

THE AGENT OF CHANGE

HOW CORPORATIONS AND FIRMS CAN ADAPT
AND MUTUALLY THRIVE THROUGH TECHNOLOGY



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How corporations and firms can adapt
and mutually thrive through technology

The legal environment is changing.

Corporations are turning inward, increasing their focus on internal resources and innovation and decreasing firm expenditures. This trend was reflected in the Altman Weil “Chief Legal Officer Survey” when CLOs were asked which service improvement and innovation they wanted most from outside counsel. Their No. 1 request was “greater cost reduction,” followed by “more efficient project management” and “improved budget forecasting.”

What’s the law firm response? While some are staying competitive and delivering what corporations want, a vast majority aren’t moving quickly and effectively enough. Why fix what isn’t broken?

As the authors of the informative 2015 Harvard Business Journal article “Knowing When to Reinvent” counter, “Just because your business model is profitable doesn’t mean it will serve you well in the future.”¹ Both corporations and firms must reinvent themselves to thrive. Both inside and outside leadership must identify the “fault lines” early on and preempt them.²

Both corporations and firms must reinvent themselves to survive.

The Georgetown Law “2016 Report on the State of the Legal Market” supports the recommendation to proactively embrace change.³ The in-depth report opens with the cautionary tale of the Eastman Kodak Company, which “dragged its feet entering the digital market” and was too late when it did respond, leading to its eventual bankruptcy. Other corporations that followed the same path include Blockbuster, Borders and Compaq.

What Law Firms Are Saying

2015 Altman Weil Flash Survey: "Law Firms in Transition"

67%

ARE LOSING BUSINESS TO CORPORATE
LAW DEPARTMENTS THAT ARE
IN-SOURCING LEGAL WORK

“ CLIENTS MAY NOT BE ASKING FOR CHANGE – BUT THEY ARE SHOWING LAW FIRMS THAT THEY CAN AND WILL TAKE ALTERNATIVE MEASURES THEMSELVES TO ACHIEVE GREATER EFFICIENCY AND ECONOMY. ”

In line with Altman Weil, the Georgetown Law report finds that firm clients want more “value”— efficiency, predictability, cost-effective delivery of legal service – for their legal spend. More than ever, clients are willing to disaggregate matters, use nontraditional service providers and retain work in-house, seeking outside counsel only when necessary. The legal industry has transformed from a seller’s market to a buyer’s market.⁴

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Naturalist Charles Darwin said, “It is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change.” As the legal environment continues to change, corporations and firms can ensure their survival by responding to change in a mutually beneficial way: by using technology to implement a more centralized, collaborative business model. This paper will show corporations and firms why adapting now is necessary in order to thrive well into the future.

SECTION ONE

CUTTING COSTS AND INCREASING PROFITS



A well-recognized trend within the legal industry is that of companies wanting firms to decrease the cost of legal services, even when the services grow more complex due to globalization and increased regulation.⁵ While the economic downturn of 2009 led to an acute increase in cost-cutting pressure, the effects continue to be felt today.

For example, the Georgetown Law report notes that every Altman Weil survey since 2011 has found more law departments decreasing instead of increasing their spend on outside counsel.⁶ That trend will continue, with 40 percent of respondents planning to decrease their spend in the coming months.⁷

If both inside and outside counsel adapt to change, they can thrive.

At first, it would seem that corporations' goal of cutting costs is in direct competition with firms' goal of increasing profits. But this doesn't have to be the case. If both inside and outside counsel adapt to change, they can thrive.

AFAs

One change underway is the use of alternative fee arrangements (AFAs) or value-based fee arrangements. These have emerged as a way for corporations to align cost and interest with outside counsel so law firms' billings are incentivized to the same goals as inside counsel. Such payment structures can be used for various types of matters, such as contracts, M&A, litigation and more. Some 60 percent of CLOs participating in the 2015 Altman Weil "Chief Legal Officer Survey" used AFAs or fixed-fee arrangements in the previous 12 months to control law department costs.⁸ Meanwhile, in Altman Weil's "Law Firms in Transition" 2015 survey, more than 93 percent of firms acknowledged using AFAs that year.⁹ And the use of AFAs will continue to increase. Forty-one percent of corporate counsel participating in Norton Rose's "2015 Litigation Trends Annual Survey" expected to increase their use of AFAs in the next 12 months.¹⁰

More than 93 percent of firms used AFAs in 2015.

The terms of AFA arrangements can vary, but the goal is to manage costs with a high level of predictability for corporations. The AFA is not going away. If firms continue to work inefficiently and maintain the "billable hour" mindset, they're guaranteed to fall behind.

Given the way that many AFAs are structured – typically fixed-fee versus hourly billing – corporations don't end up paying for the more tedious tasks, which can have a significant impact on a firm's bottom line. For example, the CIO of an AmLaw 100 law firm recently revealed to LLM, Inc. that for this reason, the firm writes off approximately 80 percent of paralegal hours. Even if the payment structure is not an AFA, corporations continue to push back and scrutinize charges. Like Bradley Serwin, General Counsel for GlassDoor, Inc says: "... we routinely push back when we feel too much time was spent on particular tasks."¹¹

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In order for firms to keep up with changes being demanded in the delivery of legal services, it's imperative that they identify inefficiencies and use technology to automate away from them. For example, using software that can instantly compile documents into a single PDF to be electronically filed with the court or shared among attorneys preparing for a deposition or trial. If firms don't identify inefficiencies, the client will. Perhaps Michelle Fang, an e-Bay veteran summed it up best when she said, “Don't send me something FedEx when you could've sent a PDF. I can't stand that.”¹²

The Top 3 Things Chief Legal Officers Want from Outside Counsel

2014 Altman Weil "Chief Legal Officer Survey"

1

GREATER
COST REDUCTION

2

MORE EFFICIENT
PROJECT MANAGEMENT

3

IMPROVED
BUDGET FORECASTING

Innovation

When it comes to the delivery of legal services, some firms are taking a more innovative approach through technology. While in the previous example of compiling hundreds and thousands of documents in a few clicks is one way a firm can be more efficient in their delivery, there are other ways firms can use technology to their advantage. For example, determining the review rate of a case using software evaluates whether a team is pacing on track with the right amount of reviewers. This allows firms to adjust quickly and add or remove reviewers, allowing for maximum efficiency and cost-savings in the review process. Bottom line: firms can deliver corporations the increased insight into cost they're asking for.

Another way that firms are being innovative and reducing cost for clients is by using technology-assisted review (TAR). TAR can cut the expense associated with review – the costliest part of litigation. Using TAR to cull down data allows reviewers to only focus on the most important documents. TAR can also be useful to inside counsel, enabling them to prioritize review before passing it on to outside counsel.

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TAR can greatly reduce time spent on review in foreign language matters as well. For example, LLM, Inc. worked with a firm that used a large number of reviewers in Taiwan for the first phase of a client's review, which was very costly. After LLM, Inc. introduced the firm to TAR, it was able to finish the case's review using a single stateside associate who spoke Mandarin.

As shown, technology can greatly reduce time and costs. It's important to note that if not used properly, it can also contribute to the problem. For example, if firms use multiple software systems to accomplish multiple tasks in litigation, M&A, investigation or more, there's a greater risk of data loss and human error, plus the added cost of procuring multiple software systems and the ingesting and transferring of data as well. The only way to avoid these inefficiencies is to use a comprehensive software system that stores legal documents for a matter or project through its life cycle.

THE TAKEAWAY

WHEN FIRMS IDENTIFY THE MORE
TEDIOUS, TIME-CONSUMING TASKS
THAT CAN BE AUTOMATED, THEY
CAN DELIVER THE SPECIALIZED
EXPERTISE THEIR CLIENTS
EXPECT OF THEM. TECHNOLOGY
ALLOWS FIRMS TO DELIVER THE
LOWER COSTS AND INSIGHT
CORPORATIONS DEMAND, WHILE
STILL MAINTAINING FIRM PROFITS.



SECTION TWO

IMPROVING COMMUNICATION AND COLLABORATION



In rethinking the delivery of legal services, including cutting costs, many firms are also reevaluating how they communicate and collaborate with clients. This is a trend LLM, Inc. is seeing among its own clients — from the AmLaw 100 to boutique firms. Such firms are proactively communicating how they're pacing against a budget and delivering weekly and monthly case strategy updates. And they're not only sending frequent updates, but also tracking data so they can provide historical insight and predictions as well. This type of efficient, thorough communication gives firms' clients the insight they seek.

Closing the Gap

At the outset of any case or investigation, there's a gap in communication between inside and outside counsel. The client usually knows more about the legal event than the firm. Efficiently transferring as much knowledge as possible between counsel is crucial. Furthermore, quickly understanding the facts of a case or investigation and having access to key documents sets counsel up for success early. If counsel uses software that includes a timeline feature to gather all of the information, both inside and outside counsel can collaborate in real time. The ability to plot key events and directly attach supporting evidence as the case develops, with all pertinent facts in one place and updated in real time, gives the few firms that have it a clear advantage.

If counsel uses software that includes a timeline feature to gather all of the information, both inside and outside counsel can collaborate in real time.

Working Together

Imagine if inside counsel no longer has to wait for an update from outside counsel. By storing all information in one centralized location, inside counsel can immediately pull any pertinent information and identify missing elements from a case. Throughout the life of a matter, both parties can keep track of the story, risk factors, key events and triggers, status, documents and more in real time. Inside and outside counsel can keep track of spend against the budget and evaluate strategy according to their aligned goals. A centralized location that stores all data contributes to more effective communication and collaboration.

THE TAKEAWAY

PROACTIVE AND EFFICIENT
COMMUNICATION IS ESSENTIAL
FOR FIRMS. AS A RESULT,
COLLABORATION BECOMES MORE
EFFECTIVE AND CORPORATIONS
CAN GAIN GREATER
TRANSPARENCY INTO THE INNER
WORKINGS OF THEIR CASE AND
INCREASED PREDICTABILITY.

SECTION THREE

PREDICTING THE FUTURE



The firms that are reconsidering how they deliver legal services realize that in order to remain competitive in today's market, they need to operate more like a business and deliver clients the value they're asking for. A point echoed by the firm White & Case:

“Success for most large law firms will increasingly depend on becoming more businesslike, particularly with respect to how they manage their organizations and operations and engage with clients.”¹³

Corporations' boards of directors are asking for greater predictability. Corporations, in turn, are asking firms for increased transparency into cost, strategy, risks and more.

One law firm client shared with LLM, Inc. that as recently as two to three years ago, corporations weren't asking for access to review software. Now these same clients are quite interested in being able to see various details of the matter at their discretion. More than ever, companies are requiring that they be involved in the development of case strategy.

Another reason corporations are asking for more transparency is that they need the ability to pivot their strategy at any given point in the case. This includes how they're accomplishing their overall goal at a high level, whether it's bet the company litigation, maximizing a settlement or driving down costs. This could mean understanding items like resource allocation for review, identifying and discussing key documents early or tracking and predicting the driving items in spend against the matter's budget. If there aren't regular status updates and insight into case details for corporations, it inhibits flexibility and case strategy that could have a great impact on the outcome of the case.

Furthermore, by having all historical information in one location, counsel can compare, track against and use it to forecast across the current and future matters.

These firms realize that in order to remain competitive in today's market, they need to operate more like a business and deliver clients the value they're asking for.

A Fortune Global 500 company LLM, Inc. works with is trying to crack the code on predictability by doing some innovative work. After reviewing historical data, the company realized that different phases of litigation can vary in cost, length and predictability. In order to more accurately budget the costs of a case throughout its life cycle, it implemented a phase-based fixed-fee AFA. In addition to the initial budgeting, the organization can also more accurately track spend and predict its trend against each phase of the budget, emphasizing both the economic and value-based advantages of an AFA. The company not only worked to reduce costs, it increased value through aligned goals and transparency on predicting cost overruns. Together, the corporate-firm team may pivot earlier by communicating adjustments for resources or strategy on either a single phase or the matter as a whole.

After reviewing historical data, the company realized that different phases of litigation can vary in cost, length and predictability.

Access to historical data including spend, win/loss rates, settlement costs or risk decisions affects not just a single matter, but also transparency across future matters. For the organization, legal department budgets may become both more predictable and transparent at the corporate level. For the law firm, tracking spend and historical data aids them in making profitable bids, assigning resources and communicating risk to their clients.

THE TAKEAWAY

IF FIRMS CAN DELIVER
THE PREDICTABILITY AND
TRANSPARENCY CORPORATIONS
ARE ASKING FOR, THEY WILL
STAND OUT FROM THEIR
COMPETITION. CORPORATIONS
HAVE ALREADY STARTED
CRACKING THIS CODE ON THEIR
OWN, BUT IF OUTSIDE COUNSEL
CAN WORK TOGETHER WITH
THEM, OVERALL EFFICIENCY WILL
BE IMPROVED.

SECTION FOUR

LOOKING FORWARD



The legal environment is changing.

Corporations and firms can adapt and be part of this change or they can – and will– be left behind. In particular, firms, which have been notoriously slow to respond, must change their own thinking and the tempo of their response to what clients are asking of them. If not, these clients will continue to create the change they want to see.

There are many approaches and technological tools available to thrive in the changing environment. But they require action. Counsel needs go beyond the page and put them into play for the sake of their business.

Lao Tzu said, “If you do not change direction, you may end up where you are heading.” Where is your corporation or firm headed?

References

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Connecting corporations and law firms
throughout an entire case, in a single platform



About LLM, Inc.

Liquid Litigation Management, Inc. offers something completely unique in the industry: discovery and case management in one product. LLM's platform enables legal teams to review discovery, produce documents, and manage related daily case materials through a single interface. This allows outside and inside counsel to better collaborate, communicate and prepare for matters in the most effective way possible, which is why it is favored by many AmLaw 100 & 200 law firms and Fortune 100 companies.