

CORPORATE counsel

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The Power of One

Tamara Loomis
Corporate Counsel
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On a crisp sunny day in late March, lawyers from 39 law firms gathered at the corporate headquarters of Pfizer Inc, a nondescript office building a couple blocks east of Grand Central Station in New York. The collective mood was cheerful. After all, each of the firms still had a piece of Pfizer's U.S. litigation work. Two years earlier, the company had dumped 80 percent of its hundreds of outside counsel in a convergence project called P3-the Pfizer Partnering Program. Now, representatives from the survivors had been convened to receive an update.

There was nothing surprising in what the first speaker, Sandra Phillips, head of the company's product litigation group, had to say. But the second speaker had some unexpected news to deliver. Margaret Madden, head of Pfizer's employment law group, explained how her staff had slashed its roster of 50 outside law firms in the first phase of P3 to ten. A quick look around the room, however, revealed that just one of those employment firms was present. What happened to the other nine?

Madden cleared up the mystery. As of January 1, 2008, she said, Pfizer was giving almost all of its U.S. labor and employment work to Jackson Lewis for the next two years. In return, Jackson Lewis had agreed to an annual cap on its fees-no billable hours or even flat per-matter fees. Madden described how her group decided to adopt a national counsel model and how it had settled on Jackson Lewis, a 500-lawyer labor and employment defense firm. She didn't say whether the other litigation groups in Pfizer's law department were contemplating a similar change. The message, though, was clear: The company was taking the lead on Convergence 2.0.

When it came time for questions, the crowd was unusually quiet. Kevin Lauri, a Jackson Lewis partner who led his firm's bid for the Pfizer contract, says he doesn't remember any questions after Madden spoke. It was a different story at the break, however. Lauri says at least three or four people came up to him. "They were very interested in how we went about the [selection] process," he says. As well they should be. For all they know, their firms could be next on the chopping block.

Pfizer is hardly the first company to embrace convergence. Over the past decade, more than 200 companies-including big names such as E.I. du Pont de Nemours and Company and General Electric Company-have tried to whack their outside counsel lineup down to a more manageable size.

And Pfizer isn't the first to give a chunk of its legal work to a single firm. In 2004 Tyco International-one of the early adopters of the single-firm concept-outsourced all of its product liability work to Kansas City, Missouri-based Shook, Hardy & Bacon, and its corporate matters to New York's White & Case. Tyco liked those arrangements so much that three years later it awarded all of its European work to London's Eversheds. The Linde Group, a German gas and engineering company, also awarded about 80 percent of its worldwide work to DLA Piper in 2007.

This year, at least two more companies-Honeywell International Inc. in Morristown, New Jersey, and Brady Corporation in Milwaukee-have picked up on the one-firm idea. Honeywell has handed over most of its European matters to Lovells, while Brady has chosen another English firm, Eversheds, to manage its European legal needs (minus some IP work). Still, the number of major companies that have publicly taken up the one-firm concept could probably be counted on one hand, says Rees Morrison, a New Jersey-based legal consultant.

But Pfizer is certainly pioneering the capped fee arrangement for outside legal work. Morrison, who has advised law departments for more than 20 years, says he can't think of another company that's opted for such a deal.

With a workforce of 32,000 U.S. employees (86,600 worldwide), Pfizer generates a lot of employment work for its employment counsel. The matters, which range from big class action suits to counsel on human resources practices, annually cost the company millions of dollars. (The company declined to say exactly how much.) According to Pfizer, the deal with Jackson Lewis was inspired by more than just a desire to cut costs, but that motivation certainly played a major role.

Allen Waxman, Pfizer's general counsel until this past March, came up with the P3 convergence program four years ago. The company was still trying to digest the acquisition of two big rivals-Warner-Lambert Company in 2000 and Pharmacia Corporation in 2003-along with thousands of product liability suits. Waxman's 18-lawyer litigation group was struggling to manage the onslaught. They decided that they would be able to reduce their outside counsel spending and handle their caseload better if they gave bigger chunks of work to a smaller number of firms. Since then, the company has systemically whittled down its outside counsel roster in each of its major litigation areas.

Product liability, not surprisingly, was the first. The initial competition of the P3 effort started with a December 2004 presentation in a ballroom at New York's Plaza Hotel. After a grueling nine-month selection process featuring a 50-page request for information, the company trimmed its product liability lineup from more than 100 firms to just 24 ["This Might Hurt a Bit," December 2005]. Pfizer went on to reduce the number of law firms that it uses for labor and employment, commercial, intellectual property, asbestos, real estate, and government investigations. By the time that P3 officially launched on January 1, 2006, the company had cut its outside litigation counsel roster of more than 200 firms to 52.

As part of that initial culling, the employment law group had reduced its lineup of firms from 50 to ten, each of which was assigned to a specific region. The ones who made the list: Bullivant Houser Bailey; Butzel Long; Epstein Becker & Green; Holland & Knight; Jackson Lewis; Littler Mendelson; Mayer Brown; Ogletree, Deakins, Nash, Smoak & Stewart; Reed Smith; and Schuster Aguilo.

But employment law chief Madden and Waxman got to wondering: Could they make the list even shorter? In the summer of 2007, they began kicking around the idea of just one law firm for employment matters. Over the following few weeks, Madden held a series of informal one-on-one meetings with a "handful" of firms to discuss the viability of a single national counsel.

Madden, a friendly, unpretentious woman who goes by "Maggi," says that as a result of those meetings, she and Waxman decided that the single-firm idea might work. Still, they thought that more research was needed. So Madden then sent a questionnaire to five firms, four of which were on the employment group's P3 list of ten firms (she declined to identify the other finalists besides Jackson Lewis). Fittingly enough, the questionnaire went out around Labor Day.

Two questions asked for firms' previous experience with a national counsel model, if any. Two questions requested firms to outline their proposed structure and staffing plan, and to address any areas they felt they couldn't cover (and what they would do to "overcome that obstacle"). And two questions requested respondents to set forth, "in detail," proposed fee structures and cost-saving measures.

To give the contestants something to work with, Madden provided material about the number of employment law suits filed against Pfizer in the United States in recent years, as well as the number of attorney demand letters that the company had received for employment matters. Madden made it clear that her staff was still in the exploratory phase. In the introduction to the questionnaire, she reassured the firms that their responses were not binding, and that Pfizer's employment group was not yet committed to culling its outside counsel down to just one.

At just two pages, the employment law questionnaire was a model of brevity, compared to the 50-page RFI that Pfizer had required firms to fill out in the elaborate P3 vetting process two years earlier. "We did not have to provide as much breadth or depth on our practice," says Jackson Lewis's Lauri, who guided his firm through both the first P3 winnowing and the later employment contest. "It was more focused on how we were uniquely positioned to serve as national counsel." Lauri says Jackson Lewis began working for Pfizer in 2001, mostly in New York and Connecticut. Once Jackson Lewis became a P3 firm, its work for Pfizer expanded to include a ten-state region encompassing the entire Northeast.

After Lauri submitted Jackson Lewis's response to the questionnaire, Madden called to ask him to give an hour-long presentation to Pfizer's employment law group on his firm's qualifications. Lauri decided not to take any chances. He brought managing partner Patrick Vaccaro to the September meeting, as well as head of litigation Vincent Cino. "We wanted them to know that the firm was behind the idea and willing to discuss creative billing proposals," Lauri says.

A couple of weeks later, Madden called Lauri again, to say that Pfizer had decided to go with the single-firm model and had selected Jackson Lewis as one of five in the running. What convinced her to go forward with the model? According to Madden, it was "a desire to enhance Pfizer's relationship with its outside counsel, find a new way to do business with law firms other than to be charged by the hour, and to obtain the ability to have budget certainty on a year-to-year basis."

Madden and Lauri scheduled another meeting for Halloween. Lauri evaluated the geographic spread of Pfizer cases throughout the country and identified the best partner in each of Jackson Lewis's 36 offices to head up Pfizer's matters in that location. He also compiled a detailed roster of Jackson Lewis's experts in various areas of employment law such as wage and hour compliance, ERISA, and affirmative action. Lauri put all of this data—as well as information and documents for each existing Pfizer matter handled by the firm—on an extranet site dedicated to Pfizer.

Jackson Lewis brought 19 lawyers—again including Vaccaro and Cino—from its offices around the country to the Halloween meeting. "Without bringing the entire firm, we wanted to make sure Pfizer knew we were dedicated to the process," Lauri says. Pfizer's attendees included the employment law staff of about ten people, as well as other assorted folks from the company's law department. It was a lively meeting, with a lot of give-and-take, says Lauri.

Afterward, Lauri returned to his home in Larchmont, a New York suburb, to go trick-or-treating with his two young kids. He said he was happy at how the meeting went. "We had obviously put in a tremendous effort," he says. Around Thanksgiving, after one more "fairly brief" financial meeting at which Lauri confirmed that Jackson Lewis would set an annual cap on fees, Madden told him that his firm had won the prize. Jackson Lewis began serving as national employment counsel on New Year's Day, and Pfizer publicly announced the firm's designation at its March convocation of outside counsel.

What tipped Pfizer toward Jackson Lewis? "The biggest part of the decision was the trust factor," Madden says. "We were putting all of our eggs in one basket. Before, we had a choice among ten firms. Making this decision meant that choice was gone." She says that Jackson Lewis's size, as well as its willingness to forgo time-based billing, also weighed in its favor. "Jackson Lewis got it because they recognized that we needed to find some alternative to billing by the hour. They actually brought it up before we did," Madden says.

Under its agreement with Pfizer, Jackson Lewis gets any employment-related legal work that comes in the door for the next two years, including single-plaintiff discrimination cases, equal employment opportunity matters, class actions, and general advice and counsel. All existing employment cases were transferred to the firm except for one single-plaintiff case and two class actions—a benefits case being handled by Sidley Austin, and a Fair Labor Standards Act case filed by Pfizer sales reps that's being litigated by Littler Mendelson.

In return, Jackson Lewis is paid one-twelfth of the annual capped fee each month. The firm sends Pfizer a monthly accounting of the time that it's spent on Pfizer matters. An end-of-the-year reconciliation will allow Pfizer to recoup any money left on the table. Madden loves the single monthly report. "It's made the management part of my job much more streamlined," she says. "I just have to read one e-mail to get all my budget updates and status reports." (Jackson Lewis won't say how many lawyers or hours it thinks the Pfizer contract will consume.)

Elsewhere in the litigation department, P3 has continued to reshape Pfizer's relationships with its law firms. At the March conference for P3 counsel, litigation chief Frederick Paulmann recapped the program's accomplishments since its launch two years ago. "On all counts, we have accomplished our goals and look forward to continuing our momentum into the future," Paulmann announced proudly. He spoke about major litigation wins, as well as various initiatives, including a diversity summit, pro bono efforts, and trial advocacy workshops, all of which have been made easier by a more manageable (and more eager to please) group of outside counsel.

The March meeting closed with awards to DLA Piper partner Loren Brown for his work on product liability cases involving Celebrex, Pfizer's Cox-2 painkiller; and to Denver-based Wheeler Trigg Kennedy for its "exceptional results" on product litigation involving the antidepressant Zoloft and preemption matters. Although they're not exactly the Oscars, Paulmann says that it was "really, really moving" to hear from the recipients just how much the awards meant to them.

Despite the happy-to-be-here vibe, the timing of the meeting couldn't have been more awkward. Just one week earlier GC Waxman had suddenly resigned for undisclosed personal reasons. Paulmann says the resignation didn't come up at the conference (at least not publicly). In fact, Paulmann claims, convergence made it easier to cope with Waxman's departure, "because the work we give out to firms is not relationship-driven." But Waxman was the chief architect and champion of P3, and his absence has cast a cloud of uncertainty over the program.

At the end of May, Pfizer announced that it was hiring Amy Schulman as its new general counsel. Schulman, 47, was cohead of the mass tort and class action practice at DLA Piper. She was also lead trial counsel for Pfizer in its Celebrex and Bextra litigation. At DLA Piper, she was renowned as a litigation superstar after a Harvard Business School case study claimed that she had a \$60 million book of business, for which DLA Piper compensated her \$5.75 million in 2006, according to Corporate Counsel's sibling publication *The American Lawyer*. Schulman had plenty of experience with her clients' convergence programs, including Pfizer, General Electric, and Schering-Plough Corporation.

All told, Pfizer now uses just 39 firms for its U.S. litigation—an even smaller number than at the launch of the P3 program. Latham & Watkins (which Pfizer used for product liability matters) was delisted after a key lawyer, Beth Wilkinson, left to become Fannie Mae's general counsel. New York-based insurance defense firm Anderson Kill & Olick got the boot for similar reasons. Boston's Edwards Angell Palmer & Dodge found it no longer had Pfizer as a client when Pfizer's go-to team left for Reed Smith (already a P3 firm). And Los Angeles's O'Donnell & Associates lost Pfizer as a client when its product liability group joined Hunton & Williams, another P3 firm.

Do these deletions create an opportunity for new outside counsel? "We are always interested in truly exceptional trial lawyers," says Paulmann, adding that from time to time, "law firms pitch us." But so far, according to Paulmann, Pfizer hasn't been interested enough to take on anyone new.

As for the firms with those coveted P3 spots, Pfizer tries to make sure the work is distributed fairly. So far, every P3 firm has had at least one assignment except one, for which conflicts could not be cleared. And 80 percent of Pfizer's litigation dollars are spent on P3 firms, with the rest paid to local counsel. The company will not say how much it spends on litigation fees, but in an internal newsletter, it suggested that the figure was about \$51 million in 2007.

In return, Pfizer makes sure that it gets its money's worth. At the March meeting, Paulmann reported "substantial double-digit reductions in spending" even though matter counts had more than doubled from 2005 to 2006, and then jumped by close to a third from 2006 to 2007. How did Pfizer keep spending down? "Flat fees, volume discounts, and value-based assigning," Paulmann told the attendees.

The company has also seen a lot more law firm interest in its initiatives. For instance, last spring Pfizer hosted a diversity summit attended by 74 lawyers from P3 firms. The company honored two—Adorno & Yoss and Ogletree, Deakins—for their diversity efforts. (Ogletree has since been delisted, a casualty of Pfizer's decision to use Jackson Lewis for all of its employment work.) Prior diversity-focused efforts had died on the vine, says deputy litigation counsel Atiba Adams, who organized the summit. Before P3, "it wasn't possible to identify which firms were truly invested in Pfizer," Adams says.

With a new general counsel, Pfizer's relationship with its outside firms will surely change. But one thing is clear—the old way of farming out legal work no longer applies. Schulman, who started her new post on June 23, says she plans to take a close look at the P3 program: "It's not just because I'm here and new, but more because it's three years old, and is due for a review." Schulman says that although it could expand or contract, she's committed to continuing the P3 program: "I think it's a very important and innovative effort."

Pfizer at a Glance: High-Profile Drugs Make The Company A Big Target

- Size: Number 47 on the Fortune 100; world's largest pharmaceutical firm
- Revenue: More than \$8 billion in net income on \$48.4 billion in sales in 2007
- Workforce: 84,000 employees worldwide; 32,000 in the United States
- Litigation: Fending off lawsuits over COX-2 painkillers Celebrex and Bextra, and over the birth control drug Depo-Provera
- Investigations: Facing a U.S. probe over an ad campaign featuring artificial heart pioneer Robert Jarvik, as well

as criminal charges by the country of Nigeria over alleged deaths of children given an unapproved drug for meningitis

- Settlement: In May, resolved a long-running patent lawsuit against Ranbaxy Pharmaceuticals, Inc., over a proposed generic for Lipitor, Pfizer's anticholesterol drug

Under the Microscope: Pfizer Takes a Closer Look at Its Outside Counsel

While the P3 convergence program has been Pfizer's biggest effort to cut its outside counsel spending, it's also explored other ways to bring down legal costs. In March 2007 the company decided to have an outside consultant called **Legal Cost Control** review one month's worth of law firm bills. The alarming result: 40 percent of invoice data was "vague and noncompliant" with Pfizer's billing guidelines, according to LCC. Pfizer was getting overcharged for copies, billed for time spent on planes sleeping (or at least, not doing Pfizer-related work), and putting together budgets-you name it, says Brian Eng, the company's director of finance and legal division operations. "We've got a whole laundry list of things they can't charge us for," says Eng, who is not a lawyer. But until that point, laundry list notwithstanding, "we were basically not reducing bills at all."

To remedy the situation, Pfizer relieved its in-house lawyers of the task of reviewing and signing off on invoices- "We want our attorneys to be able to focus their energy on where they add the most value," says Eng-and gave the job to LCC and the newly created internal Billing Review Team. The savings, although not 40 percent, have been worth the effort, Eng says. In 2007 the restructured review process produced more than \$5 million in savings, or about 10 percent of the total legal bills reviewed. Eng says that "there are some firms we've been having real problems with," but he's expecting their behavior to change at some point. To speed up the process, he's considered the possibility of penalizing firms that overbill. But that remains just an idea. "Unfortunately, we haven't rolled out a penalty," Eng says.-T.L.