

Project: *Corporate Counsel — Legal Service Providers*

Panel: Saving Even More Budget Dollars By Aggregating Demand The eLawForum Way

Panelists: George S. Frazza, Of Counsel, Patterson, Belknap, Webb & Tyler LLP, former General Counsel and Executive Committee member, Johnson & Johnson, and Patrick J. Head, Partner, Williams, Montgomery & John Ltd., former Vice President & General Counsel, FMC Corporation.

[Editor's Note] In our September issue John B. Henry II, founder and CEO of eLawForum, described on page 50 the cost savings that could be achieved by corporate counsel by providing law firms the opportunity to make fixed fee bids on bundles of matters. In this issue, Messrs. Head and Frazza, drawing upon their experience as general counsel of major companies, describe the cost benefits that can be obtained through aggregation of demand when law firms handle multiple cases. Further information about eLawForum can be obtained on its website elawforum.com.



George S. Frazza

Head: It is one of the most basic principles of business. When I worked in the law department at Sears, I saw this principle applied every day in our main businesses. Sears used its market power with its suppliers to get the best prices. If you don't use your market power, it may as well not exist.

Editor: Where did you apply your demand aggregation strategy?

Head: I followed the numbers. I focused on where FMC's biggest legal costs were. That was litigation.

Editor: How did you apply your demand aggregation strategy?

Head: We used a regional rather than a national strategy. We broke our litigation down geographically into seven regions in the United States and offered packages of litigation to law firms in those seven regions. Each firm was asked to bid a "not to exceed" price for all FMC litigation pending in their region during the year. The portfolios included groups of cases in product liability, employment, commercial, both ongoing cases as well as new cases.

Editor: How much did you save?

Head: We reduced our cost by more than 25% in the first year. We renegotiated these seven regions each year with some competitive bidding and saved even more each year.

Editor: As Chairman of eLawForum's Advisory Board of former General Counsel, you were able to pass along the lessons you have learned.

Head: It's important to understand that eLawForum didn't start from scratch. eLawForum has built on the foundation of the most innovative things that been done before it went into business. From the first time I met John Henry — that was three years ago — I believed very strongly in eLawForum's mission. eLawForum is a continuation of what we did at FMC. The first thing I did was to help John form an Advisory Board of 33 former General Counsel who provide eLawForum with the advice of people who have run some of the largest law departments in the world.



Patrick J. Head

Editor: George, as a member of eLawForum's Advisory Board of former General Counsel, what insight were you able to give eLawForum from your experience as General Counsel of Johnson & Johnson?

Frazza: In complex multi-state litigation, the level of plaintiff lawyer compensation is usually determined by the result, i.e., a percentage of the recovery. Defense lawyer fees, on the other hand, are usually tied to billable hours, independent of either the efficiency with which the defense is conducted or the eventual outcome. This asymmetrical compensation has always bothered me and I have shared with eLawForum my experience in trying to level the playing field.

Editor: What did you do to shift the risk of the cost of legal services and the risk of the final result onto Johnson & Johnson's law firms?

Frazza: We collaborated with one of our primary law firms in devising a fee system, which while not eliminating the billable hour, tied it to the result. Johnson & Johnson voluntarily took a drug off the market because of an unexpected allergic reaction that occurred in a small percentage of patients. The reaction is known as *anaphylactoid*, a condition similar to that which some people experience when stung by a bee. The condition can be alleviated by the prompt administration of antihistamines or adrenalin. If untreated, it is often fatal. The withdrawal of the drug resulted in hundreds of cases and claims.

Editor: How did you tie the compensation of your outside counsel to the result?

Frazza: We worked closely with outside counsel to analyze our situation and devise a trial and settlement strategy. We asked outside counsel to give us their estimate of what the total cost would be to Johnson & Johnson — including indemnity payments and legal fees and expenses — if the cases were handled in the most efficient and effective fashion. The cases lent themselves to such a calculation because if a claimant had received timely treatment, he or she completely recovered. This happened in the

great majority of cases. Our outside firm arrived at a figure that we found realistic. We then added a twist. If the total cost came in below that figure, a substantial bonus would be paid to the law firm. If the cost exceeded the figure, there would be certain reductions in the hourly rate. The firm was motivated to work efficiently because legal fees were a component of the base figure. On the other hand, no matter how reasonable the fees were, the target could not be hit unless the defense team was successful in the trial and settlement of cases and claims.

Editor: Did you get good results and save money?

Frazza: When the smoke cleared, the target was achieved and we were pleased with the result. Johnson & Johnson saved millions of dollars.

Editor: What applicability does this experience have to other kinds of cases?

Frazza: The incentive system we used in this group of cases can work with other cases where the extent of the injuries can be readily determined, such as mass tort cases involving material damage.

Editor: Pat, what is eLawForum doing differently than you did at FMC?

Head: eLawForum is much more effective and efficient and does many more things than we ever dreamed of doing. We weren't able to create as robust a market. We didn't have the specialized knowledge management systems to identify every qualified law firm or the specialized Internet-based software — we used voice and paper — to open our competitions to a larger group of law firms. Our RFP was very rudimentary compared to what eLawForum does today. eLawForum's fixed fees shift the risk of the cost of the legal service to the law firm more than our caps did. eLawForum's five-year deals aggregate demand more than we did pricing year to year. Finally, we didn't have any of the natural advantages that go with being an intermediary.

Editor: George, what is eLawForum doing differently from what you did at Johnson & Johnson?

Frazza: I think eLawForum is doing a good job of helping General Counsel see the problem of buying legal services, matter by matter, hour by hour, and offering concrete solutions. eLawForum's deal-making service uses complex-problem solving skills in analyzing law department budgets to identify the best opportunities to aggregate demand for fixed fees. When I was General Counsel, this outside resource didn't exist.

Head: Aggregating demand allows the corporation to buy as an entity rather than as a group of individuals. eLawForum's creativity is helping our successors approach this challenge in a highly systematic way — 30 commercial litigation cases, 20 class actions, 500 patent prosecutions, 50 M&A transactions, etc.

Editor: What was the most important thing you accomplished as a General Counsel of a Fortune 500 corporation?

Head: I always viewed law as a business and, as FMC General Counsel, I had my eye on two numbers: the result and the cost to get it. My greatest accomplishment — and looking back what I'm most proud of by far — is the pioneering work we did in aggregating demand to reduce the cost of our outside legal services.

Editor: When did you start benchmarking outside legal costs?

Head: To begin with, you can't save money if you can't measure what you are spending. We couldn't have gotten to first base without good cost data. FMC was a pioneer in using data processing to document and control legal costs. In 1980, FMC automated legal cost information (fees, disbursements, liability payments and recoveries) by division, product line, practice area, firm, state, etc. We designed systems that are forerunners of what is now off the shelf. They permitted me to benchmark outside legal costs.

Editor: How did you use FMC's cost data to aggregate demand?

Head: When I became GC, FMC was using around 100 law firms. These firms were scattered across the country and across different business units. We had put a lot of energy into finding the best specialists for us. If we were unhappy with the results we were getting, we wouldn't have continued to use these firms. The problem was with how much we were paying to get those results. I thought it was a waste of time to negotiate "below" normal hourly rates without some way of controlling the number of hours. I believed that we could lower our costs by concentrating our legal work in the hands of fewer firms with a mechanism to ensure that the work would be performed more cost effectively.

Editor: What was the basis for your confidence that using fewer law firms would reduce your costs?