

# Reality Check

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## What's Really Going On In Today's Legal Departments

By Lauren Williamson

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than 550 senior legal executives on the current state of their legal departments, as well as the evolution of their relationship with outside counsel. Good news: That relationship still earns above average with nearly 70 percent of respondents reporting a B

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and tough times breed agitation and instability. With increased layoffs comes an uptick in labor issues. With more ferocious brand protection comes more IP actions. And with shrinking budgets comes a greater scrutiny of the law firms charged with handling the work

“We just went through an earthquake of a recession,” says Mark Harris, CEO of alternative-model law firm Axiom. “During moments like this, there’s a far more intense magnifying glass on the practices of corporations.”

Corporate anxiety also breeds self-reflection and comparisons with peer companies—about how workloads match up, how many general counsel actually manage to snag AFAs and where a company’s

legal department falls on the spectrum of any number of metrics.

To help you decipher how your legal department stacks up, InsideCounsel surveyed more than 550 senior legal executives on the current state of their legal departments, as well as the evolution of their relationship with outside counsel. The good news: That relationship still earns above average marks, with nearly 70 percent of respondents giving their law firms a B grade. The bad news: That’s just about where it’s stayed for the past five years.

Over the next few pages, InsideCounsel offers results from its 20th Annual Survey of General Counsel and sheds light on the reality of what’s happening in today’s legal departments.

ART BY ROBERTA AND DAVID WILLIAMSON

# Relationship Ups and Downs



“Better lawyers understand that the client’s concern goes far beyond a discrete issue. The issue relates to an overall business objective.” – *Karl Racine, managing partner, Venable*

“The lawyers we work with are excellent, but if they don’t understand the market and our placement in it, the relationship can be hard.” – *Yayoi Shionoiri, legal adviser, Kaikai Kiki New York*

## 40.9%

say law firms understand their business

## 51.4%

don’t think law firms recognize their budget constraints

## 64.7%

say law firms don’t actively seek ways to reduce cost

## 68.5%

are happy with their law firm relationships

### Practice Makes Too Perfect

When dealing with high-stakes legal issues, it would seem that a lawyer could never be too careful—but many GCs voiced a dissatisfaction with the amount of resources their law firms allocate to issues that could be managed with good enough, if imperfect, solutions. Budgets strapped for cash and businessmen strapped for time demand an efficient response that law firms don’t always provide.

“Law firms have an incentive to perfect work,” says

Lorraine Koc, vice president and general counsel of Deb Shops. “In-house counsel have to make a judgment of what is sufficient to get the job done without having wasted time and energy. It’s a much more precise fit.”

While every GC’s job centers on risk management, Koc says it’s also about finding the right balance between incredibly unlikely but high-risk scenarios and more frequently occurring but trivial issues.

“I want to save money for the highest risks and best uses,” she says. “Typically, those aren’t going to be

routine, mundane questions, unless those are core issues repeatable 100 times—or if it’s something with potentially explosive costs. Even though it’s rare, if you get hit with it you’re dead meat.”

At times, law firms will present Robin Jensen, general counsel of construction company Total Risk Management, with the answer they think she’s looking for rather than the practical advice she really needs, delaying a project. “It’s hard to tell the government, ‘I need to wait for an attorney to get back to me before I can keep building

your road,’” she says.

Karl Racine, managing partner at Venable, says he hears similar comments from clients.

“In most instances, they’re not looking for a 125-page memorandum on a question,” he says. “They’re looking for a real, practical recommendation as to how best to achieve their business objective.”

The best solution: Open communication. Outline what you want from outside counsel as clearly as possible from the beginning and clarify the pressures you face from the business side.



“It’s a little bit like going to a doctor and having him treat your heart when he has to treat the whole body. They don’t know the nuances.”

– Robin Jensen, general counsel, Total Risk Management

### Small Change We Can Believe In

Small law firms saw a big boost in business in 2009 as more legal departments sought outside counsel with a lower price tag. Nearly 65 percent of respondents reported retaining small regional firms more frequently in the past two years than they did previously. The reason to switch to smaller firms, in most cases, was cost—90.3 percent of respondents said economic conditions are increasing the pressure to spend less on outside counsel. But the reason to stick with them, many GCs said, is quality.

Ron Peppe, vice president, legal and human resources, of Canam USA, says he’s forged great partnerships with the regional firms he approached after his legal department started to feel an economic pinch. At the smaller firms he’s dealt with, the partners don’t farm out work to associates, instead handling everything themselves.

“It’s a more direct connection, the partners are more involved, and I’m getting good results,” he says.

While Lorraine Koc, vice president and general counsel of Deb Shops, has found smaller firms to be more budget-friendly and appropriate for matters such as labor issues, the turnaround time occasionally lags.

“Smaller firms don’t have the bandwidth,” she says. “I don’t want to send something where I need an answer right away because they’re not capable of that.”

Robin Jensen, general counsel of Total Risk Management, says regional



firms are often willing to go beyond the call of duty when providing counsel. When major issues involving the road construction contractor erupt, attorneys from smaller firms will travel to the site to give rapid and thorough feedback. The smaller firms Jensen retains are also willing to participate in a monthly phone review to discuss recent issues as well as the ongoing relationship.

“Larger firms might do it one or two times,” she says. “But then it gets rescheduled and you have to hunt them down.”

Despite the shift to smaller firms, Big Law won’t likely head the way of the dodo bird anytime soon. “Certain large firms have a degree of overhead, reflected in billing rates, that may be appropriate in a bet-the-company transaction,” says Michael Denton, vice president, general counsel and corporate secretary of Curtiss-Wright Corp. “But,” he adds, “that can be hard to justify on a routine matter.”

## High Priorities

GCs rate the importance of various criteria in selecting outside counsel

**82.1%**  
seek creative solutions

**85.8%**  
value industry experience

**99.5%**  
emphasize responsiveness

“A prompt response is job No. 1 for in-house counsel supporting a business team. We want to keep things moving.” – Michael Denton, vice president, general counsel and corporate secretary, Curtiss-Wright Corp.

# Working It In



## 50.1%

of legal departments  
have the same  
number of attorneys  
as two years ago

### Litigation Limbo:

There was an almost even 50/50 split between GCs who reported litigation was increasing vs. decreasing. Quarles & Brady Chairman John Daniels says the results point to mixed feelings about the litigation climate. "Even though the number of cases has declined," he says, "the importance of the cases is critical."

If InsideCounsel merely reported that more legal work is being done in-house these days, most in-house attorneys would likely say, "Tell me something I don't know." Nearly 70 percent of respondents say that the amount of work handled in-house has grown significantly during the past two years.

"It's not surprising, given the last 18 to 24 months of economic turmoil, that companies are very, very focused on controlling costs at all levels," says Rex Schlaybaugh, chairman and CEO of Dykema. "In some instances, that means they are bringing [legal] work inside."

Still, there are reasons other than recession-mandated belt tightening to keep things in-house. "It's cheaper, but it goes beyond that," says Lorraine Koc, vice president and general counsel of clothing retailer Deb Shops. "We're able to supply and leverage institutional knowledge and outsource only what is needed." Koc secures outside advice for issues requiring specialized knowledge, as well as most litigation.

According to the attorneys surveyed, the following practice areas increased in volume the most—or experienced little or no change—during 2009:

## Growing

1. Corporate Governance
2. Labor and Employment
3. Litigation
4. Regulatory
5. Intellectual Property

**"A lot of things from the new administration are just hitting now. We're going to see that continue."**

— Ron Peppe, vice president, legal and human resources, Canam USA

**"IP has become more important to everybody, whether it's GM and whether [its employees] are authorized to use the word Chevy ... or my company protecting creative rights for fashion."** — Lorraine Koc, vice president and general counsel, Deb Shops

## Slowing

1. Antitrust
2. Environmental
3. Securities & Finance
4. Mergers & Acquisitions
5. International

**"While the economy appears to be on its way back, it's not as if we're back to the bullish days of years ago. Financing is difficult."**

— Karl Racine, managing partner, Venable

**"Everyone is waiting for the dust to settle and see where the businesses will end up at the end [of the recession]."** — Elizabeth Large, vice president and interim general counsel, Knowledge Learning Corp.

# What's the Alternative?



Alternative fee arrangements are important to more than half the GCs who responded to the survey—no surprise there. The discrepancy between the number of GCs who value AFAs and the number who actually secure them, however, is great. Only 34.2 percent responded that firms they work with have begun to move away from the billable hour. And many of the respondents said that so-called alternative arrangements are often just repackaged versions of the same old financial formula.

Well-functioning AFAs do, however, exist, in some cases with exemplary results. “There was no epiphany on our part when the economic downturn hit. We were already fostering the use of AFAs,” says Michael Denton,

vice president, general counsel and corporate secretary of Curtiss-Wright Corp.

During the past decade, Curtiss-Wright has grown from a \$300 million to a \$1.8 billion corporation through a series of acquisitions. As the company began its growth spurt, its legal department held a contest to retain a firm that would handle the more than 40 acquisitions that eventually comprised the expansion. A number of small firms proposed terms for AFAs, and for nearly 10 years Curtiss-Wright has successfully worked with the winning firm, which proposed a combination of blended fees and a discount in return for the company agreeing to send it all of the company’s M&A work.

Robin Jensen, general counsel of Total Risk Management, says she was floored when a firm she works with went two-times over budget for a project—but nonetheless stuck to the quoted price. “And I still got the product I wanted,” she says.

But not all of the firms Jensen works with are as willing to compromise. Firms that have worked with Total Risk’s legal department for a long time often fall into a rut and fail to look at changes in economics and work-product that should impact billing rates. “It’s like pulling teeth to get changes,” she says.

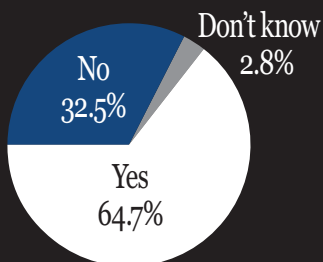
The complaints aren’t going unheard. More and more frequently, discussions about AFAs are part of the everyday conversations Karl Racine,

managing partner at Venable, has with clients.

“We’re receptive to exploring ways to bring them better cost certainty and otherwise demonstrate greater value,” says Racine, noting that it’s important for law firm attorneys to be the first to broach the issue. “That’s how they’ll know we are flexible on landing on an approach to billing that makes sense for their business.”

General counsel do understand, however, that economic trials are a two-way street. “Firms try to work with us, but it’s understandable that they have costs too. Some have absorbed them better than others. So we try to be sympathetic,” says Lorraine Koc, vice president and general counsel of Deb Shops.

Do you require law firms to submit a budget for the matters they work on?



90.3%

say economic conditions are increasing pressure to spend less on outside counsel

37%

agree law firms are open to alternative fee arrangements

Do your firms generally adhere to the budgets you set on matters?

