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## AFA-Only Firms Master The Art Of Nonhourly Billing

By Melissa Maleske

Law360, Chicago (April 27, 2016, 8:17 PM ET) -- Two law firms founded on the premise of completely eliminating the billable hour are among the 22 law firms that clients chose as the best at delivering alternative fee arrangements. Here's what traditional firms can learn from them.

It should come as no surprise that in the BTI State of Alternative Fee Arrangements **report** by BTI Consulting Group (Wellesley, Mass.), clients named Bartlit Beck Herman Palenchar & Scott LLP and Valorem Law Group as two of the law firms that are best at delivering AFAs. Both firms were founded by BigLaw defectors disillusioned with the billable hour model who recognized that to revolutionize the delivery of legal services, they would have to discard the billing conventions upon which BigLaw and the modern legal industry were built.

Clients have pushed AFAs into the mainstream, discovering that phasing out hourly billing arrangements can deliver high-quality results at a high value. Firms like Bartlit Beck and Valorem have perfected that model and the way they work because AFAs are all they do.

"From what I see, their procedures seem to be far more streamlined," Steven Greenspan, chief litigation counsel at United Technologies Corp., said of firms that refuse to charge by the hour. "They're really focused on service delivery, value and project management. My observation is that they're much better managers of their projects than law firms that have traditionally managed their projects on an hourly basis."

That efficiency is one of the biggest advantages of AFAs, but it takes an adjustment on the firm's side. While firms are adopting project management strategies wholesale, the Bartlit Becks and Valorems of the world depend on it to maintain profitability. Under flat fees — which are by far the most common billing model, according to BTI — doing more work eats into profits rather than ratcheting up bills.

Patrick Lamb, who co-founded Valorem in 2008, says law firms send mixed messages about efficiency. No matter how open to AFAs law firms are, they still largely evaluate attorneys and distribute bonuses based on whether they've met billable hour thresholds. They may tell associates to do less work with better results, but the associates are still evaluated and compensated based on whether they hit their hours for the year, he says.

"The biggest challenge [in traditional firms] is how people are judged and compensated," Lamb said. "If you're a firm that rewards people based on revenue, and your alternative fees are creating lower revenue — even if they might be increasing profit because of how you manage them — you end up hurting yourself, so that method of paying people becomes a disincentive to the success of alternative fees."

Bartlit Beck and Valorem instead put an emphasis on results. It's what their lawyers are judged on and what clients reward them for. But with rewards comes risk, which is inherent to AFAs, and minimizing that risk takes a considerable amount of due diligence.

As AFAs have become part of the mainstream, attorneys have discovered that they have to put in a lot more work on the front end to ensure the billing arrangement pays off for the firm and is fair and competitive for clients. To determine how much they will charge for a particular case, Bartlit Beck and Valorem undertake a full case assessment.

First, they need to know their client more — its business goals, goals in litigation and how it defines success in a particular case. They look at the type of case it is, its size, its stakes for the client, what court it is in, what judge it is before and what law firm is representing the other side, as a court with a low tolerance for motions to dismiss or a law firm known for going all in on every dispute will affect their quote.

They also determine how many attorneys will need to work on the case and estimate a case's timeline and the work to come — for example, how many depositions will be required or how many expert witnesses will need to be recruited. It's a lot to consider.

"The good news is that we've had enough cases over the last 23 years that ... you can take a look at a patent case, for instance, and say: 'OK, this case falls into this bucket,'" said Chris Lind, a Bartlit Beck partner who has been with the firm since it was founded in 1993. "But every case is unique, so we do need to do a lot more due diligence at the front end than you might do under an hourly arrangement."

Another benefit of an AFA-only firm comes down to the law of averages. Under a common arrangement, both firms charge a flat fee with a holdback that is doled out based on a matter's outcome. When cases don't end favorably, the firms may take a loss, but if they win, they walk away with more than they would have under hourly billing. Because of the quantity of work they do under such an arrangement, it all evens out in the long run.

And at an AFA-only firm, buy-in is not a problem. Everyone in the firm knows the deal and knows how it works, and the firm is structured to support that approach. Both Bartlit Beck and Valorem do away with the pyramid structure of most law firms, eliminating a large base of associates cranking out hours to generate revenues for the firm in favor of more experienced attorneys who can work more efficiently than a lawyer in training.

"To take a firm that's been billing on an hourly basis for 100 years and has been very profitable, where the people who are making the management decisions at the very top are likely reaping most of the financial rewards, it's going to take a lot more coaxing to get them to change the model," Lind said.

Both Bartlit Beck and Valorem are litigation boutiques, but the model suits transactional work as well, Lamb says. If nothing else, when part of the fee is predicated on the client's satisfaction with the outcome, it aligns interests and requires that firms achieve what the client wants, according to Lamb.

"I think the issue is determining what skills are needed when and having those skills that you need on a regular basis," he said. "If you

were an M&A firm and you needed a basic skill set, you could still develop massive efficiencies.”

So where Valorem works with an outside document review provider to keep client costs down, an M&A firm could develop a strategic relationship with a tax expert for complicated deals, for example. What’s important is not the work but how it is done and the focus on the outcome rather than the hours.

Working solely under AFAs makes for a better working environment as well, Lind and Lamb say. When firms’ goals and their clients’ goals are aligned, as AFAs require, it makes for stronger, closer relationships.

Eliminating the billable hour also eliminates one of the most tedious parts of many attorneys’ job. Although the firms have a sense of the resources a particular case requires, there’s no timekeeping.

“I never get emails at the end of the month telling me I have to get my time in. I never face the conundrum of, ‘What did I do that day?’ or ‘I’m not busy enough to be at 2,000 hours for the year,’” Lamb said. “The tyranny of the timesheet is gone.”

Also, when the billable hour isn’t driving everyone’s compensation, congeniality increases, according to Lind. Without billable-hour minimums and bonus thresholds, there’s no competition between lawyers to get on the cases that appear to offer the most hours. There’s no emphasis on which partner owns a case because the lead partner is paid based on the total hourly billings generated.

And when the outcome of a case matters more than accounting for who’s doing what, everyone in the firm rows in the same direction.

“The collaboration that results because you have this shared interest in maximizing the outcome is really fun,” Lamb said. “The right compensation system and the right approach to fees breaks the silos that most lawyers operate in and makes being a lawyer way more fun than it ever was before.”

--Editing by Christine Chun and Philip Shea.

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