Why Managing Rates & Discounts Falls Short

Case Studies from the Value-Based Fee & Budgeting Project
Co-Sponsored by ACC and The Counsel Management Group

Innovative approach analyzes outside counsel fees via unit costs; shows that law firm efficiency quotients have a far greater bearing on cost than hourly rate differentials (~2 to 1 ratio). Builds customized cost models for more effective fixed fees with possible success measures based on value delivered.

"Extremely helpful analysis and tools to improve predictability and savings," according to Legal Department Leaders participating in the project. "Helps me collaborate more effectively with my law firms to deliver greater efficiency."

What if you could truly measure law firm efficiency, with real numbers, beyond "gut level" perspectives? How would law firm efficiency scores compare to one another when lined up side-by-side, showing cost effectiveness in producing similar items of work? What would the analysis show in terms the relationship between rates, discounts and overall efficiency?

These are exactly the types of questions leading companies are answering as they participate in the Value-Based Fee & Budgeting Project, co-sponsored by ACC and The Counsel Management Group. And the results are striking, especially after so many years of industry focus on rates and rate freezes.

Case Study: Clients Measure Law Firm Efficiency via Unit Models, Assesses What Items Should Cost Based on Value, Beyond Hours

One of the companies participating in this project wanted to look more closely at the costs associated with a particular type of recurring litigation matter. It sought to refine the analysis further by comparing the "unit costs" of similar types of law firms performing similar work on these matters. "Unit" here refers to an item or component of work a law firm or legal vendor produces within a matter. An example in the litigation context would be the number and type of fact witness depositions to be taken, or the number and type of defense experts to be prepared.

The first thing the team looked at is how closely distributed are the "all in" unit costs for various items. In other words, is there a pattern or cluster suggesting what this item tends to cost time and time again? The tighter the clustering, the more confidence the team would be inclined to have in terms of the predictive value on what this item should cost – not as an absolute figure, but as a starting point for value-based fee discussion with the law firm(s).

Figure 1

Figure 1 illustrates where the company identified cost patterns that were: (1) recurring and (2) reflective of the expected cost range in light of the in-house team's experience on these types of matters. This is a key point. By evaluating unit costs in situations where the in-house team identifies the subset of matters as comparable based on similar characteristics like complexity etc., this company and others in the project are developing sophisticated cost models to help improve efficiency and value.

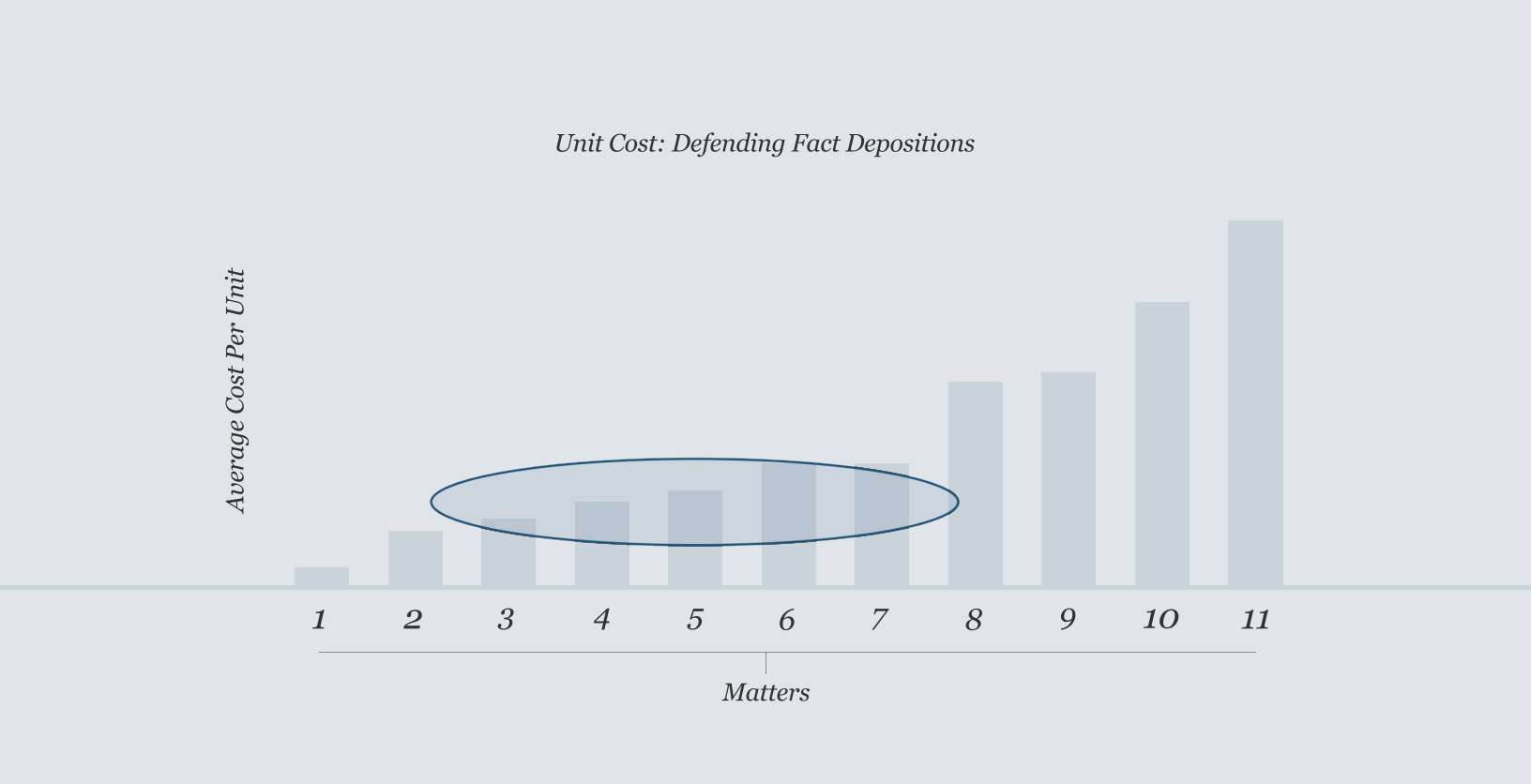
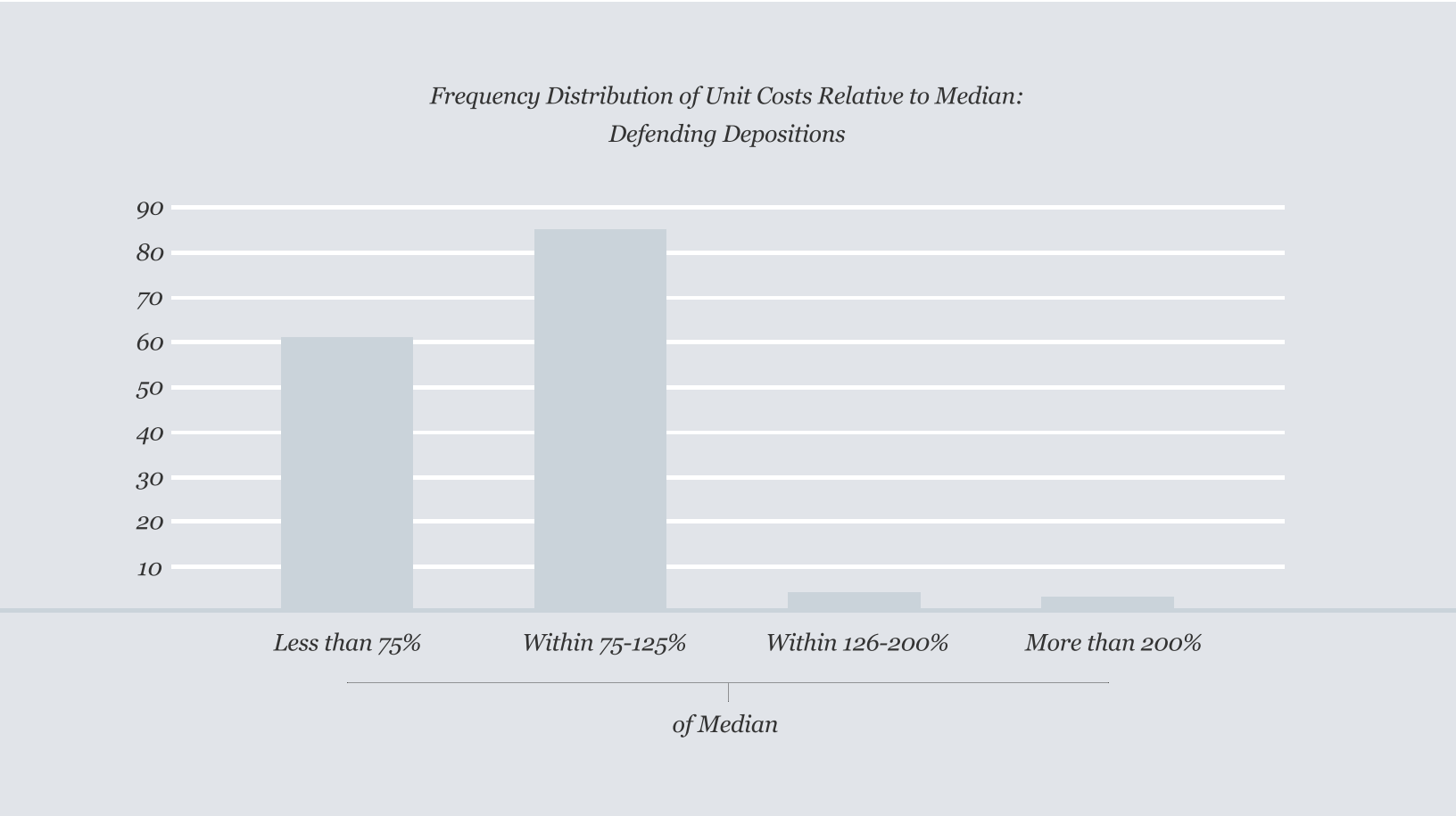


Figure 2

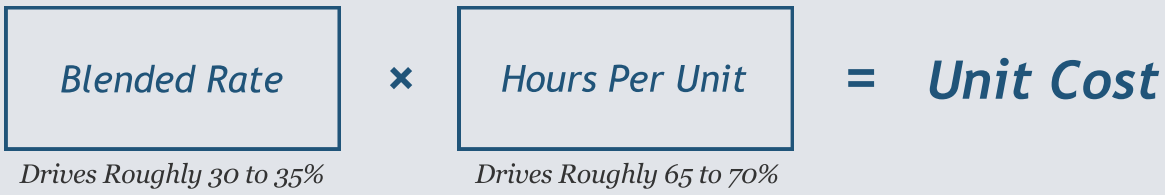
Figure 2 shows a different view, tracking how closely the different unit costs clustered around the median. Here, the majority of entries were within 75-125% of the median value, with far more entries on the lower side of that range than on the higher side. This type of clustering contributes to a higher confidence level in the underlying data and cost model re expected values.



Case Study: Law Firm Efficiency Quotients Have a Far Greater Bearing on Cost Than Hourly Rate Differentials (~2 to 1 ratio)

The second thing the team looked was cost outliers, high and low. What was causing these, and was it something to be further encouraged or something to be improved upon? By unpacking "unit hours" (the number of projected hours required to produce each unit) the team was able to measure what drove the cost disparities between similar law firms.

Overwhelmingly, differences in efficiency (the number of hours per unit) were much more responsible for cost differences than were differences in rates – by a factor of more than 2:1. Stated differently, **the data suggest that for every dollar in rate disparity among similar law firms performing similar work, there are an additional two dollars of disparity on average attributable to difference in efficiency.** The difference in the number of hours per similar unit is often within +/- 25%, but can be as high + 100% or more (i.e. more than double the number of hours to do the work).



This is how, somewhat surprisingly, a lower blended rate could end up costing significantly more.[1]

[1] The same applies to discounts. Unit cost analysis reveals several instances where a higher "discount" from hourly rates ends up costing significantly more because of a relatively high number of hours billed to produce each unit.

With this information in hand, the client team could have productive conversations with its law firms, particularly the high outliers, to adjust the approach to bring the unit costs back within the client's expected range. In instances where additional complexity arose and the higher unit cost / unit hour figures were warranted, then client and firm could make the decision together in an informed way.

Companies participating in this study appreciate how the unit cost analysis enables better conversations at the outset, to get to right before the efforts have been incurred. They find this to be more productive than combing through stacks of invoices, then slashing fees after the fact.

"Extremely helpful analysis and tools to improve predictability and savings… Helps me collaborate more effectively with my law firms to deliver greater value."

- Silvio DeCarli (DuPont, Associate GC & Chief Litigation Counsel)

"The ability to build fee models for new matters will allow clients and firms to better understand the value of a matter at the beginning of an engagement. This value-based fee approach will reward law firms who have listened to their clients and have worked to become more efficient."

- Bob Harchut (GlaxoSmithKline, VP & Associate GC, Head of Global External Legal Relations Team)

"The value-based fee project has provided great insight into historical legal spending patterns. With this information, and a stronger approach to building budgets, we are in a better position to partner with our outside counsel to improve efficiency and lower costs while delivering the same quality service."

- Jean Holloway (C.R. Bard, VP & General Counsel)

About This Project

For years now, in conversations across the Legal Industry, attorneys have been looking for better approaches to measuring value. Yes, the focus has included traditional concepts like comparative rates and discounts. But the discussions have evolved far beyond that, with legal department and law firm leaders calling for better ways to measure true productivity and craft fee structures based on value delivered, not simply the number of hours worked.

In response, ACC and The Counsel Management Group launched the Value Based Fee and Budgeting Project in September of 2012. Leading Legal Departments across multiple industries have enrolled in the project, working with sophisticated law firms large, mid-sized and small.

The companies have signed up for individual, customized analysis of their outside counsel fee structures. The process entails historical data analysis, along with an improved approach to activity scoping and fee budgeting on active matters. Using better metrics to measure efficiency, the participating companies are building customized fee models based on "unit costs," which reflect the cost of core components of work within a legal matter. Comparing unit costs across multiple similar items in the portfolio, clients are developing better baseline expected values for what items of work should cost based on apples-to-apples comparisons ***as the client sees fit***.

The unit cost data and approach enable better conversations between client and law firm regarding specific items that impact fees, allowing latitude to make adjustments as warranted by the circumstances of the case. The baseline cost model also offers the opportunity for client and firm to explore a fixed fee or success fee covering some or all of the underlying items of work. It also enables continued used of the hourly rate model where that structure is seen as providing the best fit.

No company in this project sees any other company's data. Information is rolled up into an aggregated, blinded data set for benchmarking purposes.

For more information, or to participate, please contact Catherine Moynihan of ACC (moynihan@acc.com) or Fred Paulmann of The Counsel Management Group (fpaulmann@counselmgmtgroup.com).