

ELECTRONIC



BILLING 2.0

A Novelty Becomes an Essential Management Tool

By Chris Marlin, Stuart Roth and Rob Thomas

It has been three years since the first *ACC Docket* article about legal ebilling's entry into the mainstream of law department technologies.¹ Since then, the pace of adoption has accelerated and the new functions that it provides have multiplied. From its initial role as a way for a few innovative law departments to enhance control over their outside legal spending, ebilling has quickly become accepted as a work process familiar to most of the in-house bar and the law firms that represent business clients.² In the latest survey of ACC members, approximately one-fifth of in-house counsel are currently doing online ebilling and matter management, and over 40 percent are planning implementation.³ With today's increasing pressures on in-house counsel to reduce spending by managing budgets, holding the line on outside counsel rates and negotiating alternative fees linked to the value of services provided, ebilling has become an urgent priority for many law departments. What specific developments are driving ebilling's rapid adoption? What should your law department expect from the latest technology?

Raising the Bar

In the early days of ebilling, the technology was reserved for only the largest companies that could dedicate the staff necessary for the lengthy implementation process required to install and configure the system, bring on internal users, and connect their largest law firms that could afford the hefty up-front vendor costs. On the law firm side, only the largest firms participated because ebilling required costly customization of their time and billing software. Ebilling vendors charged law firms large fees (a deterrent to implementation for some in-house counsel, who suspected those fees would ultimately appear in their bills) to use their systems, making it worthwhile only for clients that had a consistently high level of billings. Ebilling was considered successful if a majority of the spending from a company's largest US law firms was processed electronically. Foreign law firm bills, and many of the bills from smaller US firms, still had to be processed as paper outside of the ebilling system.

Today, there are ebilling vendors who will commit to connect all of the law depart-



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ment's law firms and other vendors, large and small, foreign and domestic, in a single online system. Such systems accept both the predominant standard output (LEDES) from law firm time and billing software, as well as non-LEDES bills (e.g., Adobe Acrobat and Microsoft Word formats) from firms or vendors not using time and billing software, or whose software is not LEDES compatible (usually non-law firm vendors and smaller law firms outside of the United States). In-house counsel generally prefer the easier processing and reporting enhancements associated with LEDES bills.

Many ebilling systems are now "hosted" (often called "Software as a Service"), which means that there is no hardware or software that must be installed or maintained by law departments or their law firms. Users at both companies and law firms work through encrypted Internet connections to the shared system, which is hosted by the vendor. Most ebilling vendors have stopped charging law firms to submit bills (or at least offer a no charge to law firms option), removing the final barrier to ebilling for small law firms handling a single project for a corporate cli-

Progress on Legal Billing Data Standards

The LEDES™ (Legal Electronic Data Exchange Standard) invoice format can be generated by virtually all legal time and billing systems in the United States, as well as many of the more sophisticated systems outside the United States (to check specific time and billing vendors that support LEDES, go to <http://ledes.org/vendors.aspx>). LEDES was originally developed in 1998 by PricewaterhouseCoopers and the American Bar Association, which have now placed it in the charge of the LEDES Oversight Committee (LOC), a voluntary standards body consisting of representatives of in-house counsel, outside counsel, consultants and vendors. It is the goal of the LOC that LEDES be an open standard used for all electronic billing within the profession. The LEDES 1998B standard was the original standard adopted. The LOC has adopted additional standards such as LEDES 2000, LEDES XML and LEDES 1998B-INTL. While the LOC has been advocating the latest version, LEDES XML, the vast majority of law firms are still generating ebills using the LEDES 1998B standard.

The Uniform Task-Based Management System comprises codes that enable a law firm to classify and categorize their fees and ex-

penses. The Litigation Code Set and definitions were developed in the mid-1990s by a tripartite effort of the American Bar Association Section of Litigation, ACC (known then as the American Corporate Counsel Association) and a group of corporate clients and law firms coordinated and supported by PriceWaterhouseCoopers. Much of the initial enthusiasm has faded, as law firms found that lawyers often cannot be relied upon to accurately enter two codes for each time entry, and clients found the data untrustworthy, difficult to analyze and/or inconclusive.⁴ As a result, the number of in-house counsel requiring the use of UTBMS task and activity codes in bills submitted by outside counsel remains a small minority (approximately eight percent).⁵ Although work on the codes was dormant for many years, recently there has been an effort to extend the codes to areas such as patent prosecution and trademark registration. Today, the UTBMS committee is part of the LEDES organization. New task codes have recently been adopted for patent prosecution and trademark registration to provide more sophisticated spending analysis on the law department side. For more information about the UTBMS codes, please visit www.ledes.org.

ent. No longer can law firms reasonably claim that ebilling is too difficult or too costly; most firms are using multiple ebilling systems.⁶ The cessation of charges to law firms for ebilling also means that law departments no longer need to be concerned that those vendor charges will be passed through to them as higher legal bills.

On the law department side, the costs of ebilling systems have also dropped to the point that even law departments with a solo GC can justify the cost when compared with the savings. The most recent ACC survey reflected an average annual savings from ebilling of approximately 13 percent of outside legal spending.⁷ As a result, some of the same ebilling systems that are used by the largest international law departments are now also affordable for the smallest law departments.⁸

Spending reports from older systems that did not connect all outside counsel were of relatively little value to in-house counsel — like looking at your monthly checking account statement without knowing which checks were left out. Now a law department can consistently see *all* of its spending summarized in ebilling system reports which analyze trends and help set more accurate spending forecasts.

Ebilling systems are also now capturing other performance-related data that used to be maintained only in separate matter management systems. With one system tracking both spending and results, law departments can move beyond hourly fee structures to create performance-based alternative fees. Such fees can reward the firm or reduce compensation depending upon whether agreed spending, duration and results targets are met.

No IT or Administrative Support? No Problem

With the latest Web-based ebilling systems, even the smallest law departments that have little technical or other support can now quickly connect with their outside counsel. Alex Tejeira, the solo GC and director of HR for Kruger Products in Ontario, Canada, manages numerous law firms worldwide for a wide range of legal issues that run the gamut from IP to litigation and compliance. He decided how he wanted to organize the spending and other information in Serengeti's ebilling/matter management system and then had his firms put in their active projects. "All of my outside counsel — in Canada and internationally — were already on the network, so with their help I was able to fully implement my practice in less than three weeks. Now instead of stacks of paper, all of my legal files, spending and budgets are available online with a few mouse clicks."

Finally, current systems allow the law department to manage the managers, tracking which in-house counsel are best at getting top performance for the lowest cost from the outside counsel they manage. The latest ebilling systems have evolved from basic bill processing to a collaborative environment for managing work with outside counsel, as well as for managing the broader business requirements of the law department.

Agreeing Upon a Financial Plan and Tracking It

In the early days of ebilling, the systems tracked only bills, not law firm budgets or law department financial forecasts. Then the systems accepted budgets, but required in-house counsel to run their own comparisons of the spending against the budget. Now, as part of monthly bill review, ebilling systems can automatically present comparisons of spending versus budget for the project phase, fiscal year and project duration. The systems can also provide an automatic alert when a bill arrives that is over budget and enable in-house counsel to reduce the bill with a single click.

The latest ebilling systems simplify the full range of law department and law firm budget processes:

- Requiring and approving budgets from outside law firms;
- Managing outside law firms' spending to those budgets;
- Preparing a budget for the legal department; and
- Preparing law department legal spending reforecasts throughout the year.

Requiring a budget from outside counsel is generally the first step in budgeting workflows.⁹ An approved budget is put in place only when there is a meeting of the minds between in-house counsel and outside counsel regarding the expected level of activity and spending. The ebilling system enforces the requirement of a budget by not processing bills on a project until the budget is received and approved by the client. The budget then becomes the financial plan against which future spending is measured. Just having a budget generally sets limitations on outside counsel who might otherwise adopt a "leave no stone unturned" approach. Knowing that the in-house client is actively monitoring spending against the budget also induces discipline on future spending decisions, causing outside counsel to obtain approval before engaging in spending that exceeds the agreed budget.

Both fees and expenses can be budgeted on a monthly, quarterly or annual basis. Alternatively, for specified types of legal work that involve a standard progression of phases (e.g., litigation, patent prosecution, etc.), a phase-based budget may prove more practical. Such budgets define the duration of phases, fees and expenses, so that actual spending can be tracked. For example, typical litigation phases would be: initial case assessment and handling; discovery and post-discovery motions; trial preparation; trial and post-trial motions; and appeal.

The individual project budgets in the ebilling system can, with new system functionality, also become the building blocks for law department budgets. Some systems help law departments roll up the project budgets, for both matters involving outside counsel, as well as internal matters, to significantly speed up the process of creating the overall departmental budget. To further refine the departmental spending analysis, reforecasts (reflecting actual spending) can be prepared on a periodic basis, which can then be compared to the original budget, to ensure greater accuracy at the end of reporting periods. Law departments that take advantage of this new functionality often generate significant savings from tracking projects to budgets, while earning internal kudos for more accurate spending forecasts.¹⁰

Chris Marlin, deputy general counsel of Lennar Corpo-

ration, describes how ebilling coupled with budget tracking is now at the heart of their management processes:

Lennar requires budgets from its outside lawyers on all matters, no matter how small. At a time when the homebuilding industry is in its toughest economic position in decades, if not in its history, the ability to project and manage fees and costs, in every kind of case, large and small, is a business imperative. Our ebilling and matter management system enables us to provide as much predictability in fees to its business units and divisions as practical and enables outside lawyers to update budgetary projections as a case develops and changes course. Our in-house attorneys also utilize the budgeting capabilities of Serengeti Tracker to run cost-benefit analytics on matters that may merit new direction.

The natural extension of ebilling to the management of project budgets and law department budgets has permitted law departments to become much better financial managers of their legal work. At the same time, such law departments also become more effective contributors to their companies' internal budget forecasting and reporting processes.

Fine-Tuning Electronic Bill Review

The monthly review of bills is also often the best time to check to see if a project is on track. As a result, sophisticated ebilling/matter management systems present not only bills, but also key information regarding spending versus budget, the latest status reports from outside counsel, summaries of law firm staffing and the most recent estimates of exposure. Instead of pulling the file and spreading out documents on your desk as you review a bill, the latest ebilling systems can save you significant time by putting this information one click away. "The month before beginning ebilling it took me seven working days to review our paper bills," said Craig Bohn, chief intellectual property counsel at Semitool, Inc. "The next month, it took me only two hours to approve the same volume of bills coming through Serengeti."

Ebilling systems can also facilitate multiple levels of review. For example, law departments can first designate paralegals or staff to resolve bill audits and verify adherence to guidelines, including approved rates for expenses. The next layer of approvers could be the attorneys responsible for the matter, who will check to see if law firm staffing is what it should be, whether actual progress matches the budget and case plan, and whether time was efficiently spent. Ebilling systems can even be set to automatically bump larger bills up an approval chain, adding higher levels of approvers only when required to comply with corporate policies. As a result, the functions of online bill review can be easily allocated among members of the law department to ensure the efficient, thorough processing of a large volume of bills.

Capturing Law Firm WIP for Accurate Company Financial Statements

What about all of the work in process sitting out there on the books of your law firms, work that has been done but not yet billed? In order for your company to produce accurate accrual-based financial statements, such spend-

Integration of Online Matter Management with Networks of Registered Agents

Another opportunity for the more efficient collection of data pursued by some ebilling vendors is the online processing of Service of Process (SOP) records. Some systems are designed to automatically upload SOP records served upon your registered agent, including scanned electronic copies of the documents and data entered by the registered agent. Included are workflows that allow the law department to route the SOP record to the appropriate matter, including creating and assigning a new matter if necessary. The response date and response made are also tracked, including alerts in the system and by email in advance of any deadlines. A clear audit trail is kept, along with the ability to produce reports regarding the status of responses to outstanding SOP records.

ing must be collected for inclusion in financial reports. In addition, such accruals should include any reasonable estimates of time that law firms expect to spend prior to the end of the accounting period, as well as bills that are in the law department review process (not yet reported to the accounting department). These outstanding categories of legal spending can be material to the company's financial reporting. Also, because performance against the departmental budget is often a key component against which law departments are evaluated, accurate spending forecasts should include accruals.

According to the *2008 ACC/Serengeti Survey*, 78 percent of law departments collect accrual data from their firms: 31 percent on a monthly basis, 31 percent on a quarterly basis and 16 percent on an annual basis.¹¹ The vast majority of law departments attempt to collect accrual data from their outside law firms manually (with correspondence, emails and phone calls). Law departments have to repeatedly contact their firms to get current information and manually input the information that they receive from outside counsel.

Because of this significant burden faced by most law departments, Serengeti became the first system to leverage the ebilling connection to also collect accruals from outside counsel. The first step is for the law department to establish a calendar of accrual activities, including

Making Budgets an Integral Part of the Process

During its first 10 months of ebilling, NRG Energy realized over a million dollars in savings through the reduction of legal bills. A key aspect of NRG's management of legal spending is putting in place project budgets with their outside counsel. Just having a budget can make a big difference in the conduct of outside counsel; having a system that continuously monitors spending compared with the budget helps in-house counsel keep projects on track. Susan Kurtain, analyst for the legal and regulatory compliance departments, noted that, "NRG's fiscal priority is to manage to the matter budget that gets established when a matter is opened. Using Serengeti to manage the legal spend for NRG allows us to track on a real-time basis the total spend for a matter to its current fiscal matter budget — thus keeping NRG apprised of its current performance versus the plan. The system also allows for mandatory budget requirements to be set before invoices can be processed, which keeps both the firms and NRG engaged in the process of managing to budgets."

whether the law firm accruals are to be reported before or after the end of designated accounting periods. During a defined input period, the firms have the option of inputting unbilled amounts for individual matters in the system or uploading a single spreadsheet file containing the accruals for multiple matters. Depending upon when the company wants this information from the firm, the accruals will take one of two forms: (a) just the prior unbilled amount (input after the accrual period ends) or (b) the prior unbilled amount plus an estimate of additional spending expected before the end of the accrual period (input before the accrual period ends).

The company designates the matters for which accruals are required and whether the company wants a review period. A review period enables the company to edit the firms' accruals if necessary. Company administrators can also enter accrual estimates on behalf of firms that don't respond and generate accruals from budget data for months in which firms do not provide unbilled amounts.

Lightening the Burden of SOX Compliance with Online Accrual Collection

In order to comply with public company reporting requirements, most law departments must report on not only what has been billed by their outside counsel but also the time that has been spent and not yet billed. Accruals of unbilled time can be material on larger matters, as well as on a high volume of smaller matters that may not be billed each month. Like many other law departments, Olin Corporation collected such information each quarter through a series of phone calls and emails to its firms, followed by two weeks of data entry, organization and report generation. Since the initiation of online accrual collection last year by Serengeti, Olin simply calendars when the information is required from its firms and the system does the rest — informing the firms, providing a convenient upload mechanism for the required information and organizing the information into the necessary reports. "At each accrual collection deadline, we can now immediately generate reports that we need to quantify the unbilled work, estimates of additional work to be billed during the accrual period and all bills that are in our review process — for our total accrual numbers," said Stu Roth, Olin's senior deputy general counsel. "The system not only saves us weeks of time every quarter, but also provides more accurate reports than the manual processes that we had to use before this new functionality was available."

After the time windows for firm input and company review are closed, the accrual is locked down. The accrual amount is the sum of (i) the unbilled amounts plus (ii) any pending invoices or invoices that had not been sent to accounts payable. In other words, the system accrues for all known spending that has not reached the company's finance department for the accrual period. All of this accrual information (including bills that are in the law department approval process) can be reported to the finance group for preparing accurate company financial statements.

In addition, the system supports reconciliation of accruals from one accounting period to another, and compliance with company policies related to the handling of accruals for individual projects. Sometimes a company can apply an over-accrual in one matter to an under-accrual in another. Others will do this balancing across all matters and all firms, or within an organizational unit or division. The accrual functionality of the ebilling system facilitates not only the capture of accruals from outside counsel, but also the allocation and reporting necessary for accurate financial statements.

In one software upgrade of Serengeti, the financial data collected through the ebilling connection was effectively doubled when it became possible to collect law firm ac-

cruals for unbilled time, in addition to legal bills. Like the original ebilling systems, this new functionality saves law departments significant time by replacing a time-intensive manual process that occurs on a regular basis with an automated online process. With this new accrual functionality, law departments can have a single online workflow for producing accurate accrual-based financial reports covering all of their legal spending, including even the work that has been done but not yet been billed.

Handling the Unique Challenges of International Legal Bills

It is a fact of life in today's business world that even small companies may have foreign legal work (often consisting of business transactions and intellectual property filings). Those that have significant international operations may also have in-house counsel in other jurisdictions. As a result, most law departments need an ebilling system that can handle foreign currency conversions, with the additional capability of letting individual users select their own currency preferences, as well as tracking the unique value-added and other taxes often included in foreign legal bills.

The most advanced ebilling systems now permit each user to select a currency preference, into which all bills,

International Ebilling — Bigger Challenges, Bigger Benefits

With law department offices and law firms across four continents, McAfee was challenged by keeping track of the changing inventory of legal work, spending, and current status of key projects. "We needed an ebilling system that would be flexible enough to accommodate the many currencies that our company and firms are working in, as well being simple enough that we could realistically require all of our firms worldwide to do ebilling," said Ron Wills, McAfee's senior corporate counsel and head of litigation. "Now that we have all of our legal work on Serengeti, we can run up-to-date reports on inventory, spending, budgets, and status, and we have saved hundreds of thousands of dollars using Serengeti to enforce our outside counsel guidelines." Once the ebilling connection is established, it also becomes convenient to collect regular status updates, deadlines, documents and accruals directly from outside counsel around the world. "Our reconciliation of unbilled time sitting out there on the books of our firms used to involve hundreds of pages for each period," added Wills. "Now the accruals come in directly from outside counsel worldwide, and are available in a single report in Serengeti."

Two Keys to a Successful, Efficient Implementation

Olin Corporation set up a combined ebilling/matter management system with over 500 active matters, including training and connection of the law department and all of its law firms and other vendors worldwide, in less than two months. Stu Roth, senior deputy general counsel who headed up the project, cites two main reasons for its success. "First, we made very specific decisions regarding the information that we wanted to be able to report on from the system, and used those priorities to drive the necessary system configurations (matter types, business units, etc.). Second, we were very clear with our firms and other vendors regarding the information we expected them to provide at the outset, including deadlines for providing this information. We kept the initial requirements as simple as possible so that there would be no excuse for delay, and then had supplemental information entered later (either by ourselves or by our firms)." As a result, Olin was able to quickly begin processing all of its law department spending online, and then add to it the collection of exposure estimates, status updates, accruals of unbilled time and other key information once the system was up and running.

budgets, exposure estimates and other financial data are automatically converted. This allows each user to quickly assess financial data in the converted currency with which they are most familiar. For example, an electronic bill submitted by a Japanese firm in yen may be viewed by in-house counsel clients who are working on the project in company offices in the United States, Europe and Thailand — and will be automatically converted into dollars, euros and baht, respectively. The individual user's currency preference carries through the entire system, including reporting. All of the necessary currency conversions happen behind the scenes, and are updated automatically as often as the law department chooses. With such currency conversion functions, and the ability to connect all law firms and other vendors worldwide, ebilling systems have become capable of meeting the needs of international law departments with both law firm and law department users around the world.

The ability for an ebilling system to capture value-added and other foreign taxes separately is also crucial because many companies obtain reimbursement of such amounts. A well-designed system not only allows for

the separate tracking of such amounts, but also permits financial reports to either include or exclude such amounts, depending upon the accounting policies of the company.

Leveraging the Ebilling Connection with Outside Counsel to Capture Other Key Information

It often doesn't take long for in-house counsel who are using an ebilling system to ask whether they can also track the other types of information that they need to manage their projects (status updates, deadlines, documents, exposure estimates, results, etc.). As a result, the latest ebilling systems are expanding to capture directly from outside counsel the information that traditionally was manually entered by law departments into matter management systems. Instead of sending paper and email that the corporate client must process, law firms can put such information directly into the client's online project file. This additional functionality permits law departments to collect all key information in one online system, and to run reports that

Transitioning from Ebilling Into Matter Management

Like many law departments, Idearc (formerly Verizon Information Services) decided to adopt an online system for working with outside counsel primarily because of the advantages of ebilling over the manual processing of paper bills. They were able to show concrete savings by putting expense guidelines into place with their firms, which were enforced through the system, saving approximately \$50,000 on expense audits during their first nine months. Once the ebilling connection with their firms was established, they began requiring more information from their firms, having them input key data directly into the system regarding pending projects. "Now that we are comfortable that we are capturing our spending from outside counsel electronically, we are looking forward to using the same system to better manage other key aspects of our legal projects," said Joe Garza, Idearc's vice president and associate general counsel. "We expect a smooth transition into the broader use of project budgets, collaboration on documents, tracking of deadlines, and requiring periodic status updates from outside counsel." This phased approach is common because it permits legal teams to adapt gradually to the use of online systems that connect the law department with outside counsel, from ebilling into the wider use of matter management for appropriate projects.

Using Ebilling/Matter Management to Enforce Uniform Outside Counsel Policies

Capital One has discovered that one of the fringe benefits of having all of their outside counsel in a shared online ebilling/matter management system is that they can easily put in place and enforce uniform policies that govern their relationships with outside counsel. "Having multiple billing and matter management systems created additional layers of complexity, as well as an increase in administrative resources," said Molly Dodge of Capital One's legal department. "We now leverage a single system for ebilling and matter management which has decreased the complexity associated with adherence to document retention guidelines and administrative resources, as well as increased efficiencies in legal department reporting." Providing outside counsel with access to this central repository enables Capital One to share specific information such as company acronyms, physical locations, forms and templates, and key firm and rate agreements. Several features within this system allow the company to easily enforce outside counsel guidelines by automatically rejecting a firm's invoices if budgets and/or case assessments are incomplete. "We have increased our ability to easily analyze our entire legal portfolio, determine internal and external best practices, and reduce costs associated with the maintenance of multiple billing and matter management systems," added Dodge.

include not just spending, but also the other categories of information important to managing their legal work.

For example, reports can include not only fees and expenses, but also budget performance, current status, significant developments, upcoming deadlines, lessons learned, and results achieved. Such reports permit in-house counsel to assess the performance of multiple firms handling similar types of projects for the company, comparing averages against not only what each specific firm spent on fees and expenses, but also how long it took to complete the projects, whether expected results were achieved, and whether the firm accurately predicted each of these factors. Some in-house counsel also systematically analyze lessons learned, which point to opportunities for preventive actions at the company and for improving the performance of outside counsel.

One law department that regularly uses this information is FMC Technologies, whose General Counsel Jeffrey Carr says: "With Serengeti we capture critical lessons learned, and share that knowledge to drive continuous improvement from our firms."

Another example of combined ebilling and matter management reporting is an analysis that compares budgeted fee and expense amounts with estimated exposure, calculating the percentage in each project. Such reports permit in-house counsel to quickly look through a large group of projects to identify those where expected spending is too high, or not high enough, given what is at stake in each project. In this way, early settlement can be made a high priority for those litigation matters where the budget is a significant percentage of the underlying exposure.

Given the additional matter management capabilities offered by the latest systems for no additional cost, it is generally a mistake in today's environment for a law department to purchase just an ebilling system that has no potential for expansion. It is prudent to have additional capabilities available when the lawyers later decide that they want to track other information online in addition to bills. It is no longer necessary to attempt to feed ebilling data into a separate matter management system, and to require the law department to work in two different systems, because all such functions can now be covered in one system.

ACC Extras on...Electronic Billing

ACC Programs

- *ACC's Value Challenge.* ACC's Value Challenge initiative seeks to reconnect value to the costs of legal services. Our ACC Value Challenge tool kit (www.acc.com/advocacy/valuechallenge/toolkit) includes resources on budgets and performance metrics that may be of interest. Search the tool kit and find resources including: How to Use Ebilling Data to Monitor Use of Litigation Best Practices, How to Use Seven Levers to Control Litigation Costs, Promoting Litigation Cost Control and more — or contact us at accvaluechallenge@acc.com to share resources or tools that you find helpful.

ACC Docket

- *Electronic Billing Enters the Mainstream: How to Ensure a Successful Launch for Your Law Department (April 2006).* Electronic billing has become a life preserver for in-house counsel drowning in outside counsel fees and ever-increasing reporting requirements. This article shows you how to determine whether ebilling is a good move for you and if so, how to select a system that is a good fit for both your law department and your outside law firms. www.acc.com/docket

InfoPAKSM

- *Alternative Billing (August 2008).* This InfoPAK is intended to provide information on alternative billing arrangements between outside counsel and in-house counsel. It examines 11 of the various forms of alternative billing methods, providing a short summary, as well as highlighting some of the more important advantages and disadvantages of each method. www.acc.com/infopaks

Toolkit Resource

- *How to Use Ebilling Data to Monitor Use of Litigation Best Practices (September 2008).* This list recommends the use of ebill codes to monitor a law firm's litigation practices. www.acc.com/legalresources/resource.cfm?show=40403

Quick Reference

- *Top Ten Tips for Turning Your Ebilling Initiative Into a Powerful Tool for Managing Legal Spend (September 2007).* This ACC list discusses the use of ebilling in your law department. www.acc.com/legalresources/quickreference

ACC has more material on this subject on our website. Visit www.acc.com, where you can browse our resources by practice area or use our search to find documents by keyword.

Another major advantage of having ebilling and matter management in a single system is the ability to enforce the requirements of matter management by putting invoices on hold until the required work is completed. For example, if you require monthly status updates from your outside counsel in an important project, the system will provide reminders to outside counsel, log the information provided and issue a notice to in-house counsel. If a monthly status update in the system is overdue, when the firm submits its next bill for that project it will receive a notice stating that the bill will only be processed when the required status update is completed. Outside counsel quickly learn that they will not be paid unless they provide the information that is required by their clients. Such automatic enforcement of requirements helps to ensure that in-house counsel have current information in their system, even when much of that information comes from outside of the law department. This key functionality for keeping information current is only possible in a system that combines ebilling with matter management.

If Your Law Department Is Audited

It's a fact of life that more law departments are being subjected to audits by internal auditing functions, particularly reviews of law department spending and budgets. With paper bills, and a series of manual processes for approving bills and keying in spending and budgets, there are numerous areas of potential errors and/or fraudulent activity that all must be tested, resulting in lengthy, time-consuming audits. If, on the other hand, the law department receives its bills online directly from outside vendors through an ebilling system that tracks all activities, passes approval information directly to the accounts payable system, and automatically maintains a detailed audit trail of each action that is taken, such audits can be streamlined. "Prior to doing ebilling, it was very time consuming to respond to questions about historical spending, often requiring us to pull paper files out of storage," said Steve Gray, legal administrator for the NSTAR Electric & Gas Law Department. "Luckily we were on ebilling when our law department was subjected to a thorough internal audit. We simply explained our ebilling processes and gave them system access so that they could run their tests. All of the records they needed were immediately available, as were the audit trails of our approvals. Because everything was tracked automatically by the system, the auditors were quickly able to determine that our bill approval processes met their standards, and we passed with flying colors."

Finally, in an integrated ebilling/matter management system, monthly bill review can become part of an even more important management process — monitoring progress against the project plan. In the paper world, in-house counsel who are reviewing legal bills often pull the file to check the budget, current status, exposure/reserve estimates, and other key information. Today's systems will not only put all of that information a click away, but also provide analysis so that the bill reviewer can quickly determine which projects may be getting off track. For example, in-house counsel can check the latest status update from outside counsel to assess progress, the most recent exposure estimate and reserves to see if spending is in line with potential liability, and a summary of time billed by individuals to see whether the law firm is staffing the matter as expected. As a result, the review of bills can, with the help of such systems, become a periodic in-depth assessment of project progress, permitting in-house counsel to quickly triage those matters that need more attention.

Technology Enhancements to Ensure Accurate Information

With the addition of capabilities to track other types of information, ebilling systems have also become more sophisticated in helping to ensure that system data is accurate. For example, some systems have the capability of cloning matters, increasing the speed and accuracy of matter creation for a series of similar projects that

Efficient Movement of Information Among Legal Teams

Whether work is transactional, regulatory, or litigation in nature, sometimes matters move across Lennar's teams of lawyers and various law firms, requiring an efficient transition among legal teams. Serengeti Tracker's virtually unlimited document capacity enables virtual file transition immediately, eliminating or greatly reducing physical file copying and transportation costs. Lennar has used this in situations where a business deal has generated litigation, and where matters have been transitioned because of new or different matter requirements. "Lennar believes strongly in teaming with its outside lawyers, which often involves bringing together groups of lawyers from multiple jurisdictions, said Chris Marlin, Lennar's deputy general counsel. "Our ebilling/matter management system's utility as a virtual conference room/file room cannot be overemphasized in the rough and tumble world of real estate these days."

have common data elements. “Because of our ability to quickly clone similar matters, we were able to create hundreds of new matters to get up and running, with ebilling, in just three days — including our accounting codes, matter participants, and other essential information,” said Craig Bohn, chief intellectual property counsel at Semitool, Inc. “We then had our outside counsel complete the process by putting the essential information directly into the system.”

Another option offered by some service providers is the conversion and upload of data from an existing database or combination of databases (or spreadsheets). While there may be additional fees for doing so, having

a large amount of data uploaded for you in an automated fashion will not only shorten the implementation process, but also preserve data integrity.

A related option provided by some systems is for law department upload of look-up files. These are files that can be opened in the system and from which data can be copied into the appropriate fields, usually upon the creation of new matters. For example, if you want to assign accounting code allocations to a matter, you simply open up a look-up file of all available codes and select those that apply. This eliminates the risk of mistyping and/or transposing numbers. Similarly, by configuring dropdown lists from which you can make the appropriate selections (e.g., for mat-

Additional Resources

Vendors

The following ebilling systems are ranked by the number of law department responses (most to least) in the recent 2009 International Legal Technology

- Association Ebilling Survey Whitepaper, page 13 – [http://www.iltanet.org/files/tbl_s6publications/pdf33/187/e-billing%20wp%20\(i0025787\).pdf](http://www.iltanet.org/files/tbl_s6publications/pdf33/187/e-billing%20wp%20(i0025787).pdf).
- Serengeti Tracker – www.serengetilaw.com
- TyMetrix T360 – www.cttymetrix.com
- Aims by DataCert – www.datacert.com
- Legal eXchange by Bottomline Technologies – www.bottomline.com
- Smart Invoice/eCounsel by Bridgeway Software – www.bridge-way.com
- Team Connect/Collaborati by Mitratach Software – www.mitratach.com
- Tymetrix Legacy/TriPoint Systems – www.cttymetrix.com
- PACE by Navigant Consulting – www.navigantconsulting.com

Other ebilling systems that did not generate law department responses in the above survey (in alphabetical order):

- CounselLink (formerly Examen) – www.corporate.lexisnexis.com/counselink
- CSC – www.incspot.com/cscglobal/ebilling.csc
- Economic Analysis Group – www.case-track.com
- LT Online – www.lawtrac.com
- Stuart Maue – www.stuartmaue.com

Articles, Web Seminars, ACC Courses and Other Materials Regarding Ebilling and Matter Management Systems

- Ebilling/Matter Management Systems (Technology) Resources

- Electronic Billing for the Small Law Department ACC Webcast – www.acc.com/legalresources/resource.cfm?show=16330
- Electronic Billing – It’s Not Just for Large Law Departments ACC Webcast. www.acc.com/legalresources/resource.cfm?show=16437
- Electronic Billing Enters the Mainstream: How to Ensure a Successful Launch for Your Law Department www.acc.com/legalresources/resource.cfm?show=14684
- Effective Budgeting for the Law Department www.acc.com/legalresources/resource.cfm?show=20089
- The Latest Technology for Law Department Management (2007 ACC Annual Meeting course materials, see sections on matter management and ebilling) www.acc.com/legalresources/resource.cfm?show=19932
- Leading Practices in Electronic Billing: A Technological Tool for Corporate Legal Departments [www.acc.com/legalresources/resource.cfm?show=168911\(JH\)](http://www.acc.com/legalresources/resource.cfm?show=168911(JH))
- Online calculator to estimate potential savings from using an ebilling and matter management system www.serengetilaw.com/tracker/serengetitracker-roi/calculator.xls
- American Lawyer Media, 2006 Law Firm Survey Regarding Ebilling Vendors — ALM Research Survey Report. <http://alm-research.com/Documents/ebillingSurvey.pdf>.
- Krysten Crawford, “Staying Power,” *Corporate Counsel Magazine* (April 2004).
- Justin Hectus, “Better Ebilling by Leveraging Experience and Relationships,” *LJN’s Legal Tech Newsletter*, February 2008, Volume 25, Number 11. www.lexbe.com/hp/legal-research-articles.aspx?art=http://www.kyl.com/news/2008-02-06-ebilling.pdf
- Howard Janis (McKenna Long & Aldridge), “Ebilling With-

ter types, business units, types of deadlines, etc.), data is entered uniformly with virtually no errors. Such tools help to ensure accurate data in the system, which ultimately will increase the trustworthiness of reports.

Once a matter is created, the next hurdle is to maintain current data on new developments. Some systems have bulk update tools to facilitate efficiency and accuracy when major changes must be made. For example, if someone leaves the law department, the bulk update permits quick reassignment of his/her matters to one or more other members of the law department. Your system should also accommodate the entry of information directly by your outside counsel for designated fields of data of which

they have direct knowledge, such as the firm's exposure estimate, disclosures for the audit letter, case assessment and trial strategy memos, and the estimated time that will be necessary to resolve the matter. In fact, as mentioned above, the system should be able to enforce such requirements by refusing to process bills until the requested information is provided by outside counsel, ensuring that such information is provided in a timely fashion.

Ebilling systems can also enable the automatic auditing of structured invoice data. For example, audits can tell bill reviewers when a law firm adds a new person to a project, raises rates, or violates the company's expense guidelines. However, there must be a practical balance between what

out the Pain – Get involved in the selection process to find a system everyone likes," *Legal Times* (Feb. 2, 2004).

www.serengetilaw.com/news/serengeti-ebillingwithoutthepain.pdf

- Anthony Paonita, "Legal Departments tell Firms: Get on the Tech Train," *Corporate Counsel* (February 21, 2007). www.law.com/jsp/ihc/pubarticleihc.jsp?id=900005474351.
- Rob Thomas, "Web-Based Matter Management Systems: Reality Trounces Old Conventional Wisdom Once Again," *LAWNET* (2003). www.serengetilaw.com/news/serengeti-webbasedmattermanagement.pdf.
- Rob Thomas, "Choosing an Ebilling System – Measure Twice, Cut Once," *International Legal Tech. Assoc. Law Department Technologies and Best Practices* (Dec. 2005). www.serengetilaw.com/news/serengeti-measuretwice.pdf
- Robert Vosper, "Death by a Thousand Cuts – American Express Co.," *Corporate Legal Times* (Sept. 2004).

Articles, Web Seminars, ACC Courses and Other Materials Regarding Managing Outside Counsel

- 2008 ACC Serengeti Managing Outside Counsel Survey Executive Summary www.acc.com/legalresources/resource.cfm?show=62605
- Tracking Outside Counsel Performance www.serengetilaw.com/webcasts.htm#tracking_outside_counsel
- Effectively Managing Outside Counsel and Associated Costs www.acc.com/legalresources/resource.cfm?show=19986
- Managing Outside Counsel – Getting Off on the Right Foot- And Staying in Step ACC Webcast www.serengetilaw.com/webcasts.htm#managing_outside_counsel_webcast
- Outside Counsel Management

www.acc.com/legalresources/resource.cfm?show=19673

- Building/Maintaining Relationships with Outside Counsel www.acc.com/legalresources/resource.cfm?show=20196
- Strategize This! Prepare Now For When Procurement Analysts Come Knocking On The Legal Department's Door www.acc.com/legalresources/resource.cfm?show=17019
- Controlling Outside Costs Through an Alternative Billing Model www.acc.com/legalresources/resource.cfm?show=14345
- Tips & Insights: Managing Outside Counsel Relationships with James R. Buckley www.acc.com/legalresources/resource.cfm?show=14408
- Top Ten Methods to Manage Outside Counsel www.acc.com/legalresources/publications/topten/manageoutsidecounsel.cfm
- Familiar Challenges, New Solutions www.acc.com/legalresources/resource.cfm?show=86518
- Hands On: Benchmarking the Performance of Outside Counsel www.acc.com/legalresources/resource.cfm?show=14683
- Breaking Away from the Status Quo: A Survival Guide for Managing Outside Counsel Fees www.acc.com/legalresources/resource.cfm?show=86928
- Effective Partnering Between Inside and Outside Counsel: Two-Year Performance Highlights and Data from Pfizer www.acc.com/legalresources/resource.cfm?show=86898
- Mark D. Wolf, "It's ACES: An alternative billing model that really works," "*Alternatives to the High Cost of Litigation*" publication of the International Institute for Conflict Prevention & Resolution (Volume 24, Issue 11).

is identified by such audits and the time necessary to deal with them. Some ebilling vendors may claim that they can run many audits that may sound useful on the surface, but in fact generate an excessive number of false positive audits that waste the time of bill reviewers. Reports are emerging about law departments which, after months of effort, have taken the drastic step of turning off their new ebilling systems because of negative reactions from both in-house and outside counsel to such audits:

Some clients are realizing that they signed on for a punitively difficult ebilling system well into production billing. In the past three months, two of our firm's clients have completely abandoned their electronic initiatives in favor of a return to tried-and-true paper bills. Both clients worked with the same third-party ebilling service, and both were the victims of bad advice. They were encouraged to go from zero validation on their legal bills to every detailed validation and audit that an invoice could possibly endure. Instead of facilitating a transaction between two trusted parties, the service put in place rules-based engine roadblocks. It took several frustrating months of production billing to get to the realization that this approach was a failure. According to a contact working with one of these clients, the experience was more than exhausting — it was embarrassing.¹²

It is therefore important that law departments conduct thorough due diligence of the ebilling vendors that they are considering. They should request from each vendor a list of all of the law departments that are using the current version of the system, a list of the law departments that have turned off the system, and a list of any other failed implementations that did not result in the connection of all of a law department's firms/vendors. The law department should then take the time to talk with other law departments who use, and who have stopped using, the systems they are considering.¹⁵

Finally, an audit trail is essential for tracking changes to the system information, including changes made by either in-house or outside counsel. Unlike current law department manual systems and spreadsheets that have no audit trail, an online system should ensure accountability for all of the data in the system, logging the author and date of every change. All users know that their work is tracked, making them responsible for the accuracy of the data that they put into the system. If there is a question raised in an audit or in a system report, then the source of that specific data can be easily identified, facilitating independent verification and accountability.

Reports That Lawyers Can Run

The latest generation of ebilling includes built-in reporting engines that permit law department lawyers and staff to

What Do Law Firms Think about Ebilling?

For an ebilling system to be practical, it is crucial that the system be intuitive and user-friendly for outside counsel. If ebilling is not easy for the firms, it will also be difficult for the law departments which will have to answer questions and deal with issues. Therefore, it is essential that law departments reach out to their firms and involve them in the selection process for any system that their firms will be expected to use. With some larger law firms using over 20 different systems requested by their clients, they know first-hand which systems work the best. The larger firms generally know what is required to set up, maintain and use different systems, including the updating of matter information and the posting of invoices and accruals. Some outside counsel prefer working in online systems directly with their clients, and will recommend those systems that they have found work best for both sides of the relationship.

A large firm will likely have multiple clients on some of the more widely-used ebilling systems, so any efficiencies that can be leveraged will save significant time. For example,

being able to maintain one set of profile information about the firm and its users that is shared among multiple clients on the system can be a major time saver. Having such firm and user information contained in a searchable directory available to all in-house counsel using the system is also a great way to generate more business for the firm. In-house counsel also benefit from the system directory of firm profiles which enable them to quickly locate firms already connected to the system that practice in specific jurisdictions and do specific types of work.

With large firms having to utilize so many different systems, any requests for deviation from the standard LEDES format and/or UTBMS code specifications can cause major difficulties. With so many clients now requesting ebilling, some firms have even created the new position of ebilling coordinator, the person who manages the firm's submission of bills to various ebilling systems. Survey data from more than six hundred law firms regarding their assessments of the most common ebilling systems are available at: <http://alm-research.com/documents/ebillingsurvey.pdf>.

quickly run reports without having to resort to third party reporting software. For systems that also include matter management, reports can show not only spending, but also status, deadlines, results and other key information. Such systems also permit the saving of frequently run reports to save time when they are re-run in future periods. Another reporting option is data export, the ability to select specific fields of data for a defined group of matters for export to a spreadsheet or database for further manipulation, the creation of graphs and charts, and preparation of presentations.

Such reports provide complete visibility into the landscape of the company's legal work, and help the law department perform triage by identifying those areas that need the most attention. For example, changes in matter inventory trends and increased legal spending may indicate developing problems at certain business units that are causing a higher volume of legal work. Once such problem areas are identified, additional training and preventive measures for such business units may help to avoid similar problems in the future, and save the costs that would otherwise be necessary to resolve them. The law department can also use reports to identify the top-performing firms to which it may want to channel more work. For example, reports can compare similar litigation matters or transac-

Changes in **matter inventory trends** and increased **legal spending** may indicate developing problems at **certain business units** that are **causing** a higher **volume of legal work**.

tions to show the average duration, fees/expenses, and outcomes, objectively identifying the outside counsel that get the best results for the lowest cost in the shortest time.

The Lennar legal department has weighted certain metrics that it utilizes to measure outside counsel performance, rate outside counsel, and determine with which lawyers and firms it places its legal spend. Some of those metrics are automatically and objectively measured by the Serengeti system, including total cost to resolve and case cycle time. Substantive legal differences, regional and other differences can be accounted for in the reporting tools offered through the ebilling and matter

tracking system. Serengeti also enhances the subjective, more qualitative assessments of lawyers, by providing the context for important evaluative information relating to each lead lawyer on each case. Lennar uses these opportunities to contribute data to the evaluation of lawyers so that it can quickly assess its national litigation portfolio and determine which lawyers do the best job at which kind of case — and which lawyers are meeting the company’s strategic objectives most directly.

When reports are easy for lawyers to run on their own, they can regularly monitor progress of outside counsel compared with objective standards. The same holds true for assessing the performance of the law department. Such systems can be used to track in-house counsel performance, to identify those who are best at managing to a budget, or who obtain the best results in the projects that they are managing. Having spending, progress and results reporting data at your fingertips permits the law department to set realistic goals and to track progress against those goals in ways not possible before the law department had immediate access to such information.

If the firm exceeds expectations, it will receive a premium over its hourly rates, or a discount if reasonable results are not achieved.

New Ways to Save Money

As described above, the new reporting available from combined ebilling and matter management systems permits the law department to be more proactive in identifying potential developing problem areas, so that the law department can practice preventive law to save even more over the long-term. The latest generation of systems also facilitates the use of alternative fees that incent improved law firm performance, saving both time and spending.


For example, the ACES™ alternative fee model (patent pending) was developed by the FMC Technologies, Inc., law department, to tie outside counsel compensation directly to performance rather than to hours.¹⁴ Using this model, a designated percentage of the billings charged through the life of a matter is retained by the ebilling system, and is paid out in part, in whole, or with a bonus at the conclusion of the project. That final payment is set based upon the achievement of objective goals monitored by the system and previously agreed upon with outside counsel — goals such as the budget for fees and expenses, the duration of the project, and the amount of settlement/judgment. Such structures align the interests of the client in reaching a

quick and reasonable resolution, with the interests of the firm in maximizing its billable hourly rates. If the firm exceeds expectations, it will receive a premium over its hourly rates, or a discount if reasonable results are not achieved. Such innovative ways of compensating outside counsel become possible when the ebilling system tracks not only spending but also the objective performance criteria agreed upon by both sides of the relationship.

One key feature of FMC Technologies’ ACES model is that the percentage of invoiced fees and expenses withheld will change once a budget is exceeded. Typically, 20 percent of a firm’s billings are withheld up to the budgeted amount (80 percent are paid). If the budget is exceeded, the percentages flip — 20 percent of the invoices are paid and 80 percent are withheld. This reversal does not incent outside counsel to stop working, as might be the case in a flat fee-type situation, but rather drives counsel to undertake only those activities that are likely to materially impact the probability of success on that matter.

The ACES model can also be tailored to long-term engagements. In such engagements, fees and expenses are still withheld (on the same 80/20 basis). However, since “success” may not be measureable in terms of a settlement or judgment, the ACES model uses objective evaluations of outside counsel performance, which are input directly into Serengeti using the counsel evaluation feature. All of the evaluations submitted over a reporting period are averaged and a payout of the withheld fees (with or without a bonus as appropriate) is calculated based on the counsel’s average evaluation rating. As a result, the ebilling system facilitates the linking of fees earned to the value received by the client for the services performed.¹⁵

Where Is Ebilling Heading?

During the past three years, ebilling systems have made tremendous progress into giving law departments visibility into their legal work, not only their spending but the other key information necessary for them to manage their projects. As a result, this relatively new technology has earned a central role in the management of law departments. Down the road, even greater use of the data captured by such systems may be possible through dashboards or enhanced reports that quickly identify areas that need attention. Benchmarks from such data may also help in-house counsel make better management decisions by comparing their outside counsel performance, rates, and results with those of their peers at comparable companies. As ebilling systems grow to capture more of the information needed by in-house counsel, the options for what can be done with that data will likely expand to meet the evolving needs of the in-house profession. 

Have a comment on this article? Email editorinchief@acc.com.

NOTES

- 1 "Electronic Billing Enters the Mainstream: How to Ensure a Successful Launch for your Law Department," by Rick Lavers, James Sheets, and Rob Thomas; *ACC Docket*, May 2006, pp. 46-63 (hereafter "ACC Docket Ebilling Article 5/06"). This article describes the functions provided by ebilling systems, the benefits/savings for law departments, the implementation process, and the key factors to consider when selecting a system.
- 2 For example, Serengeti Tracker, the most widely used ebilling/matter management system in the legal profession, currently has more than 90,000 users in 160 countries, including over 15,000 in-house users and more than 75,000 law firm users. A list of other vendors/systems is provided in the Additional Resources sidebar.
- 3 *2008 ACC/Serengeti Managing Outside Counsel Survey Report: Assessing Key Elements of the In-house Counsel/Outside Counsel Relationship*, page 122 (hereafter "2008 ACC/Serengeti Survey Report").
- 4 Krysten Crawford, "Staying Power," *Corporate Counsel Magazine* (April 2004); Rob Thomas, "Web-Based Matter Management Systems: Reality Trounces Old Conventional Wisdom Once Again," *LAWNET* (2003), at: www.serengetilaw.com/news/serengeti-webbasedmattermanagment.pdf.
- 5 *2008 ACC/Serengeti Survey Report*, page 23.
- 6 "Legal Departments tell Firms: Get on the Tech Train" by Anthony Paonita, *Corporate Counsel* (February 21, 2007), at: www.law.com/jsp/ihc/pubarticleihc.jsp?id=900005474551.
- 7 *2008 ACC/Serengeti Survey Report*, page 121.
- 8 For a law department using a hosted ebilling service like Serengeti (which has a minimum cost of \$24,000/yr. and no costs to the law firms), and assuming conservatively savings on outside legal spending of five percent, savings will exceed costs starting with annual spending as low as \$500,000. Many companies have much higher savings in the first year. See *ACC Docket Ebilling Article 5/06*, pages 54-55.
- 9 During 2007, approximately two-thirds (62.6 percent) of in-house counsel required budgets for at least some of their matters being handled by outside counsel. *2008 ACC/Serengeti Survey Report*, page 116. For those in-house counsel who require budgets, the mean percentage of matters where they require budgets is consistently about half (49.2 percent in 2007). *Id.*
- 10 *ACC Docket Ebilling Article 5/06*, page 56.
- 11 *2008 ACC/Serengeti Survey Report*, page 89.
- 12 "Better ebilling by Leveraging Experience and Relationships" by Justin Hectus; *LJN's Legal Tech Newsletter*, February 2008, Volume 25, Number 11, at: www.lexbe.com/hp/legal-research-articles.aspx?art=http://www.kyl.com/news/2008-02-06-ebilling.pdf.
- 13 Detailed information regarding appropriate due diligence for selecting an ebilling system is provided in the *ACC Docket Ebilling Article 5/06*, page. 54.
- 14 "It's 'ACES': An alternative billing model that really works," by Mark D. Wolf, "Alternatives to the High Cost of Litigation" publication of the *International Institute for Conflict Prevention & Resolution* (Volume 24, Issue 11).
- 15 For information about the ACC Value Challenge, including a wide range of activities seeking to reconnect value to the costs of legal services, go to www.acc.com/advocacy/valuechallenge.