



**2014 CLM Annual Conference**

**April 9, 2014 – April 11, 2014**

**Boca Raton Resort  
501 E. Camino Real  
Boca Raton, FL 33432**

**Roundtable 2: Thursday, April 10, 2014 (11:30 am – 12:30 pm)**

**Don't Be Afraid of the Hourly Rate or the Alternative Fee Arrangement:  
Put Together the Right Team and the Right Incentives**

- I. Introduction
- II. Value and Service Insurance Co. – Hypothetical

Value and Service Insurance Co. is a national underwriter in commercial property and casualty risks as well as personal lines, property and casualty risks. Value and Service underwrite these risks either directly or through subsidiaries.

They recently decided to enter the miscellaneous professional liability segment of the industry and purchased the renewal book of business from a small underwriter who fell upon hard times and is now in run off. Value and Service administers all of these property and casualty claims with their own claim personnel. However, with respect to the newly acquired miscellaneous professional liability book, they will start outsourcing the administration of those claims to a TPA. After a year or so, the Head of Claims for Service & Value wants to build a staff and bring the administration of those claims “in-house” as well.

Value and Service sent Requests for Proposals to your law firm, posing a number of questions for response about your potential representation of Value and Service, and their insureds, both on an hourly fee basis and on a fixed fee basis.

- III. Formulating the RFP for a fixed Fee Relationship.

Once the decision has been made to proceed forward with an AFA, putting the right attorney and support team together is the singularly most important task facing the law firm to enhance the overall success of the forthcoming AFA relationship. As is the case in all professional

relationships, success, mediocrity or failure is totally dependent on the quality and attitude of the people interfacing in that relationship.

From the law firm perspective, the very first thing that will be communicated to the team members is the total commitment of the firm's leadership and resources to the forthcoming relationship. There can be no half-hearted attitudes coming from the top and the nature of: "we are going to try this, and see how it comes out." The approach that has to be communicated by the leadership is that the firm is totally committed and indeed is excited about this arrangement and engagement with the particular client, whether an insurance carrier or a self-insured enterprise.

When it comes to the composition of the attorney and support staff team that will be assembled to execute the relationship, an account responsible attorney is appointed to be the person who will be the primary contact firm representative with the client and the client's team members for all matters pertaining to initial assignments, appointing the "right attorney with the right case" and the periodical implementation and evaluation conferences that will take place with the client. Needless to say, the account responsible attorney must be a member of the firm's leadership core that is a total "believer" and "fan" of alternative fee relationships.

Finally, when it comes to the composition of the various attorney team members, the account responsible attorney has to pick people with the appropriate expertise and experience level who have the appropriate "attitude" toward AFA's, a passion for service, and a claim resolution mindset.

- A) What information will the claim executive require and evaluate on a fixed fee proposal?
- 1) Personnel & Geography
    - a) What attorneys will work on the claims for each line of business?
    - b) What are the attorneys' experience levels in the subject areas of practice?
    - c) What level of difficulty do the attorneys customarily handle?
    - d) What is the trial experience of each lawyer who will work on the program business?
    - e) Who will act as the "relationship manager" for the firm, i.e., receive all assignments and deliver appropriate attorney, manage performance issues, and oversee billing issues?
    - f) How will associates be utilized?
    - g) Is the firm willing to honor the carrier's request for a specific attorney?
    - h) Obtain disciplinary and malpractice history, if any, for all program attorneys.
    - i) What counties/states can you service?
  - 2) Economic considerations
    - a) What is the firm's financial position? Are they in a position to manage the cash flow created by the billing structure?
    - b) Is the firm financially stable?
    - c) Does the firm have prior experience with AFA? How did it work for them? What challenges did they face?
  - 3) Billing/Technology

- a) Is the firm willing and able to use the carrier's billing platform?
    - b) Will the firm maintain shadow billing on all matters even when AFA's are used?
    - c) Does the firm utilize any litigation management software?
  - 4) Confidentiality
    - a) Does the firm agree to maintain confidentiality of the program?
  - 5) Mindset
    - a) Is the firm willing to maximize effectiveness by strict resolution planning on each claim?
- B) What considerations must the law firm undertake in order to enhance success of an Alternative Fee Partnership?
- 1) Personnel considerations
    - a) Do we have the necessary expertise?
    - b) Do we have the necessary attitude and practice culture?
    - c) Do we have a history of relationship with the carrier?
    - d) Do we have existing professional relationships with the carrier's claim executives to whom we will be accountable?
  - 2) Putting the team together
    - a) Account responsible attorney
    - b) Team members
      - Practice group expertise
      - AFA attitude
      - AFA experience
    - c) Administrators
      - Billing
      - Paralegals
  - 3) Economic considerations
    - a) How much information has the carrier given with the RFP or that we have requested?
    - b) Number of expected cases and specific risk types (Auto, GL, Professional Liability)?
    - c) Geographical area to be covered?
    - d) What compensation culture does the firm have?
    - e) Cash flow and methods of payment?
  - 4) What pricing considerations are available?
    - a) Aggregate Yearly Retainer
    - b) Fixed Fee per case
    - c) Fixed fee per phase

- d) Risk collars
  - e) Performance Bonuses/Penalties
- 5) Miscellaneous
- a) Is carrier committed to assignments of all arisings rather than a selective number of cases?
  - b) How will conflicts be handled?
  - c) Will the proposal include the transfer of pending cases in various stages of life?
  - d) What internal metrics do we have and what kind of statistical numbers have we historically kept with respect to each line of risk?

IV. Formulating the RFP from the standpoint of Value and Service Insurance Co. eliciting a proposal based on an hourly fee structure.

There is a perception that permeates our industry that the only way to get cost effective representation is through the use of an alternative fee arrangement. We would submit that this is a fallacy. Through a clear understanding of client expectations and clear billing guidelines an hourly rate can be a very cost effective way to handle litigation.

While alternative billing methods make sense for some cases, billing hourly is not something that should be avoided at all costs. Hourly billing results in attorney's setting out descriptive time records; typically broken down into tasks with appropriate coding so the bill will be accepted and timely paid.

Alternative fee arrangements rarely require descriptive time entries by attorneys. As such, it becomes difficult to actually determine what has been done on a case. Attorneys may avoid certain work that might be beneficial to the client in order to resolve the case quickly. Clients may demand more legal work than would be necessary.

When you bill in time increments, you are providing an easy measure for firms to track their lawyers and their file handling and you allow carriers and corporations the ability to track costs and file handling. Billing data is important to all parties involved.

- A) What questions will the claim executive want posed on the hourly fee proposal?
- 1) Personnel considerations
    - a) Will we be able to choose our own attorneys – or at least the level of attorney - or will the firm assign cases to the attorney of their choice?
    - b) Do the attorneys have the expertise with the type of work we will be sending to the firm?
    - c) Does the firm have the ability to handle our work?
    - d) Do we have a history with the firm? Who will we report to within the firm?
    - e) Do we have a relationship with the attorneys?
  - 2) Economic considerations
    - a) What is the billable rate of the attorneys?
    - b) On average how many files does each attorney handle?
    - c) How many hours is each attorney required to bill?

- d) Is there something in the billing model that conflicts with what the carrier would want as a client? For example, if we only want one attorney handling a case, does that model work in the firm?
  - e) What is the billable rate of support staff? What support staff have a billable rate?
  - f) On average, when can it be expected that a case will be closed?
  - g) Can the firm cover the geographical area required?
  - h) Can the firm accommodate billing requirements?
- 3) What pricing considerations are available
- a) Will associates be billed at a lower rate than partners?
  - b) Will there be different rates for different types of cases?
  - c) Can we designate tasks for attorneys and paralegals to handle on cases?
  - d) Will some expenses be treated as firm overhead instead of being billed (i.e., postage, copies, etc.)?
  - e) How will work be billed?
  - f) How is travel handled?
  - g) Will the firm allow outside questions to be asked without billing involved?
  - h) Can there be a per diem rate if the case goes to trial?
- 4) Miscellaneous
- a) What is the firm's protocol on filing handling? Will they provide a litigation and trial plan in advance?
  - b) Do we want a budget? Does the firm charge for preparing a budget?
- B) What considerations must the firm undertake in order to respond positively to the requested fee proposal?
- 1) Personnel considerations
- a) Do we have the necessary expertise and time to accommodate the client?
  - b) Can cases be freely assigned or do they have to go to specific attorneys?
  - c) Do we have the necessary support staff to accommodate the client?
  - d) Do we have a history or relationship with the carrier? Who will be our account responsible person?
  - e) Do we have existing professional relationships with the carrier's claim executives to whom we will be accountable?
  - f) What kind of volume will be sent? Will we need to hire staff?
- 2) Economic considerations
- a) How much information has the carrier given with the RFP? Does the carrier have guidelines?
  - b) Number of expected cases and specific risk types (Auto, GL, Professional Liability)?
  - c) Geographical area to be covered?
  - d) How are lengthy questions from the client on unassigned cases going to be handled?
  - e) Budget requirements, if any?

- f) Cash flow and methods of payment?
- 3) What pricing considerations are available
  - a) Are attorneys given different rates based on their experience?
  - b) Are attorneys given different rates based on the type of case they handle (i.e., auto, malpractice, etc.)
  - c) What are the rates for support staff, secretaries and/or paralegals?
  - d) How will miscellaneous expenses be handled (i.e., postage, copies, etc.)
  - e) How is travel handled (mileage and actual time to travel)?
  - f) What will the client agree is billable vs. non billable?
  - g) How will work be billed?
  - h) Is there a budget requirement and will it affect the hourly rate?
- 4) Miscellaneous
  - a) What are the client requirements for file handling?
  - b) Does the client have any guidelines outlining billing procedures?
  - c) Will billing be via paper invoicing or through an electronic source?
  - d) Will bills be audited; if so, in what manner?

V. Conclusion