

# Trends in Hiring Outside Counsel

In-House News:

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## Trends in Hiring Outside Counsel

By Amy E. Wong

*Corporate Counsel* continues its five-year-old tradition. After asking GCs at Fortune 250 companies to name their "primary" law firms in four key practice areas, the publication has released its survey results in an August report entitled "Who Represents America's Biggest Companies."

The survey shows that competitive market prices are useless when trying to gauge who tops the list. Top outside counsel remain on top because of their "brands."

GCs continue to call on trusted law firms that have previously handled their company's legal matters—no matter what the price. Instead of shopping around with tight purse strings, GCs are willing to cough up hundreds of dollars per hour to firms whose level of competency is assured.

The survey, which compiles data from 93 respondents, shows that there are 380 law firms that America's top corporations consistently rely on for outside counsel.

Topping the charts are the following heavy hitters: corporate, Davis Polk & Wardwell; litigation, Kirkland & Ellis; labor and employment, Morgan, Lewis & Bockius; and intellectual property, Baker Botts.

The survey results highlight a distinctive trend. Over the past five years, a small group of firms has dominated the top spots in every practice area surveyed.

For corporate transactions, six firms have consistently remained in the top 10 from 2002 through 2007. Moreover, Skadden, Arps, Slate, Meagher & Flom has occupied the top spot for corporate transactions almost every year, except for this year, when it was dethroned by Davis Polk & Wardwell.

The same trend is found in the litigation practice area. Six firms have consistently remained in the top 10 during the past year, and more companies have turned to Kirkland & Ellis during the five last years than any other firm.

It is even more apparent when comparing survey results for labor and employment. Three firms—Morgan, Lewis & Bockius; Littler Mendelson; and Seyfarth Shaw—have consistently comprised the top three spots since 2003.

This willingness to retain expensive outside counsel is interesting news, especially in light of the 2006 survey conducted by Massachusetts-based legal consulting firm BTI Consulting Group, Inc.

Of more than 1,000 responses from in-house counsel at Fortune 1000 companies, BTI has found that about 70 percent of all GCs are dissatisfied with their primary law firms, a 13.5-percent increase from the previous year's results.

BTI has speculated that the rise in dissatisfaction may be attributed to law firms' inability to accommodate GCs' changing needs, the failure to apprise GCs about a particular service's value, and a dearth of communication.

For GCs who are constantly pressured to cut costs and provide detailed outlines from outside counsel, unexpected surprises and changes cause great frustration. Matthew Zinn, Senior VP and GC of TiVo, Inc., expressed in *The Recorder*, "I don't want to be surprised by a bill or by how long something is taking."

Zinn continued, "When people don't meet expectations, they tend to not get additional work, unless there's a good explanation."

However, when firms meet or exceed GCs' expectations, they will have loyal customers, as evidenced by the regular appearances of brand-name firms in the top slots. In fact, it is arguable that GCs retain their outside counsel out of fear.

In many cases, because outsourcing strains companies' pocketbooks, GCs' reputations are on the line when they recruit help from costly law firms. They're taking expensive risks, so they expect things to be handled professionally and successfully.

It is a big gamble to employ help from unfamiliar firms when dealing with major cases. Cutting costs to work with less reputable firms may actually create subpar results and blemish the GCs' reputations. This is a poor trade-off.

Instead of endangering their positions with their companies, GCs seek brands they can trust. And when they find these, they retain them—even if this costs their companies exorbitant amounts.

Richard Gray, General Counsel of Claria Corporation, told *The Recorder*, "We

all need to work together as a team and increase each other's credibility with the business people we represent."

To illustrate this point, if a company was entangled in a trial in which millions or billions of dollars were at stake, it would want to hire the best help out there. Daniel DiLucchio, Jr., a principal at legal consulting firm Altman Weil, Inc., expands on this idea in *Corporate Counsel*, saying that sometimes "a transaction becomes so complicated, it's worth paying the \$800 or \$900" an hour for a senior partner at a major law firm.

William Barr, General Counsel at Verizon Communications, Inc., shares the same sentiment. He revealed to *Corporate Counsel* that, although he recruited help from more than 100 outside law firms, he trusts Kirkland & Ellis with Verizon's major litigation and regulatory matters.

There are many positive attributes that inspired Barr's loyalty, including the firm's ability to deliver favorable results, demonstrate a deep level of comprehension, and handle cases efficiently. The firm's swift expertise, although expensive, is predictable and reliable. As Barr said, "They don't throw unnecessary bodies at a matter to gin up the billables."

He asked, "Why shop around when you're successful with what you've got?"