<u>Giving Customers What They Want</u>

By: Daniel P. Costello, Esq.

While readers of this newsletter may know that alternative fee arrangements(AFA) are nothing new, interest in AFAs has dramatically increased. In the current economic climate, providing financial certainty and value to a client is more important than ever. An April 2009 survey conducted by the Association of Corporate Counsel found that **77 percent** of its members would like to consider alternative billing arrangements in work handled by outside counsel.

The upcoming Counsel on Litigation Management meeting, at which I will present, has made the ""The Defense Dollar"-Enhancing Efficiencies and Cost the center piece. There are no fewer than five separate presentations touching on AFAs and measuring the true value of services provided.

I have been a huge proponent of AFA for the last several years and view them as necessary solution to companies to reduce their legal costs, while simultaneously aligning the goals of counsel and carrier. The key to why AFAs have quickly moved to the front is that they shift financial risk from clients to attorneys. Attorneys have "skin in the game" and now share some of the burden for insuring cost and time effective solutions.

The most popular AFAs are risk collars, flat fees, fee caps, and holdbacks, but there are virtually no limits on ways to structure fees. Although I won't cover all of these types of AFAs in this newsletter I did want to target one specific model which makes the transition from a billable hour to alternative fees easier for those that are weary that the new model will actually cost them more. This solution is known as a "risk collar". With a risk collar, an attorney and client agree on a fixed fee for a matter and, over the course of the representation, compare the actual hourly time expended to the fixed fee. If the hourly time is less than the fixed fee, the client is provided a discount, but the firm is still compensated more than the actual hourly expenditure. If the billable work exceeds the fixed fee, the attorney may absorb the first 20 percent in excess and then the client and attorney split the remaining hours.

The benefits to this model are that both the client and attorney track the hours expended on the files and there is transparency to the actual time expended. It also rewards the attorneys even if they spend less time on the file than what is set out in the fixed fee, based upon an agreed upon sliding scale for payment. However, the agreement also provides the client with a pad of 20 percent over the fixed fee a "collars" the risk, thus providing some certainty to what the final bill will be. This model does not act as a complete guarantee like a fixed or fair fee, and provides less of an incentive to hit the mark, it does provide much more protection that a billable hour rate.

The key to all of these solutions is defining success radically differently than the current model which creates an adversarial relationship. Bill review programs under the current model only feed the

monster as they address the symptoms but not the underlying root cause of the problem. As 77 percent of clients are demanding these types of arrangements it seems like that carriers will continue to come up with new models that work for both them and counsel. My experience tells me that firms that have data to mine from both objective quantified data, and their own firm will become the most successful moving forward. Due to our experience with over six years collecting this date we believe that we are well position to take chances and reward our clients with willingness to do so.