

News Release

ACC CONTACT:

Susan Jacobsen (Office: 202.349.1509; Mobile: 202.251.8184)
jacobsen@acc.com

SERENGETI LAW CONTACT:

Rob Thomas (Office: 425.748.5115)
rob.thomas@serengetilaw.com

IN-HOUSE COUNSEL BECOMING BOLDER --- REQUIRING MORE FROM THEIR OUTSIDE COUNSEL

Frustrated with Rising Costs & Inexperienced Lawyers, the Eighth Annual ACC/Serengeti 'Managing Outside Counsel Survey' Reveals In-House Counsel are Taking Action

OCTOBER 20, 2008 (Seattle, WA/Washington, DC) — Over the past eight years, more in-house counsel have required specific terms of retention that govern what they expect from their outside counsel, according to the results of the *2008 ACC/Serengeti Managing Outside Counsel Survey*, a collaboration between the [Association of Corporate Counsel](#) (ACC) and [Serengeti Law](#), released at ACC's Annual Meeting, October 20 in Seattle, WA. Gone are the days when in-house counsel send out major projects to outside counsel, pay vague bills "for services rendered," and remain uninvolved while outside counsel do whatever they think is necessary. Seeking to find out how in-house counsel were managing the work being done by outside counsel, and to gather metrics regarding the management techniques being used, the annual survey collected objective data from in-house counsel to assess the methods undertaken to better manage their work with outside counsel.

As to the most significant areas of change, in-house counsel "have become more systematic in the ways that they manage their work with outside counsel." Specifically, they are applying basic vendor management techniques (project plans, budgets, results tracking, etc.) already used in departments of the company other than the law department.

"Year after year in-house counsel voice their frustration and finally, they are taking action," explains ACC President Frederick J. Krebs. "In-house counsel face increased pressure and scrutiny from internal management to lower their costs and this year's survey results further validate the need to reconnect value to costs for legal services. Many in-house counsel have become engaged in the [ACC Value Challenge](#), an initiative designed to align law firm business models with what corporate clients want and need. We are intent on promoting a dialog within the legal profession to change the way corporations and their law firms think about the relationship between the cost of legal services and the value delivered."

This year's results reveal that roughly "one-fourth of in-house counsel are more actively managing outside counsel than the majority of their peers." Such activities include convergence (reducing the number of firms with which they work on a regular basis); issuing competitive bids for new work; requiring minimum levels of experience of associates working on their projects; getting discounts for

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early payment of bills; and systematically evaluating the performance of their outside counsel. In general, this representative group of in-house counsel have been creating new ways to manage their work with outside counsel, using techniques that their less activist peers have yet to try.

Another major change during the past four years is the increase in time and energy demanded by compliance issues, including periodic reporting on legal spending and developments. A key area that remains unchanged is the traditional way in which outside counsel are compensated—hourly billing. The primary driver of legal costs is outside legal spending, which is roughly double the spending on in-house counsel.

“During the past several years, the ratio of outside spending to in-house spending has decreased, reflecting the increasing value of in-house counsel and the legal work being done in-house,” reports Serengeti’s Rob Thomas, the author of the survey Report. “While median spending on the law department is at one of the highest levels in eight years, median spending on outside counsel is at the lowest level. Similarly, the median increase in outside legal spending this past year was the lowest in the history of the survey. Continual annual increases in outside counsel hourly rates, and the growing rate of such increases, are having a negative impact on the volume of work being sent to outside counsel.”

More than 2,000 law departments have completed the *ACC/Serengeti* survey since its inception in 2000, describing their experiences working with outside counsel. The survey questionnaire has become a living document, changing to reflect the latest developing areas of activity among ACC law departments. Each year, the survey report analyzes the data collected regarding new developments, while also comparing the current year’s data with prior years. In-house counsel can compare their management techniques and results with those of other law departments. Where their performance differs from the benchmarks established by this survey, in-house counsel can assess whether they should modify their current practices or adopt new practices. The following general conclusions present some of the more significant areas of change, as well as some of the constants, over the past eight years.

IN-HOUSE COUNSEL ARE SETTING MORE RULES FOR THEIR RELATIONSHIPS WITH OUTSIDE COUNSEL.

Over the past eight years, more in-house counsel have required specific terms of retention that govern what they expect from their outside counsel. This survey collects information on more than 20 specific categories of retention terms, including financial and budget terms, early assessments and regular updates, technology expectations, and required pre-approval of changes to legal teams or rates. Across the board, the use of each retention term has generally increased over time (with some leveling off during the past several years). It is likely that this trend will continue, as many in-house counsel state that they are planning to require even more of their firms in the future.

IN-HOUSE COUNSEL ARE TERMINATING RELATIONSHIPS WITH THEIR UNDERPERFORMING OUTSIDE COUNSEL.

Over 40 percent of in-house counsel now state that they have terminated relationships with some of their outside counsel during the prior year. This is actually lower than prior years, perhaps because in-house counsel are less willing to terminate, or have already terminated poor performing outside counsel. Specific reasons for termination are what would normally be expected: lack of responsiveness, costs that were too high and poor work product or results. Other areas of dissatisfaction leading to termination are communication and personality issues, now cited by one-third of in-house counsel as a reason for termination. An important message for law firms is that they should consider redirecting at least part of the time and money that they are spending on new client marketing, to assess and address existing client concerns.

BUDGETS ARE WIDELY USED TO CLARIFY EXPECTATIONS & MONITOR PERFORMANCE.

Approximately two-thirds of in-house counsel require at least some budgets, and on average, budgets are now required for about half of the projects that they manage. The use of budgets, which has grown significantly since the survey began, has leveled off in recent years. Budgets not only clarify spending expectations between client and outside counsel, but also provide milestones against which to determine whether projects are going as expected. Budgets are also driving in-house counsel to technologies that ease budget administration, including electronic billing systems that automatically compare bills with budgets as part of the bill review process.

IN-HOUSE COUNSEL ARE MORE CAREFULLY MONITORING WORK THAT IS OUTSOURCED.

In-house counsel expect outside counsel to keep them informed on a regular basis, when there are major developments that require decisions, and if there is a change in projected spending or staffing. They are more likely to require that outside counsel provide an early assessment and plan, a budget, reports showing progress against the plan and budget, and a summary of results achieved and lessons learned. In-house counsel generally believe that outside counsel will be more effective and efficient if the client is kept well-informed and is involved in strategic decisions.

IN-HOUSE COUNSEL ARE USING MORE SOPHISTICATED TECHNOLOGY TO TRACK THE ACTIVITIES OF OUTSIDE COUNSEL, AND HAVE PLANS TO DO MORE.

Although many in-house counsel still use home-grown spreadsheets or other internal management software, a growing number are moving toward Internet-based systems that help them to better collaborate directly with outside counsel. Even more in-house counsel say that they plan to use such systems to exchange information on a regular basis with outside counsel, including electronic billing to track spending, budgets and accruals. The use of extranets provided by law firms (that require clients to go to multiple law firm sites for information) has significantly declined in recent years after several years of growth.

CONVERGENCE CONTINUES TO BE COMMON, BUT OFTEN JUST MEETS EXPECTATIONS.

Convergence (reducing the number of law firms with which a company works on a regular basis) continues to be a management technique used by about one-fourth of in-house counsel in any given year. These law departments generally hope to achieve efficiencies, better rates, and better work by having a smaller number of law firms that provide most of their legal work. This practice appears to have been effective in keeping the number of law firms representing specific companies constant or lower over time. However, convergence does not appear to be gaining momentum, with fairly constant numbers year-to-year, and most companies stating that it met, but did not exceed, their expectations.

ALTHOUGH HOURLY RATES STILL PREDOMINATE, MANY CORPORATE CLIENTS ARE GETTING DISCOUNTED RATES.

Despite a significant amount of negative publicity regarding the reverse incentives associated with billing by the hour, the vast majority of corporate legal work is still done under hourly rates, either standard or discounted. However, many corporate clients appear to be having success in getting discounted hourly rates from their law firms. It is also interesting to note that the percentage of in-house counsel who do not use alternatives to hourly-based fees is gradually increasing, indicating that billing by the hour is becoming even more entrenched.

ALTHOUGH IN-HOUSE COUNSEL WERE HAVING SOME EFFECT ON KEEPING THE INCREASES IN HOURLY RATES LOW, HOURLY RATES ARE INCREASING AGAIN, LEADING TO LESS WORK GOING TO OUTSIDE COUNSEL.

For four years, in-house counsel reported declining percentage increases in the hourly rates charged by outside counsel. Although spending on outside counsel was increasing each year, in-house counsel were having some success in keeping the hourly rate increases in check. However, during the past four years this trend has reversed, with higher rates of increase in hourly rates creeping back up to levels last seen in 2001. In addition, in-house counsel project an increase in hourly rates during the coming year, similar to the significant increase projected last year. If, as in past years, in-house counsel have underestimated such increases, the rate of increase will continue the upward trend during the coming year. These results may be indicative of a shift in the balance of bargaining power between in-house counsel who need high quality legal work and their outside counsel who are uniquely positioned to provide such services, as well as in-house counsel concerns with compliance issues requiring the assistance of outside counsel. However, this increase in rates may also be causing in-house counsel to be more selective in the work being sent to outside counsel. Median outside counsel spending is lower, and the prediction is that it will not increase during the coming year.

OUTSIDE COUNSEL SPENDING HAS BEEN A TOP CONCERN OF IN-HOUSE COUNSEL, BUT IS BEING SURPASSED BY THOSE BUSINESS ACTIVITIES WITH LEGAL IMPLICATIONS.

Up until four years ago, the top concern cited most frequently by in-house counsel was controlling outside legal expense. Although this concern remains at a high level, it has been overtaken during the past four years by concerns about keeping track of company activities that might have legal implications. The increasing complexity of regulatory requirements driven by Sarbanes-Oxley and related laws, along with a series of high profile trials involving executives and in-house counsel, have undoubtedly heightened concerns regarding legal compliance issues. This change in priorities may have a ripple effect through relationships with outside counsel, making in-house counsel more likely to bring in outside help and less sensitive to higher hourly rates, as indicated in other parts of the year's survey.

IN GENERAL, IN-HOUSE COUNSEL HAVE NOT YET PUT THE NECESSARY SYSTEMS IN PLACE TO MEET THEIR NEW REPORTING OBLIGATIONS.

With the growing concerns over compliance, the survey has included specific questions about law department compliance reporting obligations and how they are being met. The vast majority of law departments must provide periodic reports about legal spending, accruals, liability exposure, legal matter status and legal results; and are required to provide immediate updates if there is a material development. However, a primary challenge is that such information originates from the many law firms that are handling the company's legal work. Law departments, many of which have to certify that their systems have no material deficiencies, admit that they generally use e-mail, phone, paper correspondence and other manual systems to collect and report on such information. Many also admit that their systems lack basic safeguards, such as verification of data entered and spreadsheet formulas, and maintenance of an audit trail. Law departments are now considering new technologies to collect information directly from their outside counsel to better comply with these new reporting requirements.

Survey Methodology & Respondent Demographics:

The survey was conducted online in two parts: one survey to collect hourly rate data, and another for the rest of the survey questions. The responses to the non-hourly rate survey were provided during May and June, and the responses to the hourly rate survey were provided in August and September. Data received in response to the online survey questionnaires were compiled in databases, from which tables and analyses of the data for all of the survey questions were created.

- *There were 337 law departments that completed the non-hourly rate portion of the survey; hourly rate tables were provided by an additional 108 law departments.*

- Respondents who are General Counsel constitute 70% of the respondents, and “assistant general counsel/staff attorney” constitute 21%. The remaining respondents include law department administrators and other in-house counsel titles.
- The breakdown of respondents by company size is: “small” companies (less than \$100 million in annual revenues)—30.3%; “medium” companies (\$100 million to \$1 billion in annual revenues)—37.9%; and “large” companies (over \$1 billion in annual revenues)—31.8%. [Compared with last year, there is a higher percentage of small companies this year (28.4% last year), and a smaller percentage of large companies (33% last year).
- 33.6% of the respondent law departments were small (one attorney or no attorneys); 50.7% were medium (two to ten attorneys); and 15.7% were large (more than ten attorneys).

About ACC

The Association of Corporate Counsel (ACC) is the only professional organization focused on the needs of in-house counsel. ACC promotes the common interests of its members, provides resources to help save, time money and effort, contributes to their continuing education and provides a voice on issues of national importance. With nearly 25,000 members in over 80 countries, employed by over 10,000 organizations, [ACC's community](#) connects its members to the people and resources necessary for both personal and professional growth. *By in-house counsel, for in-house counsel*[®]

About Serengeti Law

Serengeti Law provides Serengeti Tracker[®], the highest-rated and most widely used system for both electronic billing and matter management in recent surveys of both law departments and law firms. Tracker[®] includes electronic bill review/auditing, online legal project collaboration (including documents, contacts, deadlines, and status), automated budget management, and contract management. In-house counsel quickly generate configurable management reports to analyze trends in project inventory, monitor spending, track budgets, assess developing areas of exposure, and compare results. With only an Internet connection and an hour of training, hundreds of law departments save both time and money by working online with all of their outside counsel, including over 16,000 law firm offices in more than 160 countries worldwide. More information is available at: www.serengetilaw.com

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EDITOR’S NOTE: For more information, please contact Susan Jacobsen on-site at the ACC Annual Meeting at (202) 251-8184; Copies of the Executive Summary are available to members of the press. The full Survey Report is available on CD from Serengeti (order form available at: www.serengetilaw.com).