

Case Study: Using the Virtual Law Firm Concept and a Fixed Fee Arrangement in the Mass Tort Setting

This case study explores the use in the mass tort setting of the virtual law firm (VLF) concept and a fee arrangement designed to provide predictability and uniformity for the company's budgeting purposes.

An international consumer products company was faced with thousands of suits in multiple Federal and State Courts throughout the United States alleging health claims related to the ingestion of one of its products, and seeking billions of dollars in damages. Defending the cases on an individual basis was impractical for numerous reasons including expense, exposure to inconsistent results and coordination of defense.

After removing all of the state cases to Federal Court, the company was then successful in having them consolidated in an MDL proceeding. It then began to pursue formulation of a strategy to rationally resolve the cases in the MDL, including using test cases and a bellwether program. A discussion of those strategies, as well as others used to approach these kinds of cases is deferred for another time. What will be explored in this case study are the use of the virtual law firm (VLF) concept, and a fee arrangement designed to provide predictability and uniformity for the company's budgeting purposes.

1. The VLF

The idea of a VLF is not new, either as a concept used to supplant the traditional physical law office, or as in this case, to manage large scale litigation for a single client, using pieces of different law firms to form a cohesive defense team.

A. The Model – The company hires lawyers or teams of lawyers from different law firms, each being selected for their expertise and/or their geographic contribution. Leadership is either provided in-house, or through a coordinating outside counsel. A dedicated means of seamless, secure electronic communication is established, including an electronic document and deposition repository.

B. Advantages – Allows the company to create an all-star team, taking the best from each firm for task oriented assignments (health/medical issues, scientific and causation expertise, procedure, discovery, brief writing and trial skills – to name a few). Also allows for expense control including avoiding “learning curve” and duplication issues and effective utilization of expertise.

C. Disadvantages/Risks – Egos and territoriality must be controlled. Strong leadership is essential, and trust must be built over time.

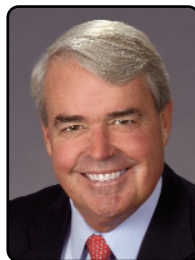
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2. The Fee Arrangement

A fixed monthly fee based on the following assumptions which are material to the arrangement:

- A. No more than six trials in the MDL in 2009.
- B. Expert witness fees, expenses for preparation of graphics and trial presentation materials, color-coded binders of depositions required by the court as part of its "trial-in-the-box" / resolution of deposition objection procedures, and deposition reporter and transcript preparation expenses are not included in this arrangement.
- C. Living expenses for trial (e.g., hotels and meals) are not included within the fixed fee.
- D. If more than six trials are begun in 2009, we will engage in good faith discussions as to whether an upward adjustment should

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be made to the monthly fixed fee level for the remaining months of 2009, or whether other financial adjustments are appropriate to fairly compensate the firm. Also, since this fixed fee arrangement is based on the assumption it will continue for the 12 months of 2009, if the matter were to terminate prior to the end of 2009, we will engage in good faith discussions as to whether any adjustment is appropriate.

It is understood that, although the firm will be operating on a fixed fee basis, it will need to continue to accrue time and related activities for the company's insurance purposes. In that regard, unless advised that it is unnecessary, the firm will continue to record time using the codes previously provided relating to the various tasks.

It is also understood that, under the fixed fee arrangement, the firm is permitted to staff the case as it believes appropriate giving full consideration to the needs and desires of the company in this important matter. The present intention is to continue using primarily the same individuals who already are working on the matter, but to the extent the firm believes it is appropriate to use others or make adjustments, the firm is no longer limited to using "approved" timekeepers" (as required under the prior hourly billing arrangement).