



STATE OF THE PROFESSION REPORT:

How Corporations Identify, Evaluate and Select Outside Counsel

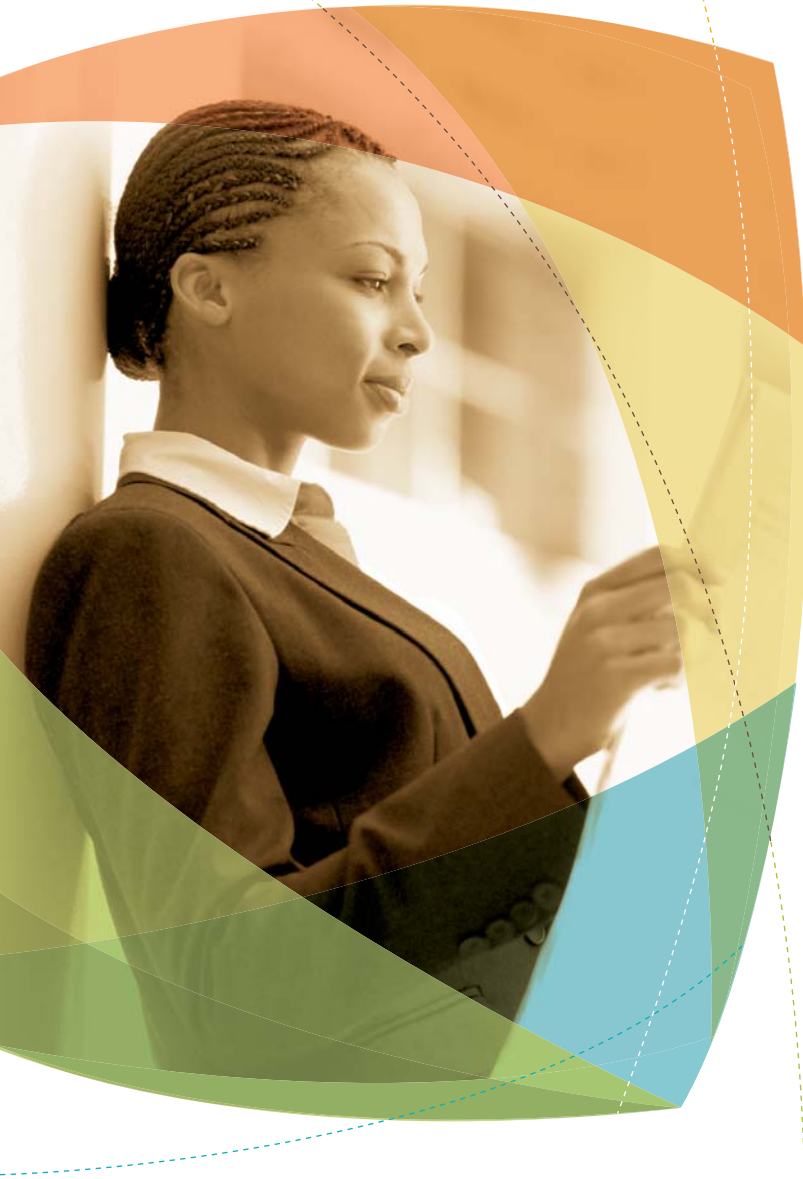


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Introduction

In-house counsel and their outside legal advisers continue to strive for the perfectly balanced relationship, one that is beneficial to both parties. The inception of that relationship often begins long before the first matter is actually assigned — through an introduction at a professional event, a referral from a business associate or even an encounter on the opposite side of the bargaining table.

LexisNexis Martindale-Hubbell is the trusted resource for connecting the global legal profession, delivering the introductions and insights decision makers need to succeed in the business and practice of law. Martindale-Hubbell operates at the nexus of inside and outside counsel, facilitating introductions between legal professionals. In the spring of 2005, we decided to look more closely at the factors influencing the evolution from initial introduction to a committed, long-term partnership between a company and its outside counsel. With the objective of facilitating better matches between both parties, we sought to fully understand both the tangible and intangible factors to which in-house counsel react. This “State of the Profession Report: How Corporations Identify, Evaluate and Select Outside Counsel” is the result. You will find both surprises and affirmations in its content.

With this report Martindale-Hubbell launches a series of research initiatives designed to identify, define and explore emerging issues within the legal profession — in particular, those areas of common ground between corporate counsel and outside law firms. We hope this study and those that follow will provide valuable insights for both in-house and outside counsel and foster meaningful and productive professional relationships.

The Results

The findings offer useful insights as to how in-house counsel make hiring decisions and what factors influence the final selection of outside counsel, including:

- The growing partnership between the general counsel and the CEO
- The perceived nature of risk involved in the matter
- Referral sources and decision-making tools
- The value of attorney and firm expertise
- Types of work outsourced
- A company's use of a preferred provider list.

The raw data has been supplemented by additional comments and insights from a handful of in-house counsel to provide a deeper and more thoughtful level of understanding relative to these key findings. Counsel are identified by industry and title; specific company and individual names have been withheld.

Implications

For corporate counsel, this research confirms a growing partnership between the legal department and the C-suite: CEOs are more involved in decisions about hiring counsel, particularly in high stakes matters that could potentially affect corporate reputation and daily business operations.

Law firms will need to respond to the continued trend toward consolidation. With fewer firms on any company's "approved list," client retention is more important than ever.

Methodology

The research was conducted in the form of a Web survey, e-mailed to U.S. and non-U.S. in-house counsel from April 26 through May 31, 2005. Of the 635 responses (± 3.9 pp) received, 461 were from the United States and 174 from other countries. More than 23 countries and 42 U.S. states were represented in the audience.



Demographics

The respondents hold significant leadership positions within the corporate legal department, with almost two-thirds having the title of Chief Legal Officer, General Counsel or Deputy General Counsel.

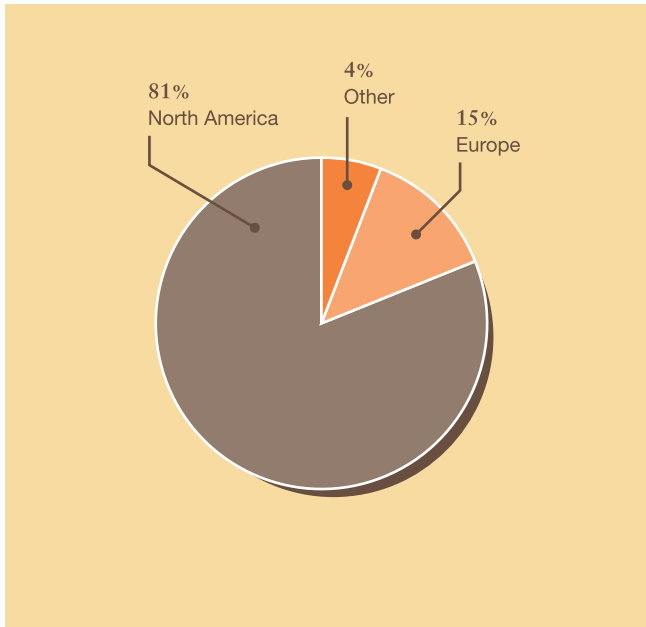
Almost half of them have worked in the legal industry for more than two decades. They wield considerable spending power: More than 25% of the companies have annual legal budgets in excess of \$5 million and 20% plan to increase their legal budgets in the year ahead.

Respondents

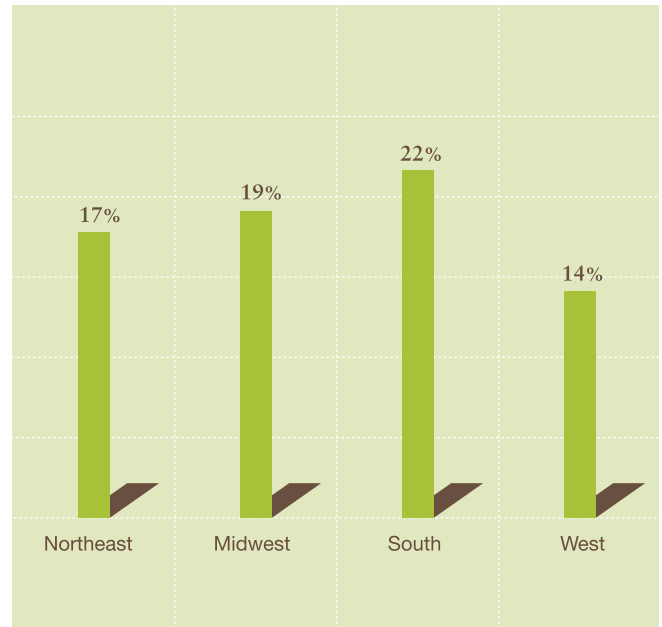
- 635 corporate counsel
 - United States 461, international 174
 - 65% practicing 16 years or longer
 - 10% managing legal departments of 100+ attorneys
- Companies ranging in size from less than \$25 million to more than \$4 billion in revenues
 - Representing 11 European countries and the United States
 - Close to 60% global businesses
 - Industries include healthcare, retail, manufacturing, technology and utilities
 - Mix of public and private businesses.

Demographics

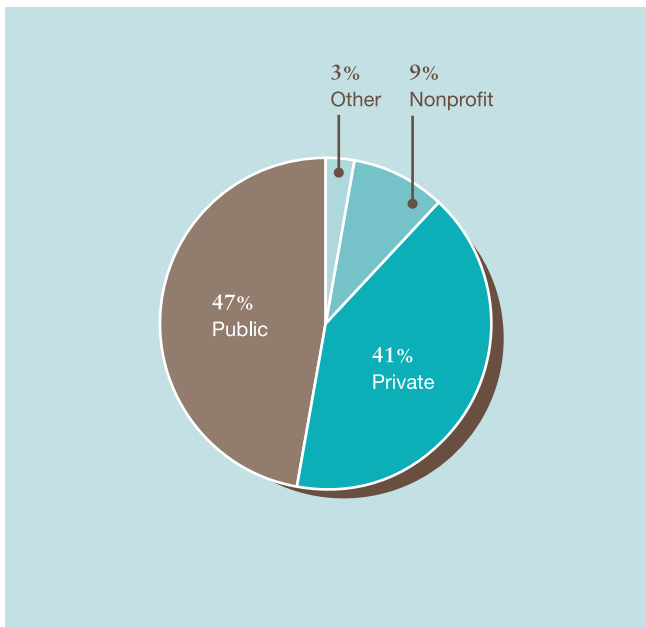
More than three-quarters (81%) of the respondents reside in North America, with the rest in Europe and Asia.



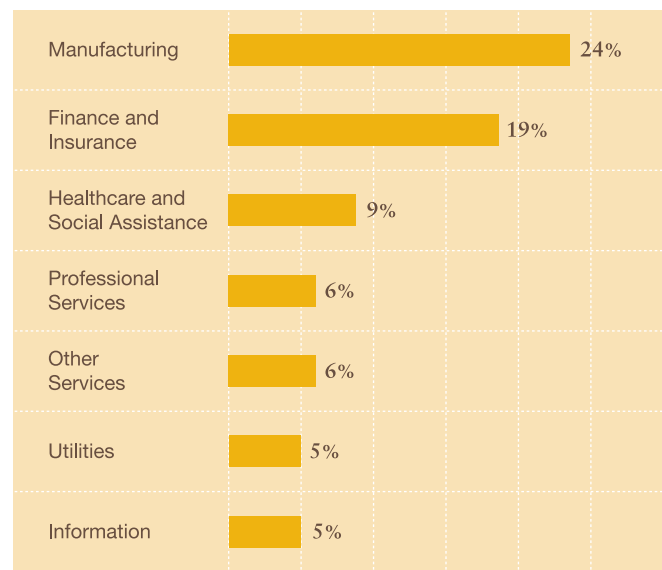
Corporate counsel were well represented throughout the United States.



When asked to describe their organization, almost half stated that they were working for a public company (47%).



Almost one out of four (24%) surveyed stated that Manufacturing was their employer's primary industry, followed by Finance and Insurance, Healthcare, Professional Services, Utilities and Information.



All other industries measured less than 5%.

Executive Summary

CEOs play a significant role in the identification, evaluation and, in some cases, selection of outside counsel.

- The CEO, CFO, senior- and mid-level legal staff are involved in the decision to allocate high stakes matters to outside counsel. For low stakes or commodity matters, senior- and mid-level legal staff all may be involved.
- The chief legal officer (CLO) or general counsel takes the lead in allocating work in both high stakes and low stakes matters. While the CLO or general counsel most often makes the final decision for allocating work to outside counsel for high and low stakes matters, the CEO may be involved in the final decision for high stakes matters.

In-house counsel rank an individual lawyer's expertise as the most important criterion in the initial selection process for high stakes matters.

While most companies have a predefined list for both high stakes and low stakes matters, the data indicate that the decision to place outside counsel on that list is more discriminate for high stakes matters: There are fewer firms on the list; fewer and more experienced people involved in determining which firms are placed on the list; and expertise is, by far, the most critical factor.

- The majority of companies have only 1–5 lawyers or firms on their predefined list for high stakes matters.
- The number of lawyers and firms on the list for low stakes matters varies, spanning from 1–5 to more than 51 firms.
- Lawyer expertise and client service are the two most important criteria in selecting lawyers and firms to place on the preferred list for both high and low stakes matters. Lawyer expertise stands far above all other criteria (87% rate expertise “5 — extremely important” on a 5-point scale) for selecting firms for the high stakes list. Once retained by a company, however, client service becomes more important in gaining additional assignments.
- The third most important criterion for selecting firms for the preferred list varies for high and low stakes matters. While firm expertise is important in determining which lawyers and firms are placed on the high stakes list, fees and budgeting are often considered for the low stakes list.

Only one-third of the responding companies expect to undergo convergence or consolidate their list of outside counsel. Similar decision makers and resources are involved in the process for selecting new outside counsel as are involved in developing the preferred provider list.

- At a majority of the companies, the CLO or general counsel participates in all stages of the process — identification, evaluation and selection. Senior lawyers and deputy general counsel also are often involved in identifying and evaluating firms, especially for low stakes matters, although the final decision will be made by the CLO or general counsel.
- In-house counsel use a wide range of resources to identify potential lawyers and firms, with referrals being the primary resource used in all stages of the selection process. Referrals from in-house lawyers remain especially important throughout the process, and outside counsel are the go-to resource to locate counsel in geographies or niche areas not presently handled by the firm itself.
- When evaluating potential firms, companies often conduct interviews with firms, especially for high stakes matters.

Responsibility for determining the budget for outside counsel lies with the same decision makers who select the outside lawyers or firms.

- Not surprisingly, the CLO or general counsel is most commonly involved in developing and approving the budget for both high stakes and low stakes matters.
- The CEO gets involved in the budgetary approval process for high stakes matters at some companies.

The Role of the CEO in Selecting Outside Counsel

CEOs play a significant role in the identification, evaluation and, in some cases, selection of outside counsel.

While the chief legal officer/general counsel generally takes the lead and *makes the final decision* in hiring outside counsel, senior management — chiefly the CEO and CFO — *are involved* in the decision-making process, at times to a greater extent than the division, deputy or general counsel. These numbers reinforce the growing partnership between the business heads and legal staff — especially in the case of *high stakes matters where the CEO makes the final decision in one out of five cases.*

	CEO Involvement in High Stakes Matters		
	Involved in the Decision	Takes the Lead	Makes Final Decision
President/CEO	52%	4%	20%
Deputy General Counsel	49%	10%	5%
Senior Lawyer	45%	9%	3%
CFO	45%	2%	2%
Division Counsel	38%	7%	2%
Chief Legal Officer/General Counsel	34%	50%	49%
Staff Lawyer	32%	3%	0%
Other	12%	1%	1%
Paralegal	5%	0%	0%

“One of three things is happening here: The CEO has a natural curiosity about who represents the company and wants to participate to add value; the CEO has a close friend and wants to get his old friend some business; or, the CEO wants to make a determination about how much is all this going to cost me.”

GENERAL COUNSEL, U.S. PHARMACEUTICAL COMPANY

“CEOs get involved because of a relationship with a particular attorney or if there is a connection between a director and a law firm.”

GENERAL COUNSEL, GLOBAL HOSPITALITY COMPANY

Interestingly, the more experienced the CLO or general counsel, the more involved the CEO or president will be in the various stages of the selection of outside counsel.

CLO/General Counsel Tenure	CEO Involvement by GC Tenure		
	Identification	Evaluation	Selection
5 Years or Less	13%	13%	25%
6–10 Years	11%	24%	25%
11–15 Years	17%	35%	26%
16–20 Years	18%	29%	24%
More than 20 Years	11%	35%	31%

CEOs/Presidents of privately held companies tend to be more involved in all phases of the process than those from public or not-for-profit organizations.

President/CEO — Type of Company	Public vs. Private Company		
	Identification	Evaluation	Selection
Public	12%	28%	21%
Private	16%	38%	38%
Not-for-Profit	8%	24%	16%
Other	21%	21%	7%

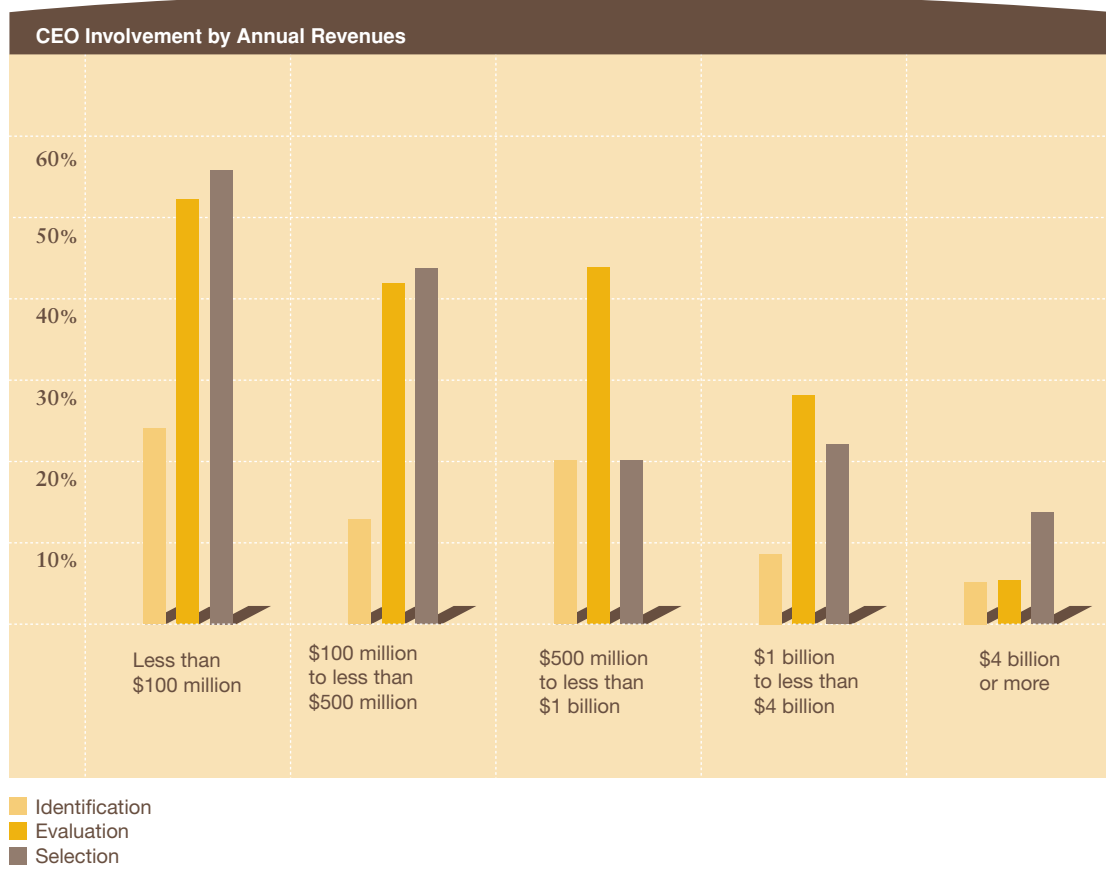
Corporate Counsel Implication

Make sure your go-to firms have exposure in the C-suite. Make appropriate introductions and increase visibility of boutique firms that may not be on the CEO or board's radar screen but perform well.

Law Firm Implication

Leverage your personal relationships with board members and executives at client companies. These individuals influence the hiring process.

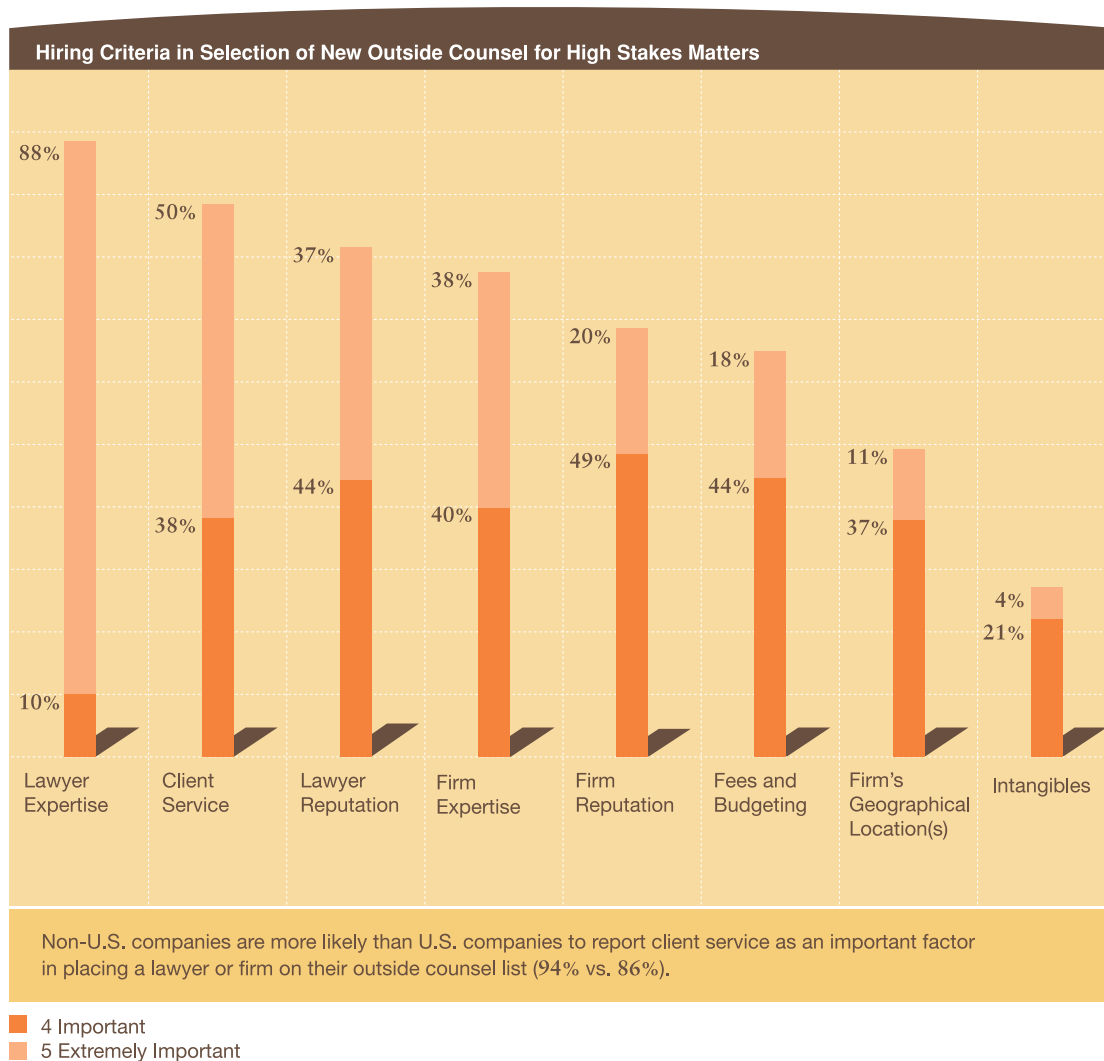
CEO/Presidents tend to be more involved during all phases of decision making in those companies with annual revenues of less than \$1 billion. The C-suite becomes less involved in companies with a large amount of revenue (greater than \$4 billion).



Lawyer Expertise vs. Service as a Purchase Trigger

In-house counsel rank an individual lawyer's expertise as the most important criterion in the initial selection process for high stakes matters. Expertise is the line in the sand in the overall decision to outsource both in terms of why firms choose to go outside for high stakes matters: "expertise not available in-house (see page 8)"; and what they look for: 88% of all respondents noted lawyer expertise as "5 — extremely important" (on a scale of 1–5) in working with new firms or lawyers on high stakes matters.

Intangibles — things such as "The boss plays golf with the managing partner" or "That firm always refers customers our way" — factor into the initial selection process or the decision to give more work to a firm, playing a role just over 20% of the time.

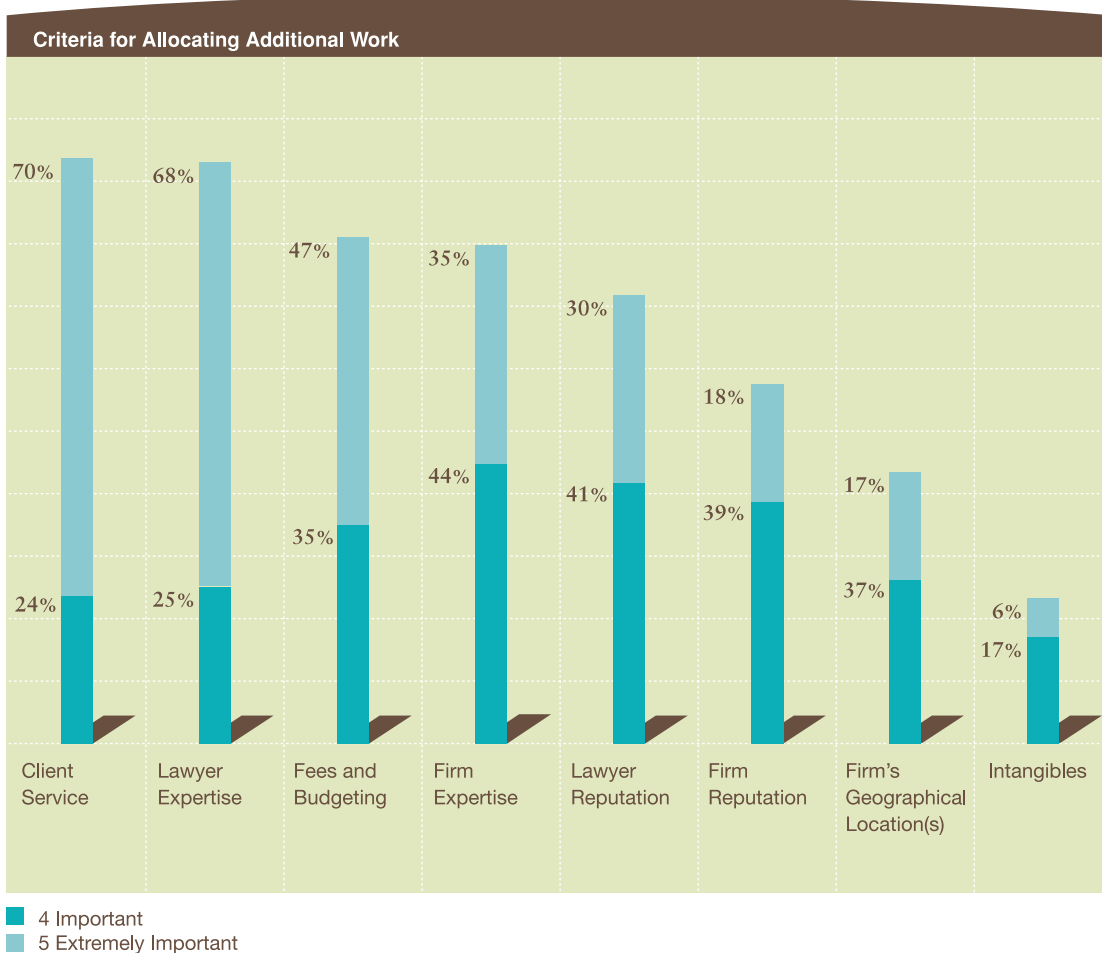


Law Firm Implication

Law firms that effectively promote specific types of expertise will be able to compete more effectively for new business. While most firms do a good job of showcasing practice and industry credentials, they often neglect to highlight individual subspecialties.

Once retained by a company, however, client service becomes more important. Client service and lawyer expertise comprise the two most important criteria for companies selecting firms or lawyers to which they will give *additional* work. Cost and expertise of the firm also remain important to many companies.

“In a new matter, what matters most are the reputation and the experience. In an ongoing working relationship, service becomes more and more important. Once you feel confident with knowledge and experience, you take it for granted. There, service matters most and something about the relationship itself. Do you like somebody? Is it fun working with somebody?” GENERAL COUNSEL, GERMANY-BASED MULTINATIONAL HOLDING COMPANY

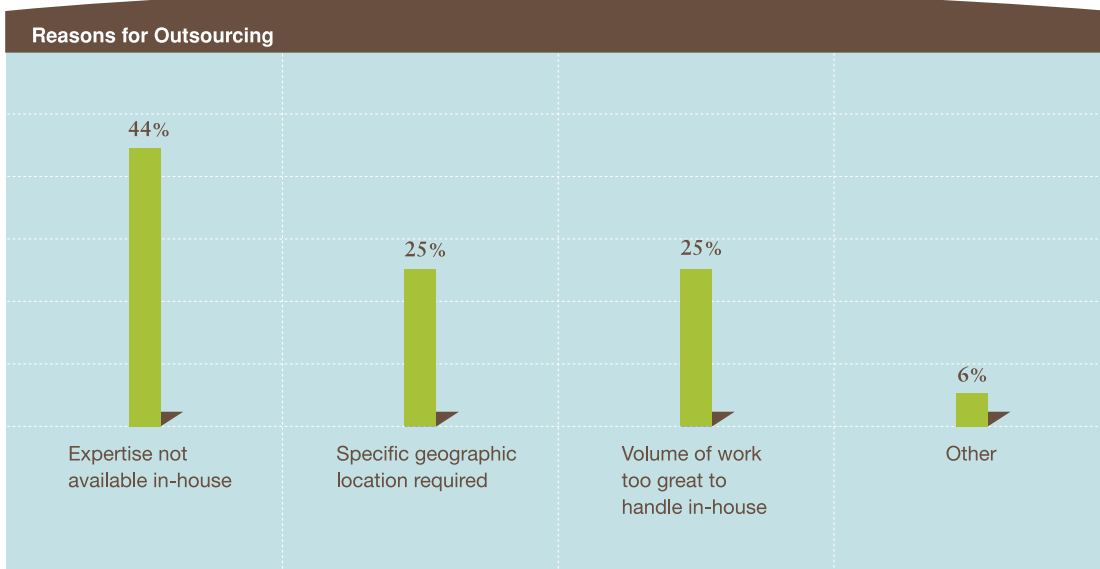


Lawyer Expertise vs. Service as a Purchase Trigger

Reasons for Outsourcing

Companies outsource work for a variety of reasons. The most common scenarios include matters involving a high degree of risk and corresponding lack of expertise and/or resources to handle the matter internally. Outsourcing by its nature hinges on capacity and efficiencies; however, when companies outsource legal work, they do so to gain expertise and minimize risk. Litigation matters provide the greatest challenges to internal departments in terms of ramping up counsel to represent the company in multiple jurisdictions.

“Many of our lawyers are really stretched and we are leanly staffed. As the breadth of my team’s horizontal responsibilities increases, they aren’t going to remember every regulatory update or nuance of international customs’ law, for example, or IP niche areas. That’s when we turn to outside counsel.” GENERAL COUNSEL, GLOBAL HEALTHCARE COMPANY



“We’re looking for the one-off situations. No one can service our (business) clients better than we can. It is a rare instance where our outside counsel will interface with our business departments. Outside counsel is helping to facilitate our job with our clients. We are their lawyers.”

ASSISTANT GENERAL COUNSEL, U.S. MANUFACTURING COMPANY

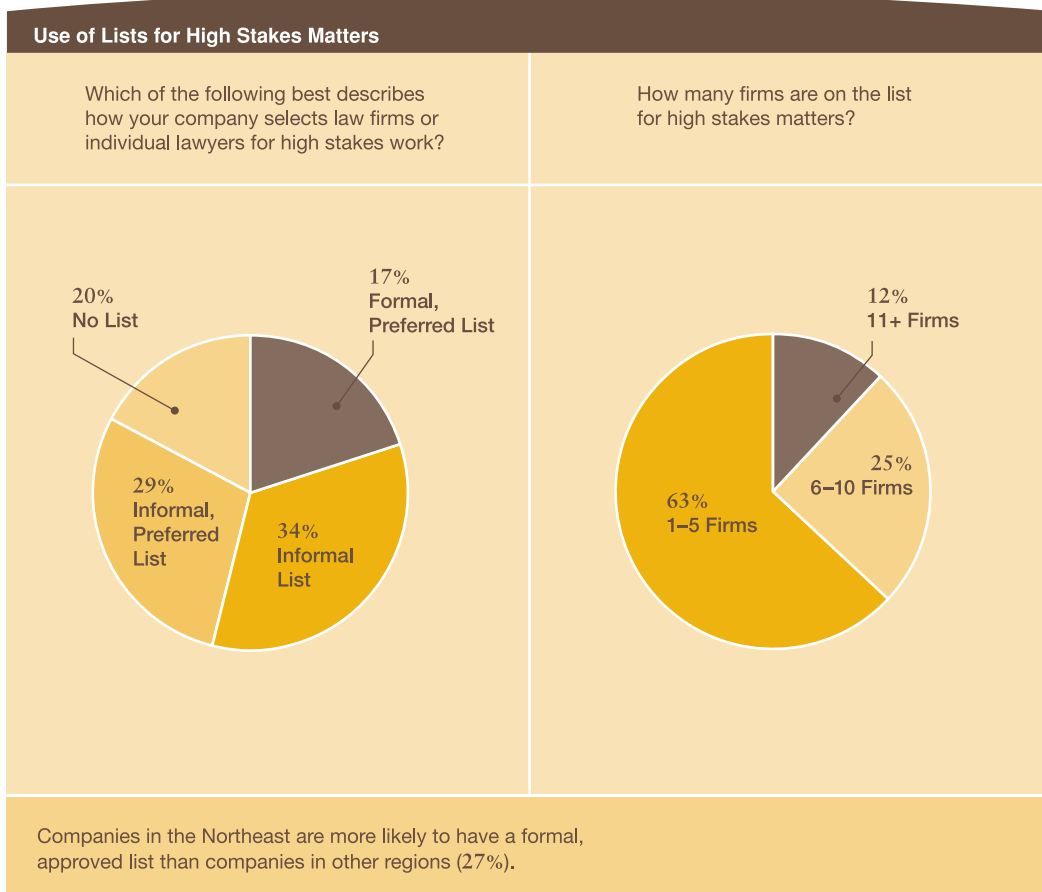
Law Firm Implication

One way to showcase expertise is through “productizing” key areas into audits, assessments and other best practice tools. Outside counsel receive high marks for helping corporate counsel benchmark and identify specific areas of vulnerability. Particular areas include privacy, product liability, compliance and regulatory matters.

Companies Continue to Rely on Preferred Provider Lists

Companies continue to rely on preferred provider lists as a way to select and manage outside counsel. As companies explore opportunities to improve outside counsel performance and decrease cost, they continue to narrow their rosters of outside providers. Companies with a select number of preferred providers tend to benefit from a much shorter learning curve, often lower negotiated fees and spend less time managing outside counsel.

While the majority of companies have only 1–5 lawyers or firms on their list for high stakes matters, the number of lawyers and firms on the list for low stakes matters varies, spanning from 1–5 to more than 51 firms.



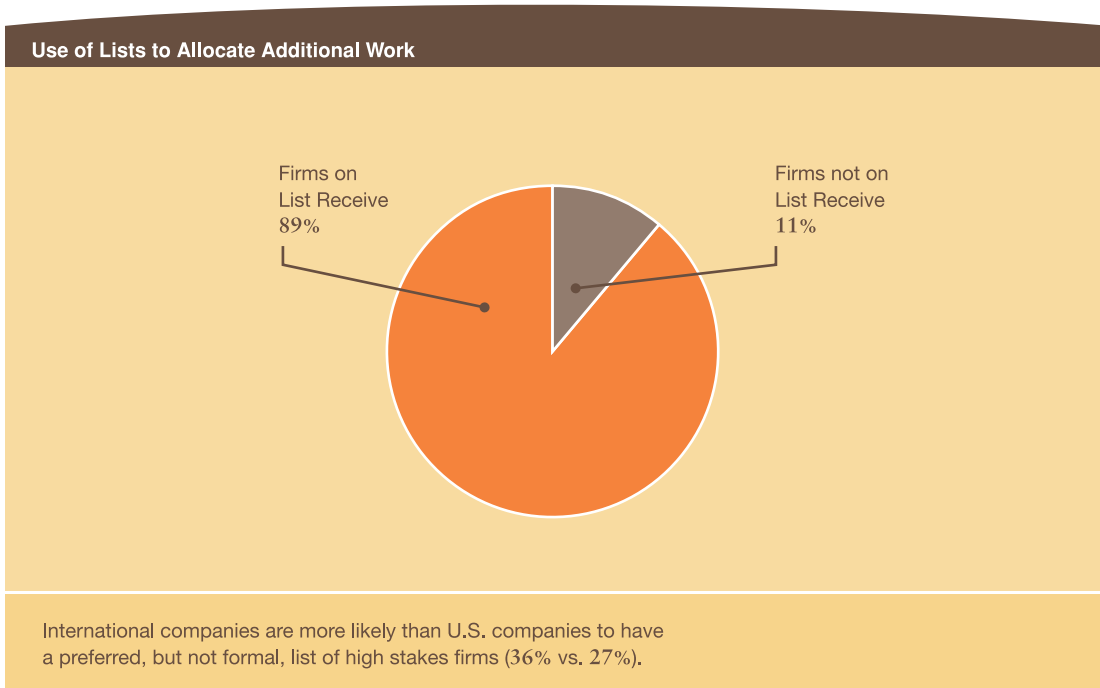
“We don’t have a tangible list, but we know who we love. We have a significant amount of litigation to manage and from that has evolved the development of some law firms who handle our most significant litigation. The highest priority matters — litigation or transactional matters — are going to go to a handful of law firms where we’ve had excellent experience and outstanding results. They make our list by producing excellent results. The surest way of getting off the list is not producing results.” CHIEF LEGAL OFFICER, PHARMACEUTICAL COMPANY

Lawyer Expertise vs. Service as a Purchase Trigger

Of companies that maintain a preferred provider list, firms or lawyers already on that list receive the vast majority of outsourced, high stakes work.

“One way or another, someone gets on a list. Not a list in my drawer, per se, but I have all the lawyers in my Outlook contacts and make notes about their fields and performance. If someone wasn’t successful with the work they did, they are out.”

GENERAL COUNSEL, GERMANY-BASED MULTINATIONAL HOLDING COMPANY

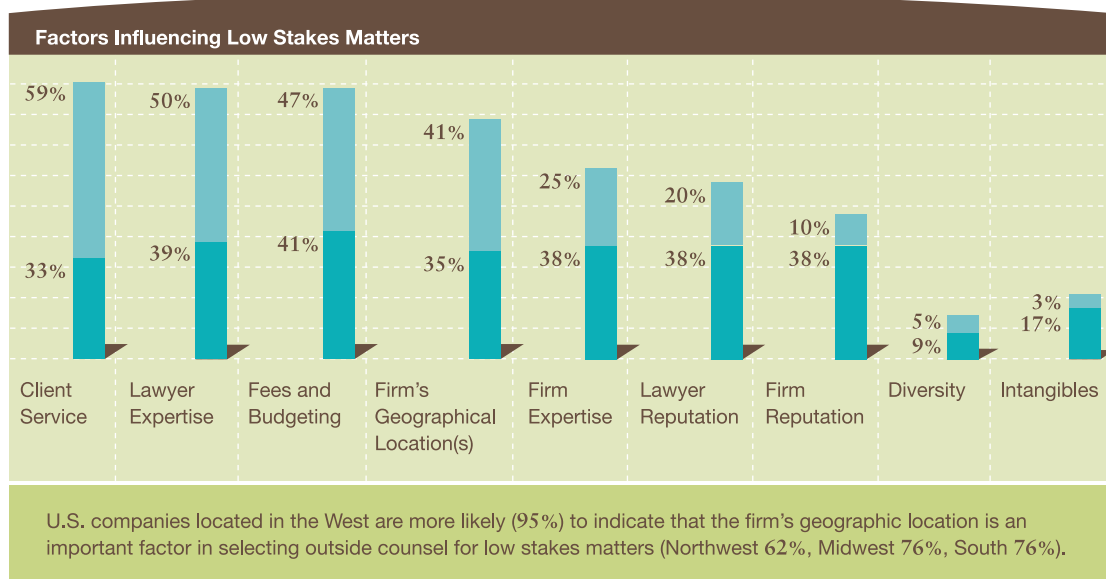
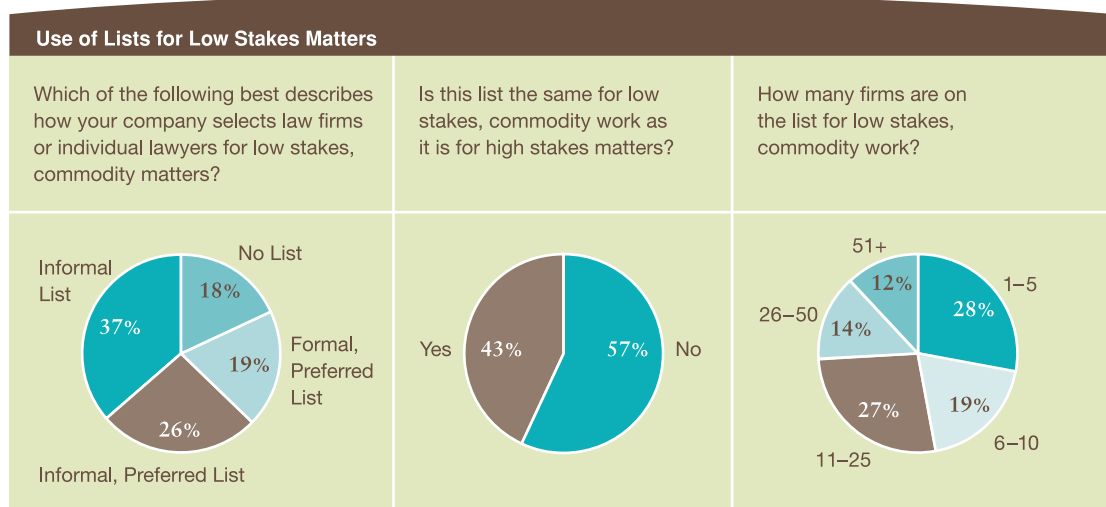


“The fact of the matter is that in-house lawyers are going to have a preference for firms that they have had previous exposure to. But at some companies, such as ours, we do not limit ourselves to particular firms — we choose individuals based upon their specific expertise. If we have new matters that involve new areas of expertise, the door is open to new entrants. We like to see tangible signs of experience in the specific area in question, not just platitudes about ‘We represented company X in litigation,’ or ‘We do joint ventures.’ Newsletters, articles and (to a lesser degree) Web pages and brochures help us understand who may have expertise. Once we have narrowed the universe of firms, we’ll typically interview a few.”

ASSISTANT GENERAL COUNSEL, U.S. HOSPITAL COMPANY

Close to a majority of companies turn to a preferred provider list to select lawyers or firms to handle low stakes or commodities matters. Nearly half of the companies that have such a list indicate that it is the same list they use to select firms to handle high stakes matters. Of those companies with a separate list for low stakes matters, the number of lawyers and firms on that list varies, spanning from 1–5 firms to more than 51 firms.

While firm expertise is important in determining which lawyers and firms are placed on the high stakes list, fees and budgeting play an important role in placing a firm on the list for low stakes work.



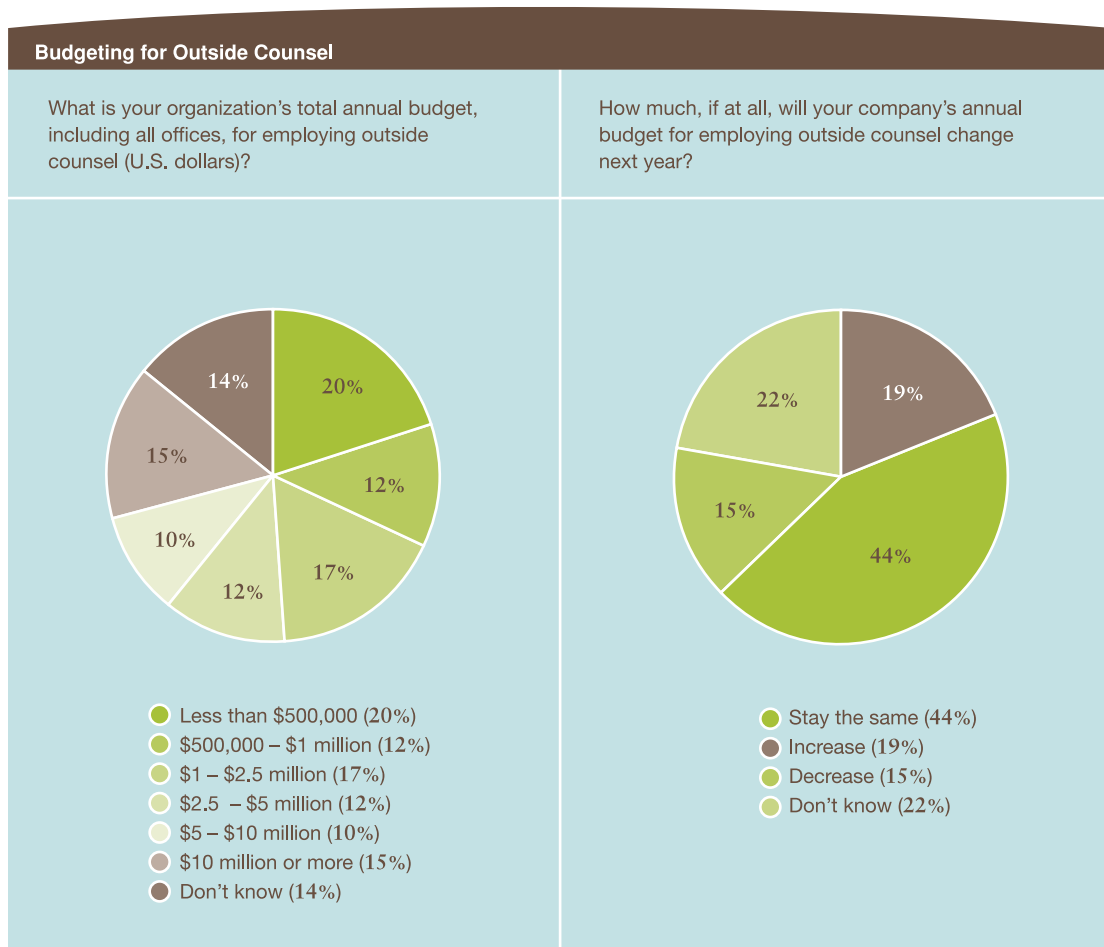
■ 4 Important
■ 5 Extremely Important

Budgeting for Outside Counsel

The budget for employing outside counsel varies. While more than four in 10 indicate their budget will remain the same, one-fifth report their budget will increase in 2006.

In conversations with in-house counsel, the most pressing issues around budgets often include formats, coding and lack of a consistent process, not just the bottom-line cost.

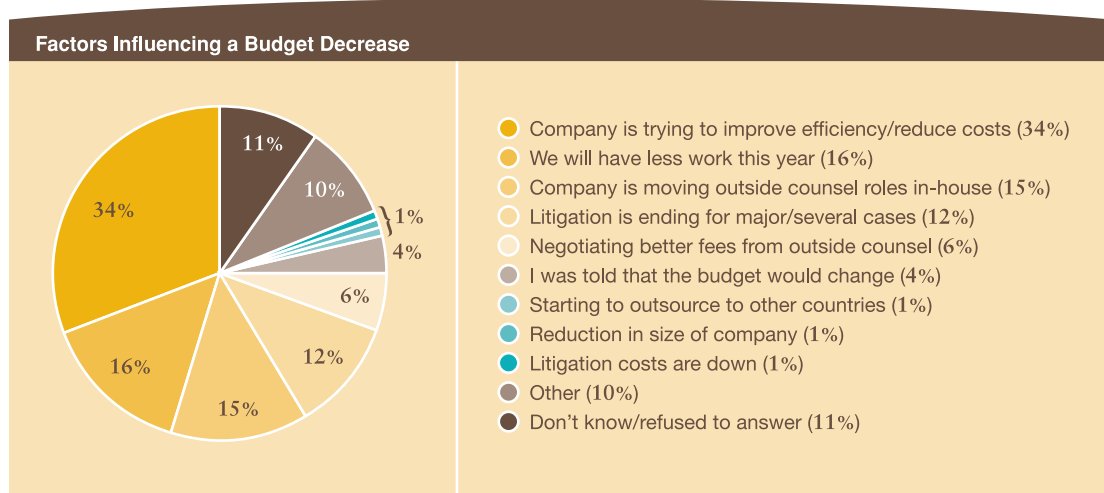
“Outside counsel could be more proactive in offering a uniform method of electronic billing. When I receive invoices from 100 firms, our staff has to input them manually. I would love to have law firms get together and agree on a single format. Most of us don’t have the resources to do it or administration to do it. Some help on the administration for payment and cost management would be a real benefit for us.” GENERAL COUNSEL, GLOBAL HOSPITALITY COMPANY



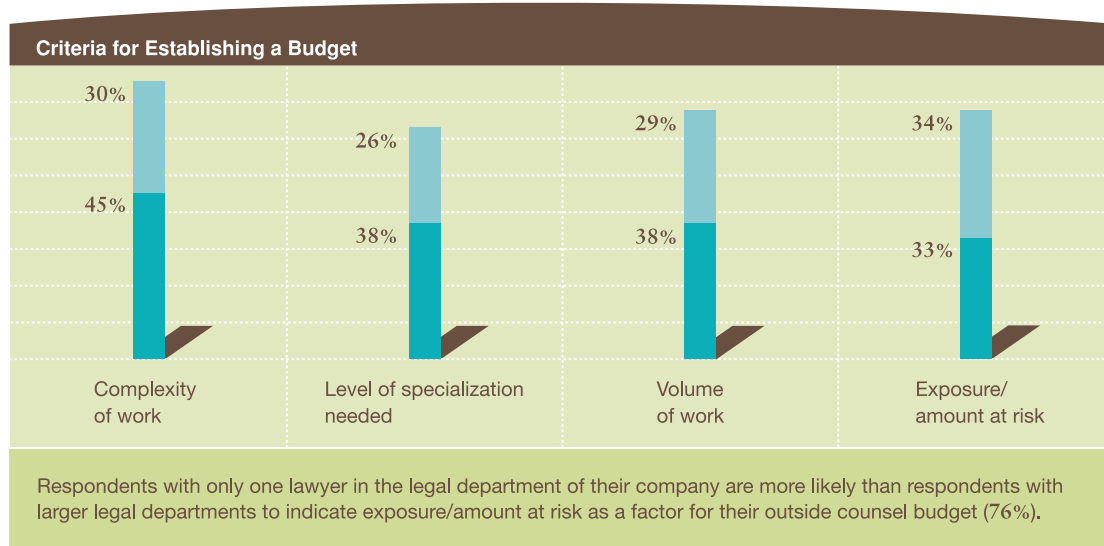
Of the respondents that indicate their outside counsel budget will decrease in 2006, more than one in three mention general cost reductions at their company as the primary reason.

“The entire legal division’s budget (internal and external costs and expenses) needs to be reviewed by the GC. Otherwise, the GC does not have any idea how much is being spent and on what. If this is done in the aggregate, it is not a waste of time. I have considered appointing a chief accounting officer, like a corporate divisional controller, to possibly serve in this role of reviewing matter budgets and relating the costs back to the division that will pay for the matter.”

SENIOR COUNSEL, U.S. PHARMACEUTICAL COMPANY



The complexity of work, amount at risk, volume of work and level of specialization needed are all important factors when determining the outside counsel budget. Complexity of work tops the list, with three-quarters of respondents rating it important (45%) or extremely important (30%).



■ 4 Important ■ 5 Extremely Important

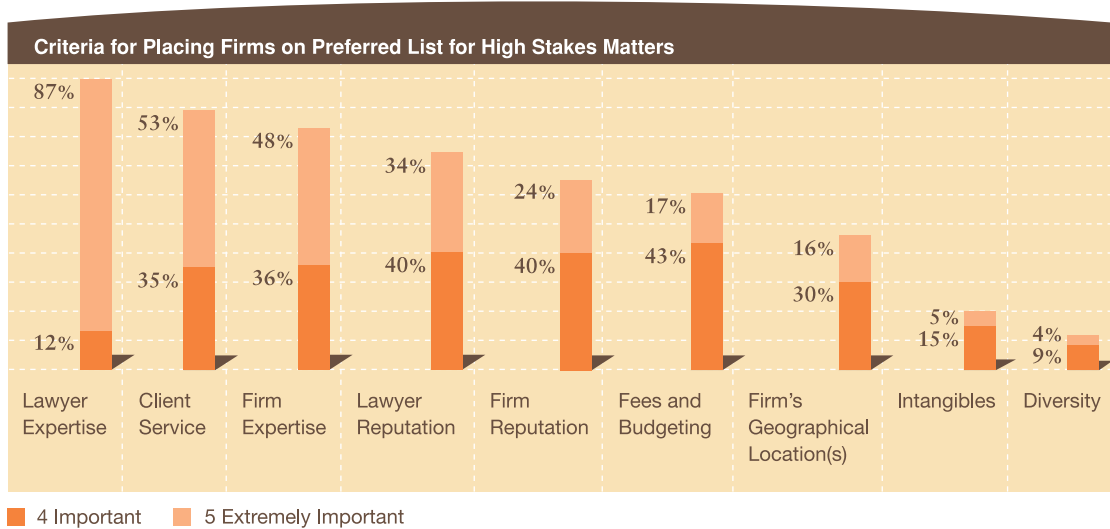
Using This Research

As with any research study, the raw data becomes more meaningful from additional analysis and interpretation by individual firms in order to gain the most value from the group findings. Firms can use these findings as a platform to stimulate further discussion and determine practical ways to apply lessons learned.

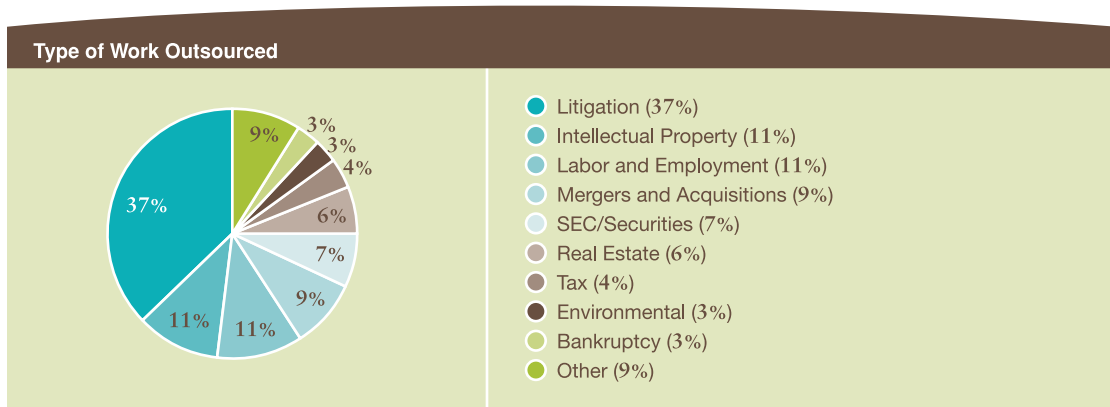
Based on five years of learnings from our Counsel to Counsel sessions, as well as interviews with leading professionals quoted in *Counsel to Counsel* magazine, we believe the following set of findings are of particular relevance to outside counsel and bear closer examination.

Individual attorney expertise is by far the most important factor considered by corporations when they hire counsel for high stakes matters. Firms need to pay as much attention to promoting the expertise of individual lawyers as they do to other firmwide branding initiatives.

Nearly nine in 10 respondents that have a preferred provider list for high stakes counsel reinforce this conclusion by indicating lawyer expertise is an extremely important factor in placing a firm or lawyer on that list. Client service and firm expertise are also highly important.



Proven expertise in litigation, intellectual property, and labor and employment matters gives the firm a leg up. These are the most common areas for which corporations seek outside counsel — in essence, the “growth markets.” Focusing marketing resources on these areas likely will result in a greater return on investment.

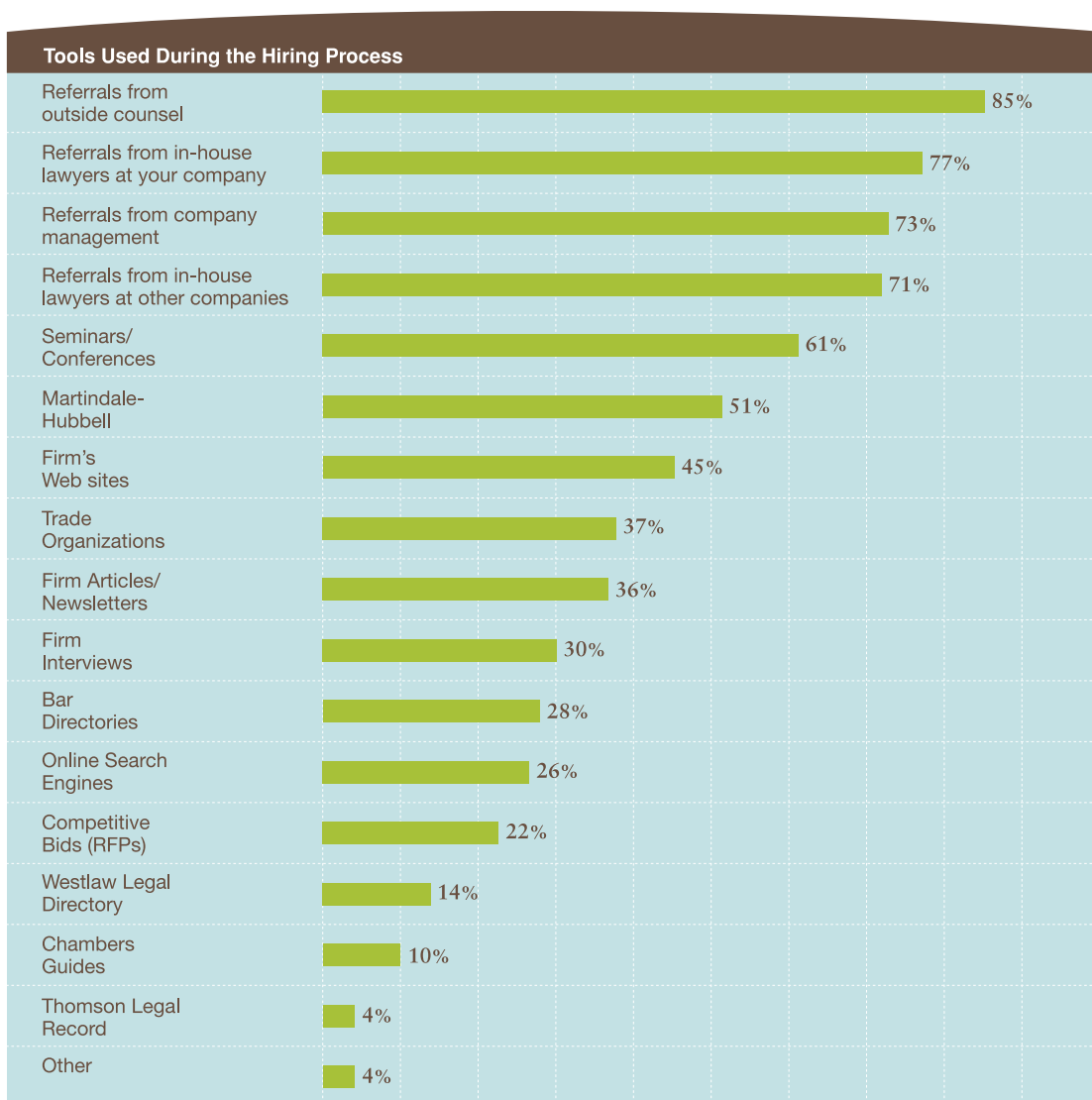


Promoting expertise through specific marketing channels remains an effective way to get corporate counsel's attention.

Firms would be wise to invest in networking opportunities as 85% of respondents indicated that their primary source for identifying outside counsel for high stakes matters is referrals from other outside counsel (85% rely on referrals from outside counsel for identifying lawyers and firms for high stakes matters; 84% for low stakes matters). Web sites, directories and seminars continue to play a significant role in getting on the corporate radar screen.

“Firm articles and newsletters are helpful if they are timely and succinct. General counsel do not have time, for example, to check the SEC’s Web site every week for new FAQs or pronouncements. An e-mail from a firm alerting me to such a development and summarizing the highlights is extremely helpful. I would like a firm to tell me how securities-offering reform is going to impact my process before I have to ask.”

EXECUTIVE VICE PRESIDENT & GENERAL COUNSEL, U.S. REAL ESTATE SERVICES COMPANY



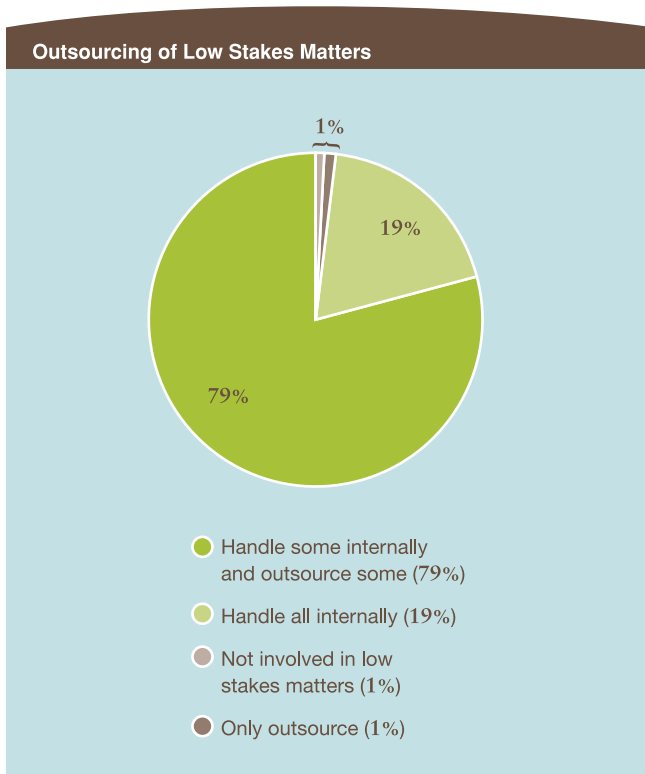
Using This Research

When pitching a client, make sure to appeal to the C-suite audience. CEOs and CFOs are involved in all phases of decision making. Demonstrate knowledge of the business too, not just the law.

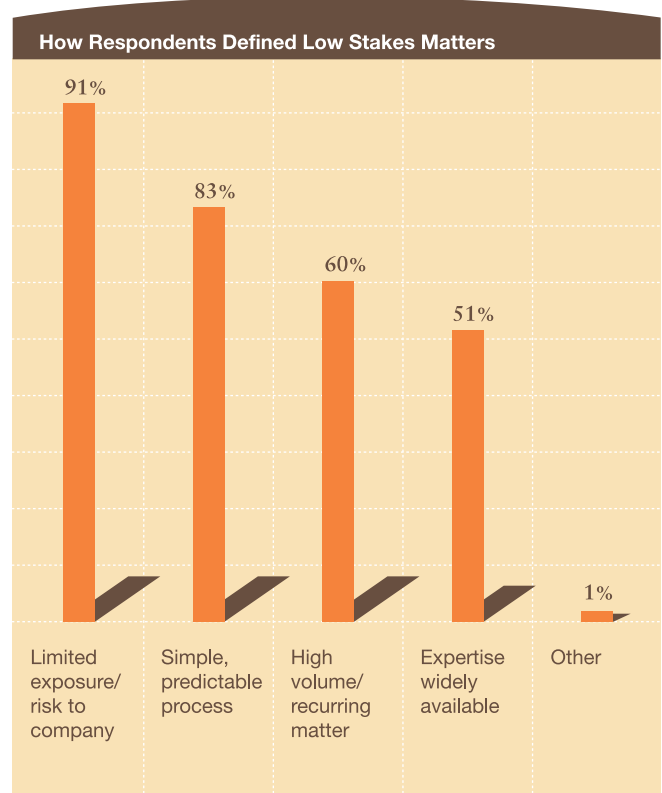
CEO Involvement			
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Other	12%	1%	1%
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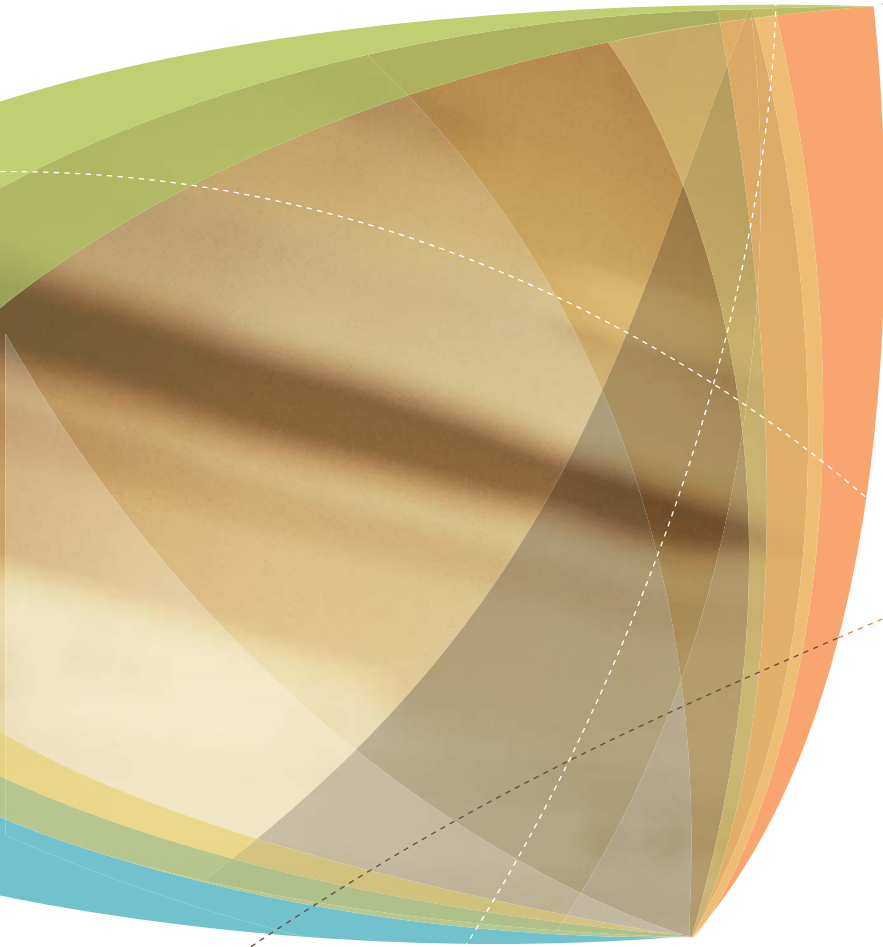
While senior legal staff and executive management are involved in the decision to outsource high stakes work, the chief legal officer/general counsel at a company generally takes the lead and makes the final decision. Notably, while presidents or CEOs rarely take the lead, they are involved in making the final decision 20% of the time.

There are abundant opportunities for firms to compete for low stakes work. While some companies handle all low stakes matters internally, nearly 80% outsource at least some of their low stakes work.



Companies outsource low stakes matters when the cases involve process and high volume. Law firms that invest in technology solutions and other means to streamline matter management will gain a competitive edge. Firms that can demonstrate effective ways to assess risk and establish links between the business units and the legal processes will be poised to get more of this work.





Copies of this in-depth report will be made available free-of-charge to members of Martindale-Hubbell's Corporate Counsel Advantage Program. For more information on the benefits of the Advantage program, please call 1-800-526-4902, ext. 7769, or e-mail ccadvantage@martindale.com.

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