

# LITIGATION 2011

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## LITIGATION | PROJECT MANAGEMENT

*More and more big clients are pressing law firms  
to deliver greater value for the money they get.  
Firms, in turn, are increasingly employing  
project management strategies to meet those goals.*

By Susan Hansen

## ON THE RIGHT TRACK

**T**hink getting a group of litigators to perform their jobs more efficiently is tough? Matt Bohnen, a senior project manager at Shook, Hardy & Bacon, isn't daunted.

A former civil engineer, Bohnen, 37, previously helped manage the construction of oil refineries on the Gulf Coast for global engineering firm Black & Veatch. The job involved overseeing hundreds of workers and budgets worth hundreds of millions of dollars. It also required Bohnen to meet strict deadlines under the constant threat of accidents while keeping costs in line with estimates. "It makes project management in the legal industry look like a walk in the park," Bohnen says.

Bohnen, who now oversees major litigation involving

drug- and medical device-related claims, had no background in law when he joined Shook, Hardy & Bacon in 2000. He does have a master's degree in business administration, though, and he contends that the basic principles involved in managing the construction of an oil refinery and managing a massive drug injury case are the same. "The heart of it, no matter what kind of project you're working on," he says, "is making sure you have the right people, processes, and schedule in place to get it done in the most cost-efficient way."

JUST FIVE YEARS AGO, IT would have been hard to find more than a handful of law firms that knew what project management was, much less actually deployed project

managers to help figure out ways to handle major litigation matters more efficiently.

But in the wake of the financial crisis and resulting downturn, something fundamental appears to have changed: More and more big clients aren't just idly complaining about hourly billing and steep outside legal costs. They're demanding that outside firms accept alternative fee agreements or otherwise deliver greater value for the money they earn.

Firms in turn are being forced to rethink the way they handle major litigation. That's where project management comes in. The basic steps involved—clearly defining parameters and goals; laying out a detailed action plan, timetable, and budget for achieving those goals—aren't

revolutionary. “This is a long-standing, well-understood discipline in other parts of the business world,” notes Susan Hackett, senior vice president and general counsel of the Association of Corporate Counsel.

For most law firms, though, the concept of project management is still new. And in the past few years, a growing army of consultants has emerged to teach lawyers how to apply project management techniques to litigation as well as to other parts of their practice in order to meet clients’ growing demands for more cost-efficient services and more predictable costs.

The process hasn’t been easy. As consultant Jim Hassett, who trains law firms in project management, notes, many lawyers have zero interest in change. They see project management as yet another “flavor of the month” legal industry fad, Hassett says, and “would just like to see it go away.”

That said, there is a small group of what Hassett and other consultants call “early adopters”—firms that are not only applying project management principles, but touting their commitment to managing litigation more efficiently as a way to distinguish themselves from competitors.

A few firms such as Shook, Hardy and Seyfarth Shaw—call them extra-early adopters—bought into the concept well before 2008 and had a team of professional project managers on staff even before the recession hit. Others, including Dechert; Morgan, Lewis & Bockius; and Squire, Sanders & Dempsey, have climbed aboard the project management bandwagon a bit more recently.

What project management means in practice—and how it affects the way big suits are handled—varies widely. Yet leaders of firms that are deploying it contend that the various project management tools and techniques they’re using help to reduce the time lawyers

spend on matters—and produce happier clients. With more and more work coming from fixed or alternative fees, project management is also seen as essential to maintaining profitability. Alternative fees now make up roughly a quarter of total revenues at Seyfarth, almost a third at Shook, Hardy, and a fast-growing portion of billings at Dechert and many other firms. “We’re really talking about a whole new mind-set and way of doing business,” says Seyfarth chair Stephen Poor, who sees project management as a key part of a broader Six Sigma-inspired initiative, called Seyfarth Lean, aimed at streamlining how the firm handles litigation and other matters and better serving clients’ needs.

In one example, Seyfarth recently tapped project manager John Duggan to design a cost-effective way of gathering 400 employee declarations as part of the firm’s bid to defeat class certification in a massive wage and hour-related suit brought against a major client. Brett Bartlett, the billing attorney on the matter, recalls that it was a huge task that required Seyfarth to interview company managers around the country about their responsibilities and show that plaintiffs weren’t entitled to a class action. And it all had to be done in four weeks. “Had the at-

torneys been left to their own devices, it would have been almost impossible to do it efficiently”—and the costs would have been prohibitive, says Bartlett, who declined to name the client.

Duggan devised a plan that included mobilizing 15 attorneys from various Seyfarth offices, and creating a detailed schedule for the employee interviews. Thanks to Duggan’s efforts, Bartlett says, each attorney was able to complete three declarations per day on average—and the firm met the four-week deadline.

Bartlett says that project managers like Duggan have become so central to



Shook, Hardy’s Bohnen (left) says alternative fees create new pressures. Of project management, the ACC’s Hackett says law firms are learning what other businesses already know.

Seyfarth’s efficiency drive that he and other partners have begun taking them along on some key client pitches to help explain the Seyfarth Lean approach to litigation. The marketing efforts appear to be paying off: Bartlett says one pitch meeting that Duggan went on last year helped the firm land work on a wage and hour class action for a major retailer, which has since hired Seyfarth to defend two other major cases. (He declined to identify the client.)

Shook, Hardy is also on a major cost-efficiency campaign, an effort that’s become especially critical now that so much of the firm’s revenue comes via flat or alternative fees. “We’ve really had to break away from the traditional way of doing things,” says chair John Murphy. One example: a multidistrict litigation matter involving some 85 separate product liability cases that the firm recently took on. The client, which Bohnen declined to identify, had retained Shook, Hardy to handle roughly 300 depositions in the matter, and was paying it a flat fee for the work, which had to be completed in under three months.

Bohnen recalls that his first step as project manager was to work with the billing attorney to craft a budget. He then helped assemble a team that included eight to ten attorneys from various Shook, Hardy offices, as well as four nurses drawn from the firm’s staff of analysts. (Altogether the firm employs roughly 20 nurses, along with biologists,

“We’re really talking about a whole new mind-set,” says Seyfarth chair Stephen Poor.

geneticists, and other scientific experts, to help it analyze toxic injury claims and other technical issues.)

To limit the time that lawyers spent preparing for depositions, the nurses did an initial review of the plaintiffs' medical files. "They did the heavy duty work of summarizing medical records and flagging the things that they knew attorneys might want to pursue in the depositions," says Bohnen. Not only did it help speed up the job, the nurses' work also helped lower expenses on the depositions, since their time cost less than the lawyers'.

Once he mapped out a schedule for all 300 depositions, Bohnen made a plan for tracking the work. "We had weekly reporting," says Bohnen, "so we could make sure we stayed on schedule and also see how much time we were spending on each deposition"—critical information since the firm was getting a fixed fee. "With alternative fees, you're taking on much more risk," he adds, "and that means you really need to keep on top of things and make sure things aren't going over budget."

GEORGE GORDON, WHO HEADS the antitrust group at Dechert, can certainly relate. He just got his own education in handling a major litigation on a flat/performance-based fee.

**Applying project management techniques, says Dechert's Gordon, "really imposes discipline on the process."**

Originally Dechert's client—Medela, Inc., the world's leading maker of breast pumps—had been paying Dechert a standard hourly rate for the firm's work in fending off a 2006 class action brought by consumer groups alleging that Medela and other baby goods manufacturers had conspired with Babies R Us to fix prices.

Yet three years into the case, with Dechert's fees piling up and no end to

the litigation in sight, Medela president Carr Lane Quackenbush persuaded Gordon to switch to an alternative fee arrangement for the remaining legal work. Fortunately for Gordon, Dechert had by then begun to train all its lawyers in project management. So Gordon at least had a basic road map for how to control costs and better organize the tasks yet to be performed. "In order to make this work, we needed to put some project management tools in place," he says.

Gordon compiled a list of the half-dozen key remaining tasks—including expert discovery, a summary judgment motion, and a motion to sever Medela from the other defendants in the case—and a budget for each one.

Under the agreement with Quackenbush, if costs exceeded the budget for a given task, Dechert would receive only 35 percent of its fees up front; the rest would go into a so-called hold-back pool, to be paid out later, if the firm met various success metrics in the litigation. "He wanted us to have skin in the game if we went over budget," says Gordon, who adds that the arrangement did provide a powerful incentive for closely tracking attorney time and costs.

Each task was assigned a code, and Gordon received regular reports showing, by code, what the status was, where costs stood, and what remained to be done. He was also in frequent contact with the attorneys working on the matter, trying to figure out ways to handle the work more efficiently.

When getting ready to prepare expert witnesses on the economic issues in the litigation, for instance, Gordon and the rest of the litigation team decided not to review all the available literature. "We were trying to be smarter about how we cast the net for material," says Gordon. "Before we might have looked at 100 documents, and 20 of them were useful. Here we were maybe only looking at a total of 35 documents, but we'd still find what we needed."

Despite those efforts, Gordon says that the firm still went about 30 percent over budget on the expert discovery portion of the case. In the end, everything turned out for the best. Because Dechert met Quackenbush's goal of settling the matter before it went to summary judgment, the firm got all the money in the hold-back pool, plus a 30 percent premium on its fees.

Plus, Quackenbush's earlier frustration at how the litigation was dragging on notwithstanding, Dechert wound up with a satisfied client. Quackenbush clearly sees the benefits of project management, though in his view it's really just a means to an end. "We only care about the outcome," he says, adding that his main goal was to "get the hell out of the case" and stop the hemorrhaging of legal fees, which he says were costing the company "millions and millions of dollars."

Once the new fee arrangement was in place, Quackenbush adds, Dechert increased its efforts to both cut costs and bring the litigation to a close, and the client-lawyer relationship improved. "At the end we were like a machine working together," he says.

Now that he's had firsthand project management experience, Gordon has become a believer. "It really imposes discipline on the process," he says, and "forces you to do things a lot smarter." ■