The care and feeding of outside counsel

By Steven A. Lauer © 2002 [*]

When a company has a law department, that department is responsible for the company's legal affairs. Due to staffing and other limitations, however, it's unusual that the members of a law department are able to handle all the legal work directly. Rather, outside counsel typically is engaged to handle at least some of that legal work. Surveys repeatedly demonstrate that spending on outside counsel typically is at least 50% of the total legal budget. This is true for litigation-specific matters as well.

Even when outside counsel represent a company, however, the law department is responsible for those legal matters. The law department must manage the legal work that is performed by the outside law firms. It cannot afford to simply turn that work over to them and ignore how, and how well, it is accomplished.

The management of outside counsel is a multi-disciplinary role. It spans selection, retention, management and evaluation of law firms. Each of those spheres of action relates to the others. They should be viewed as parts of a whole. For example, actions taken in respect of selection will affect the means by which counsel can be managed on a day-to-day basis. How a law department daily manages outside counsel can be important in determining how it should evaluate them.

Selection of Outside Counsel

Historically, companies have selected outside law firms by a variety of methods. Personal relationships between individual in-house attorneys (particularly the general counsel or chief legal officer) and individual outside attorneys have played important roles in that selection process. The presence of outside lawyers on corporate boards of directors has often been an important, if not decisive, factor.

Those decisions were made at a time when law departments were accorded considerable autonomy in managing companies' legal affairs. The departments did not routinely face scrutiny as to how they selected, retained and paid outside counsel.

That benign neglect is no longer the case. Legal budgets are subject to corporate cost cutting initiatives. Corporate executives are no longer quiescent in respect of how legal work is handled. They want to know who represents the company. They expect information about the many other decisions that in-house lawyers once made without fear of second-guessing. Senior management analyzes even strategic and tactical decisions made with respect to litigation. The atmosphere today is far different than it was in prior decades for in-house lawyers.

Another change in the relationships between corporate clients and law firms has been in respect of the number of law firms a company might use, compared to what had been the case. Years ago, many companies relied on only one or a small number of law firms for all, or virtually all, of their legal work. Legal issues have become more complex since that time. Specialized and more-complicated practices have developed. The geographic scope of business operations has grown tremendously, subjecting companies to

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suit in far-flung jurisdictions in which they may not have counsel already available. Those and other changes led companies to utilize many law firms over the course of a year. The selection of law firms became more frequent and more challenging than it had been. More recently, however, a shift has occurred. Companies are paring the number of firms they rely on for day-to-day work, including litigation.

Accordingly, in many law departments the selection of outside counsel is now conducted differently than it once was. With a view to establishing credibility for the process and anticipating accountability for the selection decisions, more and more law departments are applying business tools to this process that they formerly did not consider utilizing. While personal relationships are still important criteria by which law firms come to the attention of and are retained by in-house attorneys, more formal methods of selecting counsel are more common than they once were. "Beauty contests," requests for qualifications (RFQs) and requests for proposals to provide legal service (RFPs) have become more common in recent years. The Greater New York Chapter of ACCA issued a report in 1997 in which it canvassed issues related to various selection methods.

What are those methods by which to select counsel? How do they differ? How do you choose among them?

A beauty contest focuses on the described qualifications of the target law firms. The potential client company solicits interest from firms while some information about the type or types of work it needs handled. The process is not very structured and it can be completed in a fairly short time. It relies more than the RFQ or the RFP on face-to-face meetings with candidate firms.

An RFQ asks law firms to state their qualifications to perform the legal work that is described in fairly nonspecific terms. This process is also not too lengthy or involved. The submissions by law firms likely will vary significantly, however, as they try to anticipate the company's need. The selection among the firms represented likely will be a more-reasoned one than is often possible after a beauty contest, but it might still leave certain issues unaddressed. Exhibit 1 is an example of a hypothetical RFQ. Obviously, the specific questions and information requests will vary for each situation.

An RFP is the most rigorous selection method of the four identified. It should include a more complete description of the company's need for legal services. For example, it might describe the type of litigation for which the company needs counsel. It should estimate the amount of work expected to be assigned. Accordingly, it requires the most preparation by the law department and a longer time for completion. Finally, it typically requires the most complete submissions by the firms invited to "bid" for the work. One of the strengths of an RFP, however, is that it can serve as the vehicle to introduce changes in the nature of the relationship between a company's law department and the company's outside counsel. In other words, it is (or can be) more than a device to retain counsel for one case or transaction. Exhibit 2 is an example of a simple, hypothetical RFP for a category of litigation cases. (An RFP can be much more extensive than Exhibit 2 and the terms of an RFP should be very specific to the needs of the client and the context of the work.)

The selection of a method of retaining counsel should be made on the basis of several factors. What sort of data does the company possess regarding its prospective legal needs? Are there any time constraints that might impact the selection process? What resources does the law department have to prepare the RFP and process the related paperwork?

The data should be as complete as possible. The goal is to provide to the law firms invited to submit proposals enough information to enable those firms to make proposals that are as complete and contain as few assumptions and provisos as possible. If the law firms that receive the RFP are unable to anticipate what will be required of them if they are awarded the work, they won't be able to submit proposals that are reliable. The types of data that one would like to have include historical use of outside counsel for the types of work involved (*e.g.*, amounts spent on similar legal fees in the past), numbers of cases of the types involved for several prior years, some indication of the complexity of those past cases and how the future cases might compare, the geographic distribution of those past cases and any other

identifiable traits of that past work that might be true as to future similar work. Naturally, the description of prospective needs can't be a guaranty.

As to resources, it's important to understand that an RFP demands considerable attention from the law department's personnel. While some of that can be alleviated by retaining a consultant with experience in preparing RFPs, the success of the RFP process (in fact, the success of any of the selection methods described) depends on willingness on the part of the department to help shape and participate in the process. After all, the in-house attorneys will have to live with the results.

An RFP can take considerable time. The more extensive the RFP is (in terms of scope, number of law firms invited to respond, etc.), the longer it will take. Even a simple RFP can consume several months if done properly. Preparing the RFP itself will, in all likelihood, take weeks. The law firms will require some time to prepare responsive proposals. Evaluation of the various proposals and selection from among them can also be time-consuming, particularly if the department engages in any negotiation with one or more of the law firms (to improve firms' proposals, to clarify some of the terms or to remove some of the conditions, for example).

Implementation of the method selected should be completed as expeditiously as feasible. Once the process starts, there is considerable uncertainty and anxiety among the in-house and the outside counsel as to who will be working for the company in the future. This period of uncertainty can be debilitating and it can adversely impact ongoing work. The process should also be undertaken with as much respect for those involved as possible, also due to the uncertainty created and the need for sincere implementation of the results.

Is the use of an RFQ or an RFP available only to a larger law department? Not necessarily. The use of either of those tools is more dependent on the type and amount of legal work that can be anticipated and awarded through such a process. A smaller department, with fewer internal resources than a larger law department, might use an outside consultant to do more of the drafting and other tasks involved in such an endeavor, though even in that case the in-house lawyers should remain in control of the process. The benefits of restructuring the outside legal service through such an effort can be achieved regardless of the size of the department.

The retention of counsel

A company that is involved in litigation usually is involved as a defendant. Thus, it becomes actively involved only when it receives a complaint. The significance of that is the need to respond within a fairly short time frame with an answer or some other pleading. If some of that period is spent locating counsel, precious time can be lost. That can handicap a company in its defense, to some degree.

It's far better to know in advance what firm you will go to for that defense. If that firm is also familiar with the company, its products, and its litigation preferences, the entry into litigation as a defendant can be much smoother than it otherwise would be.

If there is enough litigation of a particular type, and it is dispersed geographically, there is great benefit from selecting counsel in various locales prior to facing suit in those places. Much of the time that might otherwise be spent identifying appropriate counsel, retaining them and bringing them up to speed can be eliminated or devoted to more productive tasks, such as planning your strategy for the case.

Depending on the volume of litigation you anticipate, you might retain a firm for a single case or, if there is likely to be sufficient work, for a class or classes of cases. This can be done by means of an oral understanding, a retention letter or a retention agreement. I list those in the order of complexity, starting with the simplest – the oral agreement – through the most involved – the retention agreement.

What are the benefits and shortcomings of each? The oral understanding is obviously the quickest to effect due to the simplicity. It probably should be used only in situations where the company and the firm are already familiar with each other and have a good working relationship. It is difficult to address in

a conversation all the issues that one should in retaining a law firm (compensation, working approach, conflicts of interest, and a myriad of other issues). Moreover, there may be nuances to any or all of those issues that one cannot anticipate and problems may later arise. It's easier to address such issues later if there is a reservoir of goodwill between the parties that results from prior history. The absence of a written understanding invites problems due to inconsistent recollections of the terms of the discussion, also. If time is extremely short, however, a verbal retention may be necessary, in which case it should be followed as soon as feasible by a written understanding.

A retention letter is a short, unilateral document by the client (usually) to the firm detailing the terms of the relationship. It often does not address some important issues. It might be accompanied by billing guidelines or some other auxiliary document from the company setting out its understanding or expectations as to certain issues. If a retention letter is used, the firm should evidence its agreement to the terms by countersigning the letter in some fashion. There are compilations of forms of retention letters available from the American Corporate Counsel Association and other sources.

A retention agreement is the most involved means of retaining a firm. It typically includes discussion of more areas of concern than is the case for either the retention letter or the oral agreement. The retention agreement might be legalistic in tone or not. My advice is to keep it more informal in style due to the nature of the relationship between client and counsel. It's not a situation where you expect or want to have to try to enforce terms specifically. In fact, the freedom that clients have under ethical rules to select and deselect counsel, as well as other protections they enjoy, may be sufficient protection for a client that becomes dissatisfied with its counsel.

A primary purpose of the agreement is to describe the expectations of client and counsel vis-à-vis their relationship. It need not contain excruciating detail as to how the relationship will work, but it should provide the basic parameters by which they plan to work together to achieve the client's goals. Don't forget that this document should be entitled to status as a privileged communication, so treat it accordingly (appropriate legend, limited distribution, etc.).

The selection of a means of retaining a firm can also depend, in part, on the fee arrangement between the client company and the firm. If the firm is to be paid on an hourly rate, for example, you might wish to spell out in great detail some of the "thou shalt"s and the "thou shalt not"s on billing issues. The submission of invoices in your preferred format (*e.g.*, task-based billing) might be of greater import in that situation. Perhaps the firm and the client have agreed on an alternative fee arrangement (whereby the fee for the firm is calculated on the basis of something other than just the amount of time devoted to the work by the professionals of the firm, multiplied by one or more hourly rates). In that situation, the client may not have any interest in seeing invoices that detail the time and expenses borne by the firm on its behalf. The important point is that the nature of the fee arrangement can impact various elements of the counsel-management system.

Retention of counsel for transactional work can be effected by means of the same mechanisms. The time considerations might be less urgent than those in the litigation context, but many of the other considerations apply.

Day-to-day management of counsel

The heart of the client/counsel relationship (for a corporate client, particularly one with a law department) consists of the day-to-day management of outside counsel. As much as you might try to anticipate issues that can arise, litigation being what it is, that is almost impossible. The pressure on law departments to control costs and achieve desired results means that members of a law department should be proactive in managing those legal affairs.

There are two basic styles of management to consider. You can be unilateral and bureaucratic. By this, I mean that the client lays down the law and sets all the rules for the engagement, sometimes in extreme detail. Billing guidelines may be only the tip of that iceberg. There is little discussion of the terms by which the client expects (no, demands) the firm to serve it.

The alternative is a more consultative and collaborative style. The client's expectations are still paramount, but either party can raise issues. The client and counsel discuss those issues and jointly decide the best means of achieving the client's goals and how the client's expectations will be met.

I advocate the consultative approach. I don't suggest that the client cede its prerogatives as client. I think it's important to recognize, however, that as a client you want a firm that will try to anticipate your needs (legal and, in some respects, extralegal). If everything must conform to the terms set out by the client without discussion and something arises that doesn't neatly fit into any of the specific guidelines set out, there is a risk that time will be lost as the firm seeks direction. If the appropriate individual in the client organization is not available at that time, the delay can be costly. Moreover, adopting a unilateral approach and issuing bureaucratic edicts sets a tone for the relationship that is more adversarial than recommended.

The consultative approach suggests more of a partnering relationship. The unilateral approach implies that the relationship is one of "us" and "them." The latter type of relationship depends not only on complete and accurate anticipation by the client of all that might later arise, but also on close scrutiny of the actions of the firm to make sure that it has in fact satisfied the dictates laid out at the beginning. In other words, it's akin to the "command and control" style of organizational management.

The collaborative approach relies on establishing common goals and expectations. Those goals are those of the client, of course, but the means of reaching them and the details of those goals are reached through discussion between the client and the firm. Good ideas can originate with either. Meetings for that purpose can be a very effective mechanism to establish the specifics of those goals and means.

The importance of communication

The importance to counsel management of good communication cannot be overstated. I'm not speaking simply of the messages sent between in-house and outside counsel about the status of cases and recent developments. Rather, the entire range of information that must be passed back and forth, and how that information flow pertains to the relationship between and among the attorneys is critical.

A monthly periodical for the legal profession has conducted annual surveys for ten years regarding the opinions of corporate general counsel about how law firms service their companies and how outside lawyers think that they service those clients. There has been a consistent gap in the two groups' views on those issues. On some issues, that gap has even widened from year to year.

In the 1998 survey law firms awarded themselves a grade of B+/A- in response to the question of whether they provide effective and creative preventive legal advice. The surveyed general counsel awarded only a C+ on that point. In 1997, general counsel had rated the firms as deserving a score of 3.3 (on a scale of 1 to 5, with 5 being the highest score), while law firms felt that they deserved a 4.2. In 1999, law firms earned only a 2.1 score from the general counsel (in the 1999 survey, the scale was 1 to 5 again, but 1 was the highest grade available and 5 was the lowest), while firms awarded themselves a 1.8.

As to whether firms share risk with their clients, general counsel felt in 1997 that the firms deserved a 2.6 while the firms felt that they deserved a 3.4. In 1998, the respective scores were C- from the general counsel and C+ from the firms. In 1999, general counsel awarded only a 2.9 (the highest score available was 1 and the lowest was 5), while firms felt entitled to a 2.2.

In respect of whether firms' charges are commensurate with the value of the services provided, general counsel graded firms at 3.4 in 1997 (5 was the highest score available), a C in 1998 and a 2.6 (1 was the highest available score) in 1999. The firms awarded themselves 4.3 in 1997, a B+ in 1998 and 1.8 in 1999.

On most service criteria rated in those surveys, self-grading by the firms resulted in grades that have been consistently higher than the grades that they earn from their clients. Clearly, there has been a

considerable difference of opinion between law firms and the chief legal officers of their clients as to how well the firms serve those clients.

The 1999 survey demonstrates a more puzzling dichotomy between the views of inside counsel and the views of the outside lawyers with whom they work. The surveyed general counsel were asked to select a descriptor for the working relationship between their law departments and the outside law firms in various substantive practice areas. The outside lawyers were asked to make a parallel selection. The available labels were "In-house only", "Outsource", "Case management", "Co-counsel" and "Temps".

"In-house only" was defined as "[I]n-house counsel performs all work internally and only uses outside counsel for overflow or when unique specialty is required." "Outsource" described a situation in which "[o]utside counsel is responsible for entire practice or block of work with little in-house management." "Case management" would apply where "[o]utside counsel performs the work; in-house counsel manages" that work. "Co-counsel" was to be selected if "[I]n-house counsel and outside counsel share substantive work responsibilities." "Temps" was to signify that "[u]se on-site contract lawyers and paralegals from a service."

There are two striking features about the data in the surveys. (The results of the surveys illuminate other issues as well, but for purposes of this discussion, I will focus on only two.) First, they reveal starkly that outside and inside lawyers do not agree even on how they work together! There may very well be disagreement on specific details as to how attorneys will work together: the allocation of responsibility for individual tasks and assignments might be confused on account of inadequate specificity at the start. To differ so dramatically on whether work is completed by only one of the parties, with little supervision, or by both of the parties sharing responsibility equally, however, leads to a natural question. Do inside and outside attorneys attempt to coordinate their actions in respect of their common clients at all? Are the clients as well served as they deserve to be?

A second conclusion that leaps of the pages of the two surveys is that the two groups are remarkably consistent over time in their views on the question. They simply disagree between themselves tremendously. That such disparity of perception should persist seems to prove that communication between in-house and outside counsel, to the extent it exists, does not include discussion of what appears to be a basic and seminal issue – how in-house and outside counsel for one client will work together!

Communications problems have been particularly significant in the insurance industry, it seems. An article several years ago highlighted the dissatisfaction of many law firms with the status of their relationships with the insurance companies. The thrust of the story was to the effect that a number of lawyers who have long represented insurers (including some prominent members of that group) have decided to represent plaintiffs against their former client industry. In the course of the article, the president of an organization of over 20,000 defense attorneys was quoted as saying "[t]here's been a dramatic drop in constructive dialogue between defense counsel and the insurance industry." (See Brennan, "Driven to Defection," The National Law Journal (May 18, 1998), pp. A1, A27.)

Communication failures have obvious implications for the day-to-day responsibilities that you must shoulder in managing litigation. Simply put, you can't afford to misunderstand the expectations of outside counsel or for them to fail to grasp your concerns. As much as possible, you need to assure that everyone is "singing from the same hymnbook." This even includes the representative of the business unit that is involved in the matter.

How can you do that? There are several tools you might consider. First, design into your counsel-management procedures periodic tasks that require communication. By requiring periodic communication to satisfy your own procedures, you'll reinforce its importance. For example, if you require that counsel evaluate the relative risk of each dispute, don't allow the mere submission of a memorandum to satisfy that need. Engage in a discussion of the details of that analysis and the implications of each factor considered for the company's litigation posture. If you require that counsel prepare budgets for your cases, and updates are called for (either because you require periodic updates or because events have overtaken the old estimate of costs), have a discussion of those questions.

Think about the benefit of having discussions with outside counsel that are not about specific cases but, rather about the ways in which you work together, or what your expectations of them are in the relationship. Ask them for suggestions as to ways to improve your management of the litigation. While they might offer such ideas on their own and without prompting, that might not be so. Their representation of other clients allows them to see the relative strengths of different clients' differing management approaches. Take advantage of that.

Meet with groups of law firms (at least, firms that handle similar work for you) periodically. Look for common approaches that they might adopt for your work. Challenge them to work together as a team. The benefits of doing so can be significant for your company and for them. Ask them to suggest ways to improve how the legal service is delivered to the business clients.

Evaluation of firms

Legal service is amorphous. It consists of words and concepts and the only tangible output is paper. Quality legal service is even more amorphous. While everyone wants high quality legal service, there is not ready agreement on what comprises it. I liken it to Justice Potter Stewart's famous statement about pornography: "I can't define it, but I know it when I see it."

The problem with that approach to legal service is that it's difficult to know the degree to which individuals' definitions of quality service vary. Even within a single law department, individual attorneys have divergent expectations of outside counsel and therefore their opinions of the same firm (and even of the same individual lawyer) can and likely do vary.

It's time that the legal profession attempted to define more specifically what it means when it refers to "quality" legal service. While the concept may be elusive, it's important in so many ways that clarity is important. If some commonality can be achieved throughout the profession, it should assist both in-house and outside counsel. Inside attorneys will be more certain of the comparative meanings of the recommendations they receive from each other (even within a single law department).

Outside counsel will have an easier task in marketing their services if they and the in-house attorneys to whom they direct their efforts are speaking the same language. It seems that every brochure that I've seen from a law firm includes the claim that the firm is the best. Can we believe that they're all correct? Can we know what standard they might have in mind?

Even within a law department, there's much to gain by developing a common understanding regarding the factors that equate with a high quality legal service. The department will be able to achieve consistency in its use of counsel because the standards will be clarified. The selection of counsel should be more reliable in terms of assuring that high quality is appropriately valued. The selections made will be far easier to defend when the quality can be more readily demonstrated. Finally, the department will be better positioned to provide to its outside firms better, ongoing feedback as to whether and how they satisfy its demands for quality service.

In short, a well designed means of evaluating outside counsel, consistently and diligently applied, supports the selection and management paradigms described above. It will also strengthen the relationship between inside and outside counsel because it should lead to periodic communication about a topic of high interest to both (and less stressful than invoices!). This in turn will conduce toward common understanding on these issues.

Conclusion

Management of outside counsel is one of the most important functions of a law department. It runs the gamut of the terms of the relationship between inside and outside counsel. The choice of a selection method is important. The design of a fee structure is part of management. The degree to which in-house counsel are involved in the day-to-day tactical decisions necessary in litigation and transactions is

the heart of counsel management. The means by which a law department evaluates its outside law firms and communicates the results of those evaluations is another important facet of counsel management. All those aspects of the management approach should be consistent and mutually supportive. Properly designed, however, they can be valuable elements of an effective and efficient legal-services delivery system.

Exhibit 1

ABC Corporation Law Department
Request for Qualifications

Name of law firm: _____
Address: _____
_____
_____

Contact partner: _____

Phone and fax: _____

E-mail address: _____

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ABC Corporation is seeking qualified law firms to represent it in certain litigation. That litigation involves the company's do-it-yourself kits for automotive brake repairs. The ABC Corporation Law Department plans to select lawyers around the country for this work by means of a broad review of firms including firms that have not represented it previously. To enable it to identify firms to interview, the Law Department has identified the following as the minimum criteria for consideration in this process:

1. Evidence of a firm's demonstrated competence in product liability litigation in respect of products marketed to do-it-yourselfers. At least one member of your firm must have at least five years of success representing clients in this field of law and that individual must be available to represent ABC Corporation in these matters.
2. Support staff and technological capabilities that would be necessary to handle this representation.
3. At least four references from clients for whom the firm has handled such matters.

This inquiry will be followed by interviews of firms selected on the basis of these submissions. In addition, the Law Department may very well request additional information in subsequent stages of this process. If your firm is interested in being considered for this work and is prepared to participate in the submissions (which may be extensive) and discussions deemed necessary by the ABC Corporation Law Department, please provide information (the minimum you feel necessary) responsive to the following questions:

1. Who would be on the legal team that would represent ABC Corporation in this litigation? Please identify each proposed member of the team and his or her qualifications. What is his or her experience in this type of litigation? Who would be the team leader?
2. Is your firm willing to share information and practices with other firms that represent ABC Corporation in this litigation? What practices of the firm would be consistent with a high degree of teamwork with both ABC Corporation's in-house legal staff and the members of other firms around the country representing ABC Corporation in the same or similar matters?
3. What experience does the firm have with task-based billing and litigation budgeting?
4. Can the firm commit to make available at least 2,500 hours of total professional staff time over the course of a year? Which professionals would be the primary billing professionals (they need not be all the same individuals identified in response to question 1)?
5. Would the firm be willing to enter an alternative fee arrangement with ABC Corporation for this work? If so, what sort of arrangement would you propose?

If your firm is interested in being considered, please sign this form in the space below and provide the above information in hard copy (not by fax, please) to the attention of the Deputy General Counsel by January 31, 1999.

_____ _____
Signature Date

Exhibit 2

ABC Corporation
Request for Proposal to Provide Legal Service

ABC Corporation is a defendant in a series of cases involving its do-it-yourself kits for automotive brake repairs. The plaintiffs typically allege that the kits are defectively designed and inappropriate for their intended application. ABC Corporation is interested in retaining a law firm to function as national coordinating counsel for this litigation. An attachment to this request for proposal details the number and jurisdictions of such cases.

The ABC Corporation Law Department envisions that the national coordinating counsel will be responsible for the following tasks: (1) maintaining a computerized database of all cases related to the do-it-yourself kits; (2) preparing the initial drafts of all responses to discovery demands to the extent those demands relate to the kits or to ABC Corporation's manufacturing or distribution processes in respect of the kits; (3) coordinating the depositions of ABC Corporation representatives and experts in the various local jurisdictions, even when the defense of ABC Corporation or its representatives or experts is primarily handled by local counsel in such jurisdiction; (4) asserting affirmative defenses to the suits and recommending litigation strategy; and (5) serving as co-counsel in most litigation involving the kits. Local counsel will be responsible for pleadings and motions (other than those specifically assigned to the national coordinating counsel), local investigations, routine court appearances, depositions of case-specific fact witnesses, medical witnesses and experts other than those retained to analyze the claims specific to the kits.

If you are interested in serving as ABC Corporation's national coordinating counsel, please submit to the Law Department by January 1, 1999, a proposal which addresses at least the following issues:

a. The total number of partners, associates, and legal assistants in the firm (with their geographic locations indicated) who are involved in litigation such as that described above. Please indicate which among them would be involved in representing ABC Corporation if the firm is selected as national coordinating counsel.
b. Specific experience of the firm and of the individuals identified in response to paragraph a in litigation such as that described above. In which cases has the firm served as coordinating counsel? What is the firm's success rate in such matters? Please provide the names and contact information for at least four clients for whom the firm has served in such role.
c. The firm's record in such litigation, including at least the number of cases won on summary judgment, the number won after bench or jury trial, the number lost, the number won on appeal and the number settled.
d. The firm's experience in developing and utilizing computerized databases for product liability litigation, including databases covering prior claims, consistent discovery responses, experts, witnesses, etc. How were the firm's clients able to access the data in such databases?
e. The names and experience of the individuals in the firm who would create and oversee the use of such databases for ABC Corporation's litigation.
f. The billing rates for the individuals identified in response to paragraph a.
g. The firm's experience in respect of alternative or non-traditional billing methods for such litigation and whether the firm proposes such alternative methods for this representation and, if so, what that proposal is.

The primary goals of this request are to identify firms that are willing to work with ABC Corporation so as to assure effective representation in these matters and to explore the terms on which they propose to represent ABC Corporation in that regard. ABC Corporation is interested in entertaining fee arrangements that align the interests of counsel and client more closely and that provide incentives for counsel that are likely to enhance the representation in that regard. An additional goal is to achieve cost savings through such methods.

We look forward to reviewing your submission.