
Yearly Fee System Helped Tyco's Legal Department Put It All Together

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November 19, 2009

[EDITOR'S NOTE: After the global financial crisis, cost-cutting has become the No. 1 priority for corporate legal departments. Part III of a five-part Corporate Counsel series on controlling outside legal costs focuses on measures taken by Tyco. [Click here](#) to read Part II.]

As a highly diversified manufacturer, [Tyco International Ltd.](#) sees plenty of lawsuits every year. About five years ago, the company decided to switch almost all of its outside legal work over to an alternative fee structure, says David Nicholas, senior litigation counsel.

The Tyco system works like this: All work of a certain type is bundled together, and the company then negotiates a yearly fee to handle all of it. For example, all Tyco product liability cases are handled by one firm, [Shook, Hardy & Bacon](#). Shook lawyers still track their time working those cases, but only to figure out the cost. And, should the firm come in over or under their hourly target for the year, Tyco and Shook split the difference.

For Nicholas, alternative fees are all about efficiency. Simply put, hourly billing "has become inefficient," he says. With alternative billing, he says, "we get the best service for the right price." This system, says Nicholas, gives an incentive to outside lawyers to build toward an end game. "We get together with outside counsel and talk about it: Is this case one that we should try to get dismissed, take to trial, or settle?" he says.

Both Nicholas and Shook litigation partner Michael Roberts say that trust is the crucial ingredient to making alternative arrangements work. "We both have to believe that one's not going to take advantage of the other," says Nicholas. For the outside firm, it's important to believe that they'll be paid fairly, and a GC needs to know that outside counsel will give each case the attention it deserves.

Shook, Hardy & Bacon has been handling Tyco's product liability docket under a fixed-fee agreement for five years running. (Not for nothing, our sibling publication [The American Lawyer](#) named it product liability litigation firm for 2008.) "Our first year was a challenge," says Roberts. "We had to learn all of Tyco's [product liability] cases—some which were about to head to trial—very quickly, and we had to work out the right staffing for each case."

Also See: ['Draconian' Measures: Top Lawyers Give Tips on Watching the Wallet \(from CC\)](#)

Also See: [Are Companies That Outsource Buying a Load of Trouble? \(from CC\)](#)

But with experience, both Tyco and the Shook lawyers became more comfortable with the new way of doing things. These days they're quickly able to get together and assess how long a case is likely to last, and whether it might settle or be disposed of with a motion. Nicholas is happy because he's better able to predict his outside counsel costs. Roberts is satisfied because Shook, Hardy gets steady work and vested ownership in cases.

"Though I don't think there will ever be a one-size-fits-all billing solution, I definitely think that what we're doing is the wave of the future," says Roberts.