

ELECTRONIC BILLING

ENTERS THE

MAIN STREAM

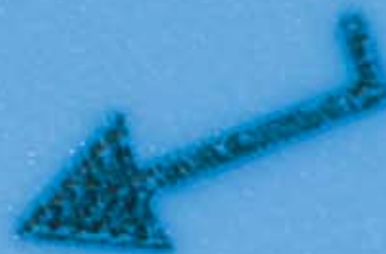
HOW TO ENSURE A SUCCESSFUL LAUNCH FOR YOUR LAW DEPARTMENT

Electronic billing has become a life preserver for in-house counsel drowning in outside counsel fees and ever-increasing reporting requirements. Once the purview of large law departments and insurance companies, ebilling is entering the mainstream, thanks to inexpensive, web-based systems requiring no installation of hardware or software. Recent surveys of ACC law departments (80 percent of which have five or fewer lawyers) bear this out: Five years ago, electronic billing was rare; today about 15 percent of law departments are using electronic billing, with an additional 15 percent planning on it. As a result of widely reported efficiency gains, GC focus has shifted from skepticism about whether ebilling will catch on, to concern about how to respond when upper management asks why the law department isn't processing its legal bills electronically. This article will show 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.

BY RICK LAVERS, JAMES SHEETS, AND ROB THOMAS



ELECTRONIC BILL



In Brief

- Ebilling systems can save, conservatively, around 5 percent of annual outside legal spending. Many ebilling and matter management systems cost around \$30,000 annually, which means that legal departments spending \$600,000 in outside legal costs annually can recoup the system cost in just one year.
- Newer ebilling systems are accessed via the internet, rather than requiring arduous installation and maintenance of hardware and software.
- Much more than traditional paper bills submitted electronically, ebilling can integrate seamless data flow (with less attorney administrative time), track costs against budget, and collect matter management data, leading to greater department efficiency.

Why Rock the Boat?

What is driving the rapid adoption of ebilling in a profession that is notorious for slow acceptance of new technology? Savings and control. Law departments with ebilling report savings of 5 to 15 percent or more of their outside legal spending which, when compared to system costs of 1 percent or less, make a compelling business case. Law departments gain control by having instant access to what they are spending and where. Ebilling generates up-to-date reports with a couple of mouse clicks—a vast improvement over the fire drills traditionally triggered by queries from management, auditors, or the board's audit committee. Law departments also use ebilling data to create more realistic budgets, including projected legal spending for specific products or business units.

Together with matter management, ebilling opens better views into the ocean of corporate legal work, enabling the law department to take preventive measures in areas of increasing legal spending and exposure. Historical spending/results data provide a solid foundation for negotiating fixed and other alternative fees—and help to identify top-performing outside counsel, enabling you to allocate work more effectively. Finally, a well-designed ebilling/matter-management system covering the law department and all of its firms can provide accurate, complete, and auditable information so that the law department can certify to upper management that it satisfies Sarbanes-Oxley and other compliance requirements.

Time savings is a major, but often overlooked, bonus of ebilling. How much time do you spend routing, filing, and looking for paper bills and other documents? How about reentering information into databases? Automated online processing of bills and budgets eliminates time wasted handling paper and generally simplifies the flow of information, giving in-house counsel more time to address the day's other pressing priorities.

Learning to Paddle: How Does Electronic Billing Work?

The latest generation ebilling system is accessed over the internet, with no in-house installation of hardware or software. The ebilling vendor provides a secure, encrypted system where law firms submit bills and in-house counsel review and process them—from anywhere with



RICK LAVERS is executive vice president, secretary, and general counsel of Coachmen Industries, Inc., a public company headquartered in Elkhart, IN, whose law department has three lawyers. A year ago, he oversaw the migration of his law department and outside counsel from an ebilling system to a new ebilling/matter-management system.



JAMES SHEETS is vice president and solo corporate counsel for Resun Leasing Incorporated, a private company headquartered in Dulles, VA. Two years ago, he selected and implemented an online ebilling/matter-management system for his law department and all of his law firms.



ROB THOMAS is vice president of strategic development for Serengeti Law, headquartered in Bellevue, WA. He was one of the architects of Serengeti's ebilling/matter-management system, which is currently used by over 30,000 in-house and outside counsel in more than 125 countries. He is also the author of the annual ACC/Serengeti Managing Outside Counsel Survey Report.

an internet connection. Lawyers who have never seen an electronic billing system often mistakenly assume that it is an electronic version of the paper world, with ebills processed like paper bills. Although this may be true for some older ebilling systems, the capabilities of today's ebilling systems are far greater.

Law firms can now upload hundreds of bills directly from their time and billing systems with a couple of clicks. The ebilling system instantly rejects bills with errors, duplications, and other problems. The system then:

- transforms bills into a uniform format (no matter what firm or system they came from),
- audits bills for violations of client guidelines (such as expense limits, budgets, and hourly rates), and
- instantaneously delivers the bills (with analysis) to the first designated reviewers.

Next, each reviewer can easily re-sort, search content, and adjust bill details online, with or without comments. The reviewer can also approve or reject bills with a single click. The same goes for audit violations (changes in hourly rates, new timekeepers, budget overruns, or violations of billing guidelines), which may be small individually but can add up to significant overbilling. The system moves the bills through designated reviewers, following established thresholds to kick larger bills up to reviewers with greater approval authority. Approved bills go back to the law firm with any modifications and comments, and off to the accounts payable system for payment. The billing data automatically populates databases for spending reports, which can be run at any time, in a few seconds, to identify trends and respond to management questions.

If the law department requires a budget in a project, bills may be automatically rejected until the budget is submitted and approved.

Many systems automatically track spending against the agreed budget for the month, quarter, fiscal year, and since inception, allowing the client to identify and deal with developing spending problems early. Some electronic billing systems allow both company and law firm budgets in a project, so that in-house counsel can track their own estimate against the firm's estimated and actual spending.

The beauty of ebilling is that the data flows out of law firm systems, through the automated review/audit/approval

process, and into reporting databases. No one has to reenter any of the spending data uploaded by the law firms.

What are the potential downsides of ebilling? As with any new system, there is always a risk that users will balk at working in new ways, that the system won't end up working as expected, and that ongoing costs will be

Navigating with One System

There are many clear advantages to having ebilling and matter-management information in one system:

1. A single ebilling/matter-management system is much easier to use and presents more consistent data than multiple systems with varying degrees of integration. Multiple systems also run the risk of generating inconsistent data, a compliance nightmare.
2. A combined ebilling/matter-management system can solve one of the key problems with any system—keeping the information current. By tying the acceptance of bills to the law firms' submission of other required information (e.g., budgets, exposure estimates, and regular status updates), in-house counsel can ensure that they are working with complete and current information.
3. Reports provide a more complete picture of projects managed by the law department, including status, deadlines, and results, as well as spending.
4. Project teams have all key information in one place, accessible to authorized users, whether in the law department or outside firm. This comes in handy when preparing for conference calls with outside counsel, budget meetings, or internal client meetings.
5. An encrypted online matter-management system is also generally more secure, easier to maintain, and more useful than a paper file stored in someone's office. Such security also ensures protection of the attorney-client and work product privileges, providing a much higher standard of privacy than unencrypted email currently used by many counsel.
6. Adopting a single system makes it easier to transfer key information when there is turnover in the law department or outside firm. It also facilitates compliance with document retention policies.
7. Documents previously generated by or for the law department, such as commonly used forms, can be shared across multiple law firms online, so that outside counsel don't waste time and money reinventing the wheel.

greater than anticipated. In order to avoid ending up in a system with such problems, it is essential to conduct thorough due diligence prior to selecting a system. (See "Essential Questions for Vendors to Tackle" and "Navigating Vendor Responses," on pp. 54 and 58–59.)

In addition, law firms may push back, particularly if you require them to use an ebilling vendor that charges them to submit bills electronically, or requires time-consuming changes to their internal billing systems. As discussed below, there are ebilling vendors who do not charge law firms and who do not require customization of law firm systems.

When outside counsel ask law departments whether there are any ebilling benefits for their law firms, there are several potential responses:

- Bills will be processed faster, often leading to quicker payment;
- The system will produce actual/budget comparisons and other reports that law firms used to spend significant time creating for corporate clients; and
- The attorney-client relationship generally improves as the client is better able to understand the spending and activities of its outside counsel.

The bottom line is that ebilling primarily benefits the law department. Most law firms are already doing ebilling because it has become a requirement to work with corporate clients.

Swifter currents: What is matter management?

Some ebilling systems provide only electronic bill processing as described above—sometimes with related financial functions like budgeting and reporting. When law departments began to use ebilling systems, however, they often asked whether they could also use the new online connection with their firms to collect other important electronic information. For example, when looking at litigation spending, it often makes sense to review not only fees and expenses, but also the results (settlements and judgments). Such results, which are not included in basic ebilling systems, often dwarf the amount of the attorneys' fees, and are necessary for a complete evaluation of the work performed. As a result, newer systems now include the ability to share additional information, falling under the broader label of "matter management."

The latest combined ebilling and matter-management systems collect all of the key information from both in-house and outside counsel in a single online system. Rather than collecting only spending data, such matter-management systems also collect other essential law firm information previously delivered to law department clients as paper or emails, such as:

- documents created by outside counsel (e.g., pleadings, transactional documents, research, transcripts, and forms);
- status updates;
- deadlines, events, and project calendars;
- exposure estimates; and
- results achieved.

Such systems can facilitate a sea change in the ways that law departments make daily decisions—from management by anecdote to management based upon data analysis. For example, when management or auditors request an identification of the developing areas of legal spending and exposure faced by the company, many general counsel go to their in-house colleagues and primary outside counsel to gather their impressions regarding the latest developments. Unfortunately, such an approach is subject to the significant human limitations of memory and cognitive dissonance—the natural inclination that we all have to disregard information that is inconsistent with our current view of the world.

Law departments with ebilling/matter-management systems, on the other hand, quickly pull up the actual data to identify previously unnoticed trends in matter inventories and exposure estimates, for specific matter types and busi-

Today's law departments find that they are **increasingly** expected to base their decisions upon the **analysis** of factual data, rather than the personal impressions of those providing legal services.

ness units. This revolution in the fundamental approach of in-house counsel is akin to what occurred in the pharmaceutical industry, where new drugs are now statistically tested for benefits/risks, replacing the old days when medicines were sold based upon testimonials. Today's law departments find that they are increasingly expected to base their decisions upon the analysis of factual data, rather than the personal impressions of those providing legal services.

Although a combined ebilling/matter-management system may cost about the same as ebilling alone, piecing together ebilling and matter-management systems offered by two different vendors will probably present additional

Downstream Benefits of Ebilling

- *Better compliance with financial requirements.* Ebilling allows staff to spend less time complying with SOX and other financial system requirements, and creates verifiable audit trails regarding legal spending.
- *Immediate awareness of developing problem areas.* Ebilling reports identify areas of increased legal spending and exposure, permitting early intervention and preventive measures to limit liability.
- *Better law department budgets.* Historical spending trends and law firm budgets form the building blocks for better law department budgets, which can be created within some ebilling systems. Historical spending averages for specific types of transactions and cases help the law department work with business units to project legal spending for their activities. Regular monitoring of spending also permits quick midterm reforecasts, assuring accurate year-end law department budget performance.
- *Enhanced communication.* If ebilling is combined with matter management, everyone on the project team is continuously kept in sync with periodic status updates, shared project calendars, online access to important documents, progress against the budget, and other material developments.
- *Reallocation of work to top performers.* With ebilling, you can compare the costs of hiring particular firms and individual outside counsel to handle certain types of work, allowing you to optimize work allocation. If the system also captures both objective results and subjective evaluations of outside counsel, you can also compare results achieved, predictive accuracy, and time to obtain a resolution—in other words, outside counsel's effectiveness.
- *Better use of alternative fees.* Historical benchmarks provided by ebilling provide a basis for realistic alternative fees (fixed and performance-based), reducing the inefficiencies of hourly billing and permitting better alignment of client and outside counsel goals. Many law departments find that this benefit alone more than pays for the system.

costs, challenges, and risks integrating two different systems. And, with any system it is important to ensure that the system is not only secure, but also reliable, with guarantees of availability when you need it. (See "Navigating Vendor Responses," on pp. 58–59).

As you can see, a law department may not thrive on ebilling alone. Law departments new to ebilling, those with older internal (not connected to outside counsel) matter-management systems requiring data reentry, and those with ebilling-only systems should consider taking advantage of the unique opportunities offered by a combined online ebilling/matter-management service. (See "Navigating with One System," on p. 50.)

With today's **global economy**, even small law departments with only **domestic** legal work must assess the likelihood that they will need to **work with counsel outside** of the United States.

Foreign waters: Can ebilling handle international spending?

Most companies with international business receive bills from foreign law firms in foreign currencies. Some law departments have offices in other countries where they are managing their legal spending in local currencies. With today's global economy, even small law departments with only domestic legal work must assess the likelihood that they will need to work with counsel outside of the United States, and determine whether it would be prudent to have an ebilling system that can handle international bills. Unfortunately, many ebilling systems can only handle bills from US law firms that can produce LEDES 1998B data (a US standard), and do not have the capability to handle non-LEDES bills, foreign currencies, foreign taxes, or other unique aspects of foreign bills.

If your legal work may involve international billings, you should verify that any system you consider:

- accepts non-LEDES bills in Microsoft® Word or Excel, Adobe® Acrobat®, or some other common format;
- automatically converts foreign currencies in bills, budgets,

and reports; and

- tracks foreign taxes separately, as they are often reimbursed.

If you have legal offices outside the United States, you may also want a system that permits each user to select a currency preference into which all financial data is automatically converted. This allows each office to monitor its spending in the local currency, while the home office views total spending from all offices in its preferred currency.

Is It Time to Launch?

The amount of work you refer to outside counsel, not the size of your law department, is usually the key factor in determining whether an ebilling system is warranted. Even in law departments with a single lawyer, ebilling often saves much more than it costs, and helps to manage more work effectively with fewer staff.

As with any technology acquisition, law departments generally base the ebilling purchase decision upon a return on investment (ROI) analysis: Are the likely sav-

ings from this new system greater than the total cost? Consultants and vendors generally agree that, for most law departments using a basic ebilling system with budget management, a conservative savings estimate is at least 5 percent of annual outside legal spending. For comparison, the average savings from ebilling reported by ACC law departments in a recent survey was 16 percent of outside legal spending. Obviously, your savings will vary depending upon your current billing methods, whether you maximize the capabilities of the new electronic billing system, and other factors. Nonetheless, these two benchmarks provide a good starting point for your analysis.

For example, using the more conservative 5 percent savings figure, and given that a broadly accepted ebilling/matter-management system costs around \$30,000 per year (including one-time initial implementation and training fees) for a small law department, the system should pay for itself in year one if that law department has at least \$600,000 in annual outside legal spending

Essential Questions for Vendors to Tackle

- How many law firms total, and how many of our firms, submit electronic bills through your system?
- Which law departments are on your system? Which law departments have stopped using it and why?
- Which law departments using your system are receiving electronic bills from *all* of their law firms/other vendors (large and small, foreign and domestic)?
- How long before we will receive electronic bills from *all* of our firms?
- How long are training sessions (law department and law firm)? How does the vendor conduct them?
- What is required for law firms to submit their bills (LEDES, non-LEDES, UTMBS codes, user/rate lists, bill narrative terms, customizations)?
- What specific bill audits do you provide? How do our reviewers handle them? How do you avoid false positives (audits that waste reviewers' time)?
- How do you handle bills in foreign currencies, VAT, and occasional paper bills?
- How do you track law department time and expenses?
- How do you transmit invoice approval data to our A/P system for payment?
- How do you enforce budget requirements and manage budgets? How do we build and reforecast our law department budget from the information in your system?
- How is the history of data modifications auditable for compliance purposes?
- How can we create customizable reports in the system? How do we export our data for further analysis or presentations?
- How can we process and report on important nonbilling information from our firms (documents, status, deadlines, exposure estimates, results, and so forth)?
- How does your system enforce our requirements of budgets, exposure estimates, regular status updates, and so forth? Are such requirements tied to the acceptance of bills?
- What specific upgrades have you implemented during the past two years? What are your plans for future upgrades?
- What security, backups, and disaster recovery plans do you have in place to safeguard our data? What guarantees do you make regarding system uptime?
- What is the total system cost to the law department, and to all of our law firms, in the first, second, and third years?
- How many new law departments and law firms have you added to your system during the past two years? Are you profitable? Who owns your company, and what is their commitment to your ebilling platform?

(\$600,000 x 5 percent = \$30,000). Assuming the higher savings rate of 16 percent cited by ACC members, the breakeven point drops to annual legal spending of just under \$200,000. These analyses do not take into account the additional soft savings of time and money from more effective long-term management. The bottom line is that even the smallest law departments can usually make a convincing business case for implementing electronic billing.

For example, the solo-attorney law department at Resun Leasing was able to realize savings in the first year in excess of \$300,000 (approximately 40 percent of prior annual legal spending) by diligently using a combined electronic billing and matter-management system. With ebilling, we recognized inefficiencies in prior billings, implemented an audit system, and tracked legal spending by matter type. With electronic billing and online reporting, we were able to recognize which types of matters were more suited to in-house work while knowing what to pay efficient, reasonably priced outside counsel for more specialized matters.

You can run your own potential savings scenario for your law department with one of the ROI calcula-

If you are considering an older **non-web system** that requires you to install the **vendor's software** on your hardware, you will need to **calculate the additional costs** for hardware installation, ongoing maintenance, and internal technical upgrades.

tors available on the web. (See Additional Resources on Ebilling p.62.) The calculator uses either predetermined benchmarks or your own savings assumptions to calculate savings in specific categories. It's generally a good idea to run an optimistic scenario and a pessimistic one, expecting a result somewhere in the middle. You may also want to add implementation costs for your depart-

You can **simplify the cost comparison** by asking any vendors you are considering to **provide a fixed-fee quote** for all charges **associated with the ebilling system** for a specified time, with no additional charges to law firms who will be using the system.

ment's time to clean up existing data, organize the new system (with your business units, matter types, and so forth), and have everyone trained.

Looking downstream: The long-term benefits of ebilling

Most law departments focus on the short-term gains from more effective bill auditing and regular budget tracking. As described above, these savings generally fall in the 5 to 15 percent range. Much greater savings are possible

downstream, however, by using the valuable data generated by ebilling. These longer-term benefits are a significant bonus to the law departments who maximize the use of their newly available information.

To reap these benefits, it is essential to have a system that everyone is comfortable using. Only through regular system use and the periodic generation of reports will in-house counsel be able to make better decisions about managing legal work and outside counsel.

ACC Resources on . . .

Ebilling and Fee Structures

ACC Committees:

More information about these ACC committees is available on ACC OnlineSM at www.acca.com/networks/committee.php, or you can contact Staff Attorney and Committees Manager Jacqueline Windley at 202.293.4103, ext. 314, or windley@acca.com.

- Law Department Management
- Small Law Departments

Docket Articles:

Ron Peppe and David G. Briscoe, "Strategize This! Prepare Now for When Procurement Analysts Come Knocking on the Legal Department's Door," *ACC Docket* 22, no. 9 (October 2004): 24–44. www.acca.com/protected/pubs/docket/oct04/strategize.pdf

InfoPAKs:

- "Alternative Billing" (2005), www.acca.com/resource/v5799.
- "Outside Counsel Management," (September 2004), www.acca.com/infopaks/ocm.html.

Annual Meeting Course Materials:

- *Implementing Alternative Fee Structures—Real Life Experiences*, ACC 2004 Annual Meeting course material. www.acca.com/education03/am/cm/605.pdf.

Surveys:

- *2005 ACC/Serengeti Managing Outside Counsel Survey Report*, which can be ordered via www.acca.com/Surveys/partner/2005/.
- *Managing Outside Counsel Survey Report: Assessing Key Elements of the In-house Counsel/Outside Counsel Relationship* (2004), www.acca.com/Surveys/partner/2004.

Webcast:

The following webcast is available at www.serengetilaw.com/accresources:

- Electronic Billing: It's not just for large law departments (Serengeti) (March 30, 2005).

ACC Alliance Partner:

The following ACC Alliance partner offers ebilling-related services. To receive your ACC discount, be sure to mention that you are an ACC member when inquiring about services.

- LexisNexis Examen offers web-based outside counsel management solutions. www.acca.com/practice/alliance.php#examen.

Navigating Vendor Responses

When comparing vendor responses to your due diligence questions, consider these benchmarks.

Ease of bill submission by law firms and other vendors

Your primary law firms should be able to tell you whether the system is easy to set up and maintain, provides convenient bill submission, clearly identifies any billing errors, and promptly communicates client explanations of bill modifications. You should specifically verify that the system will be able to process bills electronically from all of your law firms, small and large, foreign and domestic. Incomplete implementations lead to inefficient and inconsistent dual systems (one electronic and one paper), and incomplete financial reports, significantly reducing the value of the system. Finally, you will want to nail down the ongoing costs and effort to submit bills that your firms will incur (and may pass through to you).

Implementation process and track record

Implementation should take no longer than three months, even for large law departments with international offices and firms. The vendor should offer training online and by conference call, and sessions should last no longer than an hour. Longer implementations and training sessions are an indication of system complexity issues that may mean busy lawyers will not use the system. Confirm that the vendor routinely connects their customers to all of their law firms, and will commit to implement all of yours.

Bill review and audit processes

Make sure you can use the system to route, audit, and review bills in ways consistent with your priorities. Check on the types of audits performed by the system, and the accuracy of the results (new timekeepers, hourly rates, violations of budgets and billing guidelines, and so forth). The more bill audits that the system performs automatically, the more chances there are for false positives—audits that someone must deal with, but that don't lead to bill revisions. Also, many companies have found that requiring firms to code each time entry (UTBMS codes) is not effective. (See "Billing Codes—Theory Meets Reality," on p. 60.) Some systems provide practical alternatives to billing codes for tracking spending, such as phase-based budgets. Bill routing should also match your internal controls, in-

cluding thresholds for kicking larger bills up for additional approvals, and ways for law department administrators to check on bills that have not been promptly approved by law department reviewers.

Tracking law department time

Although one of the benefits of being in-house is often not having to track time, more and more law departments are doing so at a high level so that they can report on what they are doing, and for which units of the company. If this is something that you do, or may need to do in the future, you will want to check whether the system permits input of law department time, and how it accounts for law department spending in addition to spending on outside counsel.

Budget management

Explore whether the system can require budgets to be submitted before bills are accepted, the types of budgets available (e.g., monthly, quarterly, annual, or by phase), whether multiple firms working on a single matter can be rolled up into a single budget, and how comparisons between actual spending and budgets are presented as part of bill review. You should be able to lock budgets or permit changes, and track budget revisions. You may also want to find out whether a system facilitates the preparation and reforecasting of law department internal budgets, using law firm budgets and spending as building blocks.

Compliance

Due to SOX and audit requirements, law departments may be expected to certify to upper management that their reporting systems have no material deficiencies. You will therefore want to explore how any system that you are considering: (1) will capture all material information from both outside and in-house counsel; (2) will enforce the requirement of regular status updates, exposure estimates, budgets, and other information from outside counsel (e.g., tie acceptance of bills to submission of other required information); (3) will prevent inconsistent data in multiple systems; and (4) will generate an audit trail showing any modifications to material information, including the date and source.

Reporting

Make sure that the system provides the types of reports that you currently require, as well as those that you

Navigating Vendor Responses, cont'd

will probably need in the future. This should include spending breakdowns by matter type, business unit, law department practice group, and firm for any specified period, so that you can quickly answer the most common questions about legal spending. You should also ask whether you need to purchase any additional software or training to produce reports. The system should be able to save periodic reports and have the flexibility to export data to your own spreadsheet/database program for further analysis and the creation of presentations, graphs, and charts.

Interaction with accounts payable

Request a sample of the approved bill data that the system will transmit to your A/P group, so that they can determine how the ebilling system will work with your A/P system. Determine whether there is a way to automate the transfer of data from the ebilling system to your A/P system.

Upgrades

By drilling down on the upgrades provided during the past couple of years, as well as upgrades planned for the future, you will better understand the platform's limitations,

whether the vendor is responsive to customers, and whether the company is developing in areas that are important to your law department. Find out whether there are additional charges for upgrades, and whether prior versions are still supported for those who choose not to upgrade.

System access, security, backups, and disaster recovery

Because the system holds your sensitive legal financial data, your IT group may want to examine the system security and procedures for disaster recovery, including periodic penetration testing. Your IT staff may also want to explore vendor commitments regarding system uptime, maintenance windows, and ongoing support to ensure that the system is always available when you need it. You may also want to make sure that access controls are in place to cover the various relationships that you have with outside counsel. For example, in some cases you may not want multiple firms working on one matter to see each other or their spending. In other cases, you may want such information to be available to all firms working on a project, or to just one firm that is acting as coordinating counsel.

Taking the Bait: How Do We Compare Vendor Pricing?

Costs can vary significantly among ebilling vendors. Unlike software purchased and installed on law department hardware, the latest generation of web-based electronic billing is a service from a vendor that hosts all of the hardware and software, for both law departments and law firms. The biggest cost variable is often whether the vendor charges law firms to use the system. If the vendor does impose law firm charges, these costs can quickly add up as you connect more firms and offices. Such law firm charges will also often come back to you, directly or indirectly, in the form of higher legal bills. It is therefore prudent to include all law firm charges in the calculation of total system cost—and to request a no-charge-to-law-firms pricing option from all vendors.

Another key difference among vendors is whether costs are fixed or variable. Some vendors charge a fixed monthly service fee, setup fee, and/or data conversion fee (to convert historical data from a spreadsheet/database into the ebilling system). By contrast, other vendors have variable charges that will periodically move up or down depending upon the amount of spending processed through the

system, the number of law department and law firm users (seats), the number of bills processed, and other factors. Before agreeing to variable charges, you should make reasonable forecasts of the legal department's anticipated growth in legal spending/users/firms over time, and calculate the likely effect upon your future charges.

You may also face future charges for maintenance, upgrades, support, and other services after the system is up and running. For any such additional charges, it is a good idea to get a written estimate covering all such charges for several years, and to include it in the vendor contract. Finally, if you are considering an older nonweb system that requires you to install the vendor's software on your hardware, you will need to calculate the additional costs for hardware installation, ongoing maintenance, and internal technical upgrades.

It is relatively easy to compare one vendor's fixed fees to another's. It is much more difficult to compare fixed fees with variable fees. To compare variable fees, you must forecast growth and calculate the effect of that growth on future pricing over several years. The goal is to compare total system cost for the foreseeable future, including charges to law firms and other vendors who will be using the system.

You can simplify the cost comparison by asking any vendors you are considering to provide a fixed-fee quote for all charges associated with the ebilling system for a specified time, with no additional charges to law firms who will be using the system. This approach allows you to make a direct comparison of total system cost across multiple vendors. With any price quotes, carefully review the details for conditions that may lead to price increases down the road.

Reel Them In: Selecting the Best System

Getting everyone in your law department who deals with bills, all of your law firms, and your other vendors (e.g., copy services, court reporters, experts) to use an ebilling system is a significant commitment, one you should plan on making for at least several years. Although the decision is yours, you can expect better cooperation from your law firms and other vendors if you take into account their experiences with the systems that you are considering. It also makes sense to spend time getting familiar with

a system up-front—rather than after you have committed your law department and firms to something that may not work as planned. Switching to another system will involve issues of data conversion, as well as retraining for internal users and law firms, so it is worth investing some time to select the best system right from the outset.

Vendors approach implementation, training, system workflows, and system features in various ways, which can make it difficult to compare differences. Many law departments have found it useful to rely on a matrix of basic questions for a side-by-side comparison of vendor responses. We have provided a list of key questions in “Essential Questions for Vendors to Tackle” (p. 54). We have also provided some suggestions on how to evaluate vendor responses to those questions, in “Navigating Vendor Responses” (pp. 58–59).

Who else is in the data stream?

When selecting an ebilling system, remember that ebilling is different from internal law department software in

Billing Codes—Theory Meets Reality

In 1995, the Uniform Task-Based Management System was released with optimistic predictions that clients would be able to use it to evaluate law firm performance and create realistic spending forecasts. Some ebilling systems began requiring a UTBMS task code and activity code for every time entry in an electronic bill. However, results have been disappointing, with only around 5 percent of law departments requiring such bill coding from any of their firms.

Recent articles in the legal press have discussed the reasons for this low level of adoption. First, there is a “garbage in, garbage out” problem—it has proved unrealistic to expect busy lawyers to code each bill activity with two code numbers. Secretaries and billing clerks have an even harder time assigning codes to lawyer descriptions. Second, clients have found it difficult to use the data, giving the law firms little incentive to improve their coding efforts. Even with accurate coding data, it is difficult to distinguish among different types of matters and different degrees of complexity, limiting the usefulness of data comparisons. For example, if a case appears to have more than average deposition time, it is likely that there were more witnesses, documents, issues, or other unique factors dictating more depositions. As a result, many law departments have found that UTBMS task/activity coding is not worth the effort, for them or their firms.*

By contrast, law firm time and billing systems can easily generate UTBMS *expense* codes without lawyer involvement, making them a reliable source of ebilling data regarding expenses. For example, if a law department has a retention agreement stating that it will not pay more than five cents a page for photocopies, the ebilling system will provide an audit alert for any photocopy charge that exceeds the authorized rate.

As an alternative to time-entry coding, many law departments require monthly or phase-based budgets, which permit them to monitor spending progress against agreed benchmarks without coding time entries. For example, the ebilling system calculates spending during periods devoted to the initial case assessment, discovery, pretrial preparation, and trial, and compares the spending in each phase with what was budgeted. In-house counsel can quickly see if spending is getting off-track, and compare spending for specific phases across multiple projects without any bill coding.

The bottom line: Before selecting a system that requires bill coding, talk with other users to see if the system works as represented, check with your law firms to see whether they are willing to take the ongoing time to support it, and explore alternatives that may provide what you need more efficiently.

* Krysten Crawford, “Staying Power,” *Corporate Counsel* (Apr. 2004): 81.

an important respect: Your law firms and other vendors will also have to use it. Due diligence should therefore include the perspectives of all users, including at least some of your primary law firms. You may be surprised to learn how many of your firms are already using ebilling systems and have valuable insights based upon their experiences.

Also, involve your IT Department in the due diligence process. During implementation of its electronic billing and matter management system, one company's chief information officer voiced strong support for a web-based system that required minimal maintenance and that would not interfere with its proprietary operating system. By consulting with the IT Department early in the due diligence

process, the general counsel was able to quickly eliminate several systems and concentrate on the candidates that were the best match for the company's IT priorities.

Fish around: Have your primary users try out the system

Salespeople in canned demos can do some remarkable things, but the real world is messy. It is important to conduct live testing of the systems you are considering to make sure that they will work in your world. Sure, take an online guided tour of the system with the vendor, but also spend time on the system on your own. Private time will indicate whether the system is easy to use and give you an idea whether the system will work well without continuing vendor guidance. You can also determine whether system performance is acceptable with your network and internet connection. After law department staff perform the initial search for a system, it is a good idea to have the primary in-house attorney users also give it a try. This minimizes the risk that your attorneys will later push the system use off to their staff, reducing the significant benefits of having everyone working in the same system.

Hook up with other law departments and law firms using the system

You are not limited to the information that the vendor provides. The General Counsel Roundtable surveyed its law department members last fall about legal department technology, including ebilling and matter management. The report (*Evaluating Legal Department Technology*, available without charge to members) describes the systems most frequently used, overall satisfaction with those systems, and the cost/value ratio. The survey also asked law departments whether they would recommend their ebilling/matter management systems to other law departments. Results varied widely even for the most common systems, from systems recommended by 100 percent of their users to systems recommended by only half of their users. And don't forget the resources that ACC offers. (See "ACC Resources on Ebilling and Fee Structures," on p. 56.)

Bon Voyage: Will the System You Choose Be Around in the Future?

As happens with most new technologies, ebilling vendors are consolidating. Some vendors have been sold to larger companies. Others have left the business. Recent surveys show that for some vendors, many of their customers would not recommend their systems, clouding their long-term viability.

Several years ago, Hummingbird Ltd. created shockwaves throughout the legal software industry when it announced that it would stop selling and supporting the Law-

Additional Resources on Ebilling

References

- Howard Janis (McKenna Long & Aldridge), "Ebiling Without the Pain—Get involved in the selection process to find a system everyone likes," *Legal Times* (Feb. 2, 2004): 33.
- Rob Thomas, "Choosing an Ebilling System—Measure Twice, Cut Once," *International Legal Tech. Assoc. Law Department Technologies and Best Practices* (Dec. 2005): 8.
- Robert Vosper, "Death by a Thousand Cuts—American Express Co.," *Corporate Legal Times* (Sept. 2004): 38.

ROI Calculators

- www.datacert.com/products/ROIstudy.asp. Requires filling in online form and assistance from DataCert staff.
- www.serengetilaw.com/ACCresources. A do-it-yourself calculator.

Some Ebilling Vendors for Law Departments

- Bottomline Technologies: www.bottomline.com
- Bridgeway: www.bridgeway.com
- DataCert: www.datacert.com
- Economic Analysis Group: www.case-track.com
- Examen (acquired by LexisNexis): www.examen.com
- LT Online: www.lawtrac.com
- Serengeti: www.serengetilaw.com
- Stuart Maue: www.stuartmaue.com
- TriPoint Systems (acquired by Wolters Kluwer): www.tripoint.com
- Tymetrix (acquired by Wolters Kluwer): www.tymetrix.com
- Visibillity (acquired by Bottomline): www.visibillity.com


Pack® matter management system, used by most Fortune 100 law departments and many smaller law departments. Although you can't predict the future, your due diligence should include an assessment of the growth and future prospects of potential vendors.

One key indicator of stability is growth rate: How many law departments and law firms have come onto the system during the past two years? Find out whether the vendor is experiencing steady growth, struggling to maintain its current position, or declining. Also request information about changes in management, ownership, revenues, debt, and profitability, with an eye on whether the trends are positive or negative. Management's general plans for the future may be illuminating. Ask about plans for both the business entity and the technology, and assess the extent of control by outside investors or a parent company that may step in to discontinue an underperforming platform.

Finally, talking with other system users should make it clear whether the vendor has a growing platform with enthusiastic users and provides system enhancements that respond to their needs. The frequency and the scope of past upgrades, as well as plans for future upgrades,

may be good indications of whether the vendor has the necessary resources to meet the evolving needs of the profession. Your careful assessment of these factors will help ensure that you will be able to reap the benefits of a system long after you select a vendor.

Are You Ready to Catch the Rising Tide?

As companies expect their law departments to manage outside counsel more systematically, electronic billing has become an essential management function. In addition to saving time and money, today's technology gives in-house counsel better control over the work being done by outside counsel, as well as helping the law department meet its growing compliance obligations. If you take the time to understand your ebilling options and perform thorough due diligence before selecting a system, managing your legal spending can be smooth sailing for years to come. 

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

Rick Lavers, James Sheets, and Rob Thomas, "Electronic Billing Enters the Mainstream: How to Ensure a Successful Launch for Your Law Department," ACC Docket 24, no. 5 (May 2006): 46-63. Copyright © 2006, the Association of Corporate Counsel. All rights reserved.