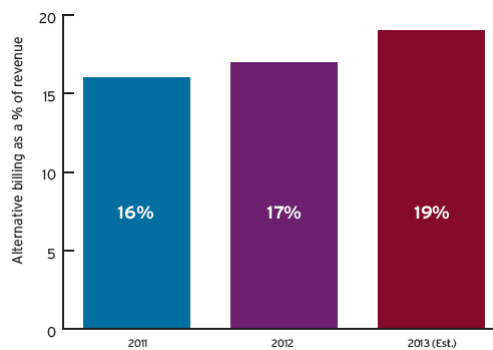
## Agenda



## The Billable Hour Boundary



Trends in AFAs as a percent of Firm Revenue



Source: Citi 2012 Law Firm Leaders Survey

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## Billable Hour Boundaries

***"Lack of Predictability"***

***"Sporadic Communication"***

***"Too Many Attorneys"***

***"Relationship Management"*** (invoice reviews, RFPs)

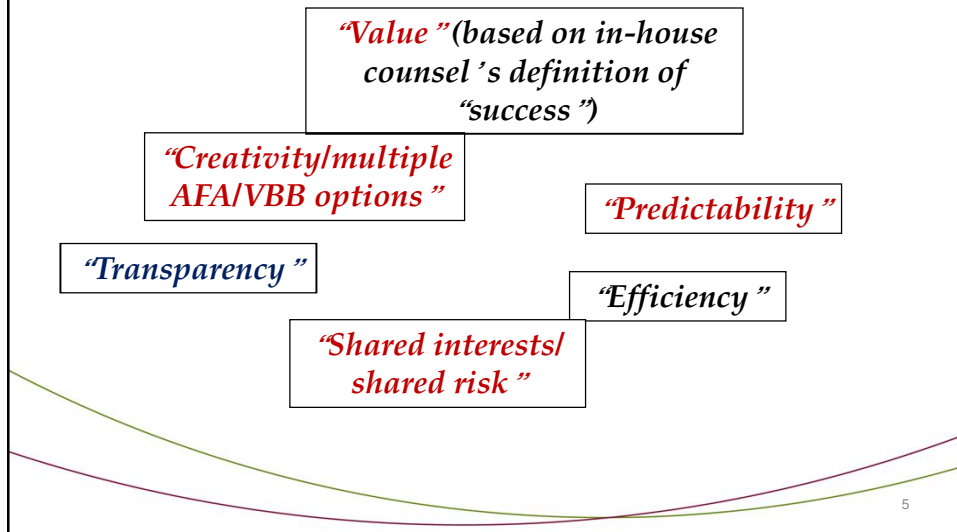
***"Not Utilizing Existing Work Product"***

***"Pressure to generate billable hour levels"***

***"Delayed Settlement Attempts"***

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## Banishing Billing Boundaries through Value



## *"Creativity/multiple AFA/VBB options"*

### **Fixed Fees**

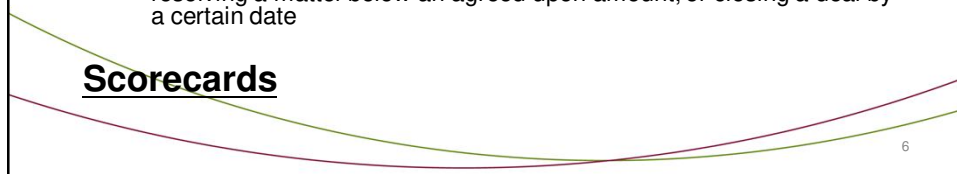
- By Phase of Work
- By Matter
- By Docket
  - What not to do: Overestimate the fixed fees

### **Fixed Fees with Collars**

### **Success Fees/Holdbacks**

- A portion of firm fee is based on the outcome achieved for the client
- Based on a desired result, such as winning a motion to dismiss, resolving a matter below an agreed upon amount, or closing a deal by a certain date

### **Scorecards**



## Target Budgets are the Key to Value Based Billing

- Budgets are being used in the counsel selection process
- Key elements of a budget:
  - Clearly Defined Scope of Work
  - Detailed Phases & Tasks to be Performed
  - Staffing Plan
  - Documented Assumptions
  - Firms & clients have developed benchmark fees for specific types of work
- Build better budgets: experience on “what has it cost” moving to “what should it cost”

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## Budget Example: Assessing a Matter

Client: Matter Name: Wage & Hour Collective Action Case Allegation: The allegation is that Client did not pay overtime for what later became a non-exempt position File Date: Trial Date: TBD Potential Damages: Unpaid overtime comp, liquidated damages, interest, and attorney fees. Court: Opposing Counsel: Settlement Options: Early Mediation						
	Task	Assumptions	Partner	Counsel	Associate	Total Budgeted Fee Hours & Dollars
<b>Phase 1 (ECA/Mediation/Settlement)</b>						
1.1	ECA: Early Case Assessment	Collect/produce key docs/interviews/chronology	5	10	11	26
1.2	Early Mediation	Communication, Brief, & Attendance	24	44	29	97
1.3	Settlement Agreement	Negotiate and implement	11	27	13	51
1.4	Strategic Response/Answer	Research and write	10	15	5	30
1.5	Case Management Conference	Negotiations & Attendance	15	15	10	40
<b>Total Hours</b>			65	111	68	244
<b>Total Fees</b>			<b>\$52,325</b>	<b>\$67,155</b>	<b>\$23,120</b>	<b>\$142,600</b>
<b>Phase 2 (Conditional Certification/Discovery/Motion to Decertify)</b>						
2.1	Pre-Trial Motions	Opposition for Cond. Cert, Protective Order, Compel, Decertify or MSJ	80	100	40	220
2.2	Management of Opt-In Process		15	5	5	20
2.3	Written Discovery	Interrogatories	10	35	20	65
2.4	Document Production	Offensive & Responsive	5	5	40	50
2.5	Depositions	Fact (Prepare/Take/Defend) 4 Total	100	20		120
2.6	Expert Depositions	Expert (Prepare/Take/Defend) 2 Total	80	10		90
2.7	Ongoing Settlement Discussions		10	5		15
<b>Total Hours</b>			285	190	105	580
<b>Total Fees</b>			<b>\$229,425</b>	<b>\$114,950</b>	<b>\$35,700</b>	<b>\$380,075</b>

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## Budget Software: Assessing a Matter

LexisNexis® Redwood Planning

Planning

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**Client Planning**

Staff, price and compare various scenarios and phases leveraging historical data and alternate fee arrangements to see the impact on client profitability.

- Create a Client Plan
- Create a Client Plan based on History
- Create a Phase/Task Plan
- Create a Phase/Task Plan based on History
- Open an Existing Client Plan



**Matter Planning**

Staff, price and compare various scenarios and phases leveraging historical data and alternate fee arrangements to see the impact on matter profitability.

- Create a Matter Plan
- Create a Matter Plan based on History
- Create a Phase/Task Plan
- Create a Phase/Task Plan based on History
- Open an Existing Matter Plan

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## Budget Software: Profitability

LexisNexis® Redwood Planning

Planning

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Measure	Scenario 1
Total Hours	200
Standard Amount Worked	\$132,000
Writeup(down) (vs Std)	(\$22,000)
Direct Costs	\$35,945
Direct Margin	\$74,055
Direct Margin %	56.1%

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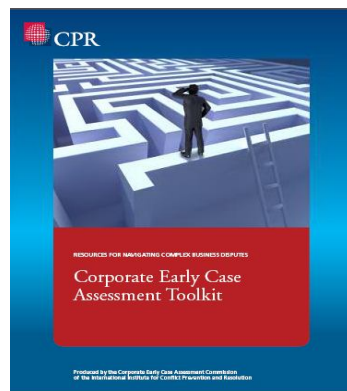
## Reporting & Alerting

**PROFITABILITY TEMPLATE**  
DEPARTMENT: All Departments (W)  
OFFICE: All Offices (W)  
CLIENT: All Clients

	2008			2009			2010		
	Value	%	Hourly Rate	Value	%	Hourly Rate	Value	%	Hourly Rate
Hours Worked	669,725			687,649			686,729		
<b>Std Amt</b>	<b>118,945,770</b>	<b>100%</b>	<b>\$178</b>	<b>130,992,007</b>	<b>100%</b>	<b>\$190</b>	<b>136,923,140</b>	<b>100%</b>	<b>\$199</b>
Writeup(down) from Std - Total	-8,326,131	-7%	(\$12)	-10,896,219	-8%	(\$16)	-10,708,238	-8%	(\$16)
Writeoff Amt	-4,214,995	-4%	(\$6)	-4,280,679	-3%	(\$6)	-1,364,986	-1%	(\$2)
Bill Risk Adjustment	-593,911	0%	(\$1)	-2,453,891	-2%	(\$4)	-599,519	0%	(\$1)
Collect Risk Adjustment	-178,571	0%	\$0	-356,380	0%	(\$1)	-1,934,695	-1%	(\$3)
<b>Expected Amount</b>	<b>105,632,162</b>	<b>89%</b>	<b>\$158</b>	<b>113,004,838</b>	<b>86%</b>	<b>\$164</b>	<b>122,315,702</b>	<b>89%</b>	<b>\$178</b>
Direct Costs	-61,313,122	-52%	(\$92)	-68,217,529	-52%	(\$99)	-74,826,039	-55%	(\$109)
Cost Losses (WIP & A/R)	-696,254	-1%	(\$1)	-1,081,169	-1%	(\$2)	-1,225,489	-1%	(\$2)
<b>Direct Margin</b>	<b>43,622,787</b>	<b>37%</b>	<b>\$65</b>	<b>43,706,140</b>	<b>33%</b>	<b>\$64</b>	<b>46,264,174</b>	<b>34%</b>	<b>\$67</b>

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## Early Case Assessment Phase: Budget



© International Institute for Conflict  
Prevention & Resolution, *Corporate Early  
Case Assessment Toolkit*

- Capture matter information and assemble team
- Informal factual review
- Business concerns
- Forum and adversary analysis
- Risk management analysis
- Legal analysis
- Cost/benefit analysis
- Determine settlement value
- Establish settlement strategy
- Develop preliminary litigation plan

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## Value Based Billing: Fixed Fees

- Places premium on development of a “winning strategy”
- Motivates efficiency – core team of lawyers that know the business, the people, and the legal issues
- Legal project management is implemented

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## Value Based Billing: Fixed Fees with Collars

- “zone of certainty”
- Law firm bears risk of modest inefficiency or scope changes but reaps the benefit of an efficient resolution
- If work goes above collar, law firm “penalty” is sufficiently severe that it has incentive not to go there

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## Fixed Fees with Collars: Example

- Client Agrees to a an annual fixed fee of \$1M for all labor counseling matters with a 10% risk sharing collar
  - The budget fee is \$1M unless the tracking fees at the client agreed rates are less than 90% of \$1M (\$900k) or exceed 110% of \$1M (\$1.1M)
  - 50% of any such savings below the 90% level shall be returned to the client or 50% of any such overruns above the 110% level will be paid by the client
- Example 1 Savings Scenario: Fees are \$900k. Firm returns to client \$0.
- Example 2 Savings Scenario: Fees are \$800k. Firm returns to client \$50,000.
- Example 3 Overrun Scenario: Fees are \$1.1M. Client pays firm an additional \$0.
- Example 4 Overrun Scenario: Fees are \$1.2M. Client pays firm an additional \$50,000.

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## Value Based Billing: Success Fees/ Holdbacks

- Client or Firm “hold” funds in reserve to “grade” law firm’s performance
- Explicitly linked to client satisfaction with Firm’s overall performance

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## Scorecard Criteria: Examples

- Law firm's performance and success fee are often based on critical to quality measures:
  - Legal results: Number of Zero Pay Dispositions in litigation, class certification denied, or number of successful M & A deals closed
  - Percent of partner time on the matter
  - Reduced case cycle time
  - Number of cases resolved in the period
  - Reduction in the fixed fee level
  - Value added services: secondments, Partners attend board meetings, and pro-active risk reduction training

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## Procurement: Scorecard

Area	Weight	Mather & Straus		Garcia Loeb		Elliot & Weld	
		Score	Comment	Score	Comment	Score	Comment
1. Subject Matter and Product Class Expertise	20%	4	Acted as national coordinating counsel for Cyro in litigation concerning Flu Mist. Has exp. in cases involving pharmaceuticals and alleged injuries.	5	Has significant exp. litigating cases with allegations of drug-related injury.	3	Has acted as our counsel in Taxil. Does not have significant exp. with allegations of injury to the liver.
2. Trial Experience of First and Second Chairs	20%	5	J. Smith (first chair) tried 45 cases to verdict, including 2 cases in AK. J. Crawford (second chair) tried 3 pharmaceutical product liability cases.	4	N. Hannon (first chair) has tried 21 pharmaceutical product liability cases to verdict. Walter Wojcik has tried 7 pharmaceutical product liability cases to verdict.	3	A. Green (1 <sup>st</sup> chair) tried several pharmaceutical product liability cases to verdict, including our Taxin cases. J. Reyes (2 <sup>nd</sup> chair) tried 2 cases, but has little pharmaceutical exp. except for the Taxin case.
3. Court and Judge Expertise	20%	4	No exp. with the Atlantic City judge, but it has considerable exp. with the judge likely assigned the MDL cases.	3	No exp. with this judge, but claims regular practice in the jurisdiction through their area partner firm.	2	No exp. with this Judge or jurisdiction but recommended a partner law firm that has extensive exp. in the jurisdiction.
4. Opposing Counsel Expertise (e.g., Plaintiff's Counsel)	10%	5	Has litigated against one of the plaintiff's counsel several times, knows their strategies, and has extensive library of work product from which to draw.	3	Have direct experience with plaintiff's counsel and litigated at least one trial against them. Partner firm Perry & Smith has successfully litigated against Allen & Simon.	2	No experience with the plaintiff's counsel.
5. Strategy for Handling Litigation / Key Impressions	5%	5	Provided examples of appropriate aggressive defense (with an eye toward early resolution), with sensitivity to plaintiff's involved.	3	While a capable firm, has not provided any concrete examples or suggestions on how to most effectively manage the matter.	3	Examples of strategic methods provided focus narrowly on scientific aspects, not the matter as a whole - a significant concern
6. Diversity	5%	4	Good	3	Fair	5	Excellent
7. Alternative Billing Arrangement Proposal	20%	4	\$2,200,000	5	\$2,000,000	2	\$3,100,000
Final Score (Weighted)	100%	4.3	Mid-size firm. Excellent team, most appropriate for matter. Exp. in product liability and substantial coverage in Philadelphia and NJ is ideal. While not the most cost competitive, very solid ABA.	4.2	Large firm, the team proposed brought strengths but key gaps in coverage. Despite a very competitive price proposal, not appropriately qualified to handle this matter.	2.7	Boutique litigation firm with an extremely uncompetitive proposed fee. Their jurisdictional experiences are lacking.

DATA IS  
ILLUSTRATIVE ONLY

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## *“Predictability”*

- RFP requirements
- Convergence Counsel Programs
- Use of Procurement Professionals by In-House Counsel
- Budgeting /e-billing systems (with controls if over budget)
- Short List / Reverse Auctions
- Scorecards
- Periodic evaluations of outside counsel

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## *“Shared interests/ shared risk”*

### Benefits to Clients

- Cost savings
- Price certainty of legal spend
- Ease of invoice review & payments
- Risk sharing: aligned interests with the firm
- Partnering approach leading to expanded relationships
- Bottom Line = Value
  - Association of Corporate Counsel: [www.acc.com/valuechallenge](http://www.acc.com/valuechallenge)

### Benefits to Firms

- Typically firms receive an increased volume of work from current clients
- New clients
- Communication often increases with the client providing a strengthened relationship
- Increased profits via LPM

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# *“Transparency”*

## Pitfalls

- Wrong fee – Client feels it “overpaid” for really quick win
- Firm under budget and feels “underpaid”
- One or both parties mis-scope project

## Best Practices

- Communication
- Realistic Assumptions
- Staffing Agreement
- Budget (Involve Finance)
- Memorialized Terms
- Flexibility

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# *“Efficiency”*

## Legal Project Management

- Budgeting the case/transaction provides a roadmap
- LPM Team Lead
- Develop a workflow process document to provide the key steps, timing, and roles and responsibilities
- Staffing of matters or dockets is a key efficiency
- Technology: Matter Management Software
- Ongoing project reviews with the client

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## LPM Benefits

### For Clients

- Increase client satisfaction
- Improve client communications
- Enhance predictability – Deliver what the client wants on budget, on time, no surprises
- Create greater efficiencies
- Enhance quality of the work

### For the Firm

- Increase client satisfaction
- Improve efficiency
- Improve risk management
- Attract new business
- Ensure greater legal consistency

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## *“Value”*

- No surprises
- Clearly defined, communicated and agreed goals; Firm strategy, staffing and work plan directed to achieving a “successful” result
- Fees (actual, or maximums) determined in advance -- linked to value delivered, not effort expended

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## Value Based Billing: Overcoming Common Obstacles

- Value based billing does not really apply to my area of practice
  - Solution: Counseling, litigation, and transactional work all are very conducive to value based billing
- Litigation has so many unknowns at the outset, we could not utilize a fixed fee due to the uncertainty
  - Solution: Break case into phases; make explicit assumptions
- I feel that value based billing may encourage the use of inexperienced associates on my matters
  - Solution: Use holdbacks or other client satisfaction payments to alleviate such concerns
- Hourly rates are likely safer for me to use, as I could get a value based fee wrong
  - Solution: Start small and work up; utilize collars

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## Looking Ahead: Value Fee Related Transition Topics

- Billable hour requirements
- Staff attorneys programs
- Administrative functions moved to lower cost markets
- Legal project management training
- Limit attorneys on matters to core team members
- Discipline on value billing engagement intake approval
- Other transitions in your firms?

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## Open Forum

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