



## Survey of Law Firm Economics

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### Saul Ewing Puts Its Alternative Fees in Writing on the Web

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Moving beyond all the talk of alternative fee arrangements, Saul Ewing has put its fixed-fee programs in writing -- on its Web site at least.

The firm launched this week its "[cost certainty commitment](#)" with two different programs in which either a fixed fee or a cost per-attorney, per-day will be used on specific types of matters the firm identified as lending themselves to such arrangements. New matters have already started to come in as a result, and the goal is to have practice group leaders come up with other areas in which the program could be expanded.

"As a midsized firm, we felt like 'shame on us' if we can't be very nimble in responding to this market activity," Saul Ewing's managing partner, David Antzis, said. "We wanted to act quickly and with market specificity."

While there is always an element of risk in these types of arrangements, Antzis said he hopes to make up any lost fees by doing the work in volume and increasing the firm's market share in these areas as clients look for more ways to ensure cost predictability.

#### DUE DILIGENCE AND INSURANCE HEARINGS

To start, Saul Ewing is offering a fixed, daily blended rate per attorney for due diligence work for investors, companies looking for capital and venture capital or private equity firms looking to have their portfolios evaluated.

The second program offers a fixed fee for representation at administrative hearings before the Pennsylvania Insurance Department. There are two packages under this plan, with the second having a higher cost to include some post-hearing work.



Antzis said the arrangements could be offered for certain types of labor and employment, intellectual property and litigation matters as well.

Deborah Spranger is a corporate partner in Saul Ewing's Chesterbrook, Pa., office and said it comes as no surprise that the work in that area is down, so the firm has been looking at ways to increase it. She had been noticing that equity investors were doing much deeper due diligence in this market and the lead time for closing deals was getting quite long. So Spranger sat down and came up with a way to offer both investors and companies predictable due diligence representation that could fit their tightening budgets and hopefully shorten the due diligence process by offering proactive advice in areas like tax, ERISA, intellectual property or environmental law.

Spranger sent her clients information on the program at 10 p.m. Monday and by 8 a.m. Tuesday, she had two new engagements.

"So obviously there's an appetite for these types of services," she said.

For Michael Consedine, vice chairman of the firm's insurance practice in Harrisburg, clients in the insurance arena are under a lot of pressure to reduce costs. And while there has been a lot of talk about alternative fee arrangements in the past, he said there is a true sense that clients are serious this time.

"It's our sense that what we're seeing right now in terms of the way companies are approaching legal services may be a real paradigm shift in terms of how the industry will work now and in the future," Consedine said.

Focusing on the insurance department hearings was an easy first step for the firm, he said, but hopefully it will be one of many areas where the firm can offer these types of arrangements.

Consedine said the idea came out of talking to a client about such a hearing. When the client heard the hourly rate, it asked for some parameters. The group came up with the fixed-fee idea and Consedine said the client liked it so much it gave the firm more work.

"And that's what we're hoping for," he said. "And if it pushes our competition to step up and be creative, then everybody wins."

Another winner in this paradigm shift could be law firm attorneys, Antzis said. Not only does it get younger associates out there doing work to meet the value proposition, but it takes the focus off of the billable hour and might make for a happier work environment. That in turn, he said, could reduce attrition rates.

#### **NEW, BUT NOT THAT NEW**

Law firms have been offering fixed fees for things like patent filings and the drafting of wills for years, Antzis said. But the firm's first significant foray beyond those areas came this year before the "cost containment commitment" had even been thought up.

Saul Ewing stole away work for a large grocery chain from a larger, national firm. Antzis said the chain brought its business to Saul Ewing because the firm agreed to a fixed cost for handling all of the chain's single-plaintiff employment discrimination claims in the region.

While many firms are testing out the alternative fee waters, Altman Weil's Pamela Woldow said Saul Ewing's cost containment commitment is certainly unique. She said she isn't aware of any other firm that has created such a program and made such a public, formal commitment by putting it on its Web site.

"They did it smartly," Woldow said. "They aren't trying to do it across the board in the whole firm because that's a recipe for failure."

Firms don't want to have to go to clients at the end of the matter and say, "We messed up," she said. Coming up with an alternative fee arrangement strategy is a process that takes time, Woldow said. Firms need to mine the data they have for certain practices and come up with numbers that make sense for the firm and the client. But many firms, she said, don't have that data.

Morgan Lewis & Bockius and Marshall Dennehey Warner Coleman & Goggin are two area firms Woldow pointed to as having a commitment to alternative fee arrangements.

Morgan Lewis Chairman Francis Milone said in a statement that the firm regularly works with clients on fee arrangements that meet their needs.

"While we would decline to put a percentage on how much of our revenue we derive from those arrangements, what we can say is that many of our alternative arrangements result in fees that are very competitive with those charged by mid and small-sized firms," he said in the statement.

Marshall Dennehey President Thomas Brophy said the firm has been offering alternative fee arrangements for more than 10 years and, while the firm is very open to their use, he hasn't noticed any increased demand from clients lately.

The firm does a lot of insurance defense work and he said he found there is a reluctance on the part of some of those clients to take on the perceived risk of the arrangements. Alternative fee arrangements are generally implemented with the hope that a client will direct more work to the firm in consideration of the arrangements. But Brophy said insurance companies use a number of outside law firms and don't necessarily have an interest in changing that model.

The firm currently has a few matters that are being handled on an alternative fee model, and Brophy said he would be interested to see whether the use of alternative fee arrangements increases in the coming months.