

Corporations Balk at Outside Counsels' Automatic Rate Increases

*Wal-Mart, Shell, and other corporations say
rising associate salaries are to blame*

By SEAN T. CARNATHAN
LITIGATION NEWS ASSOCIATE EDITOR

In a memorandum to all its outside law firms, Wal-Mart recently announced that it was imposing a moratorium on across-the-board hourly rate increases, and stated, in effect, it was not going to pay increased hourly rates so that these firms could pay their junior associates such substantial salaries. Wal-Mart advised that it would consider rate increases only for attorneys who were performing at an exceptional level and who were adding substantial value to the matters they handle.

The memorandum, written by Miguel R. Rivera, Bentonville, AR, Associate General Counsel of Wal-Mart and a member of the ABA's Law Practice Management Committee, has caused significant concern among outside counsel. In protesting rising legal costs, it specifically refers to escalating associate salaries: "Starting salaries for junior associates in large and boutique law firms have increased dramatically over the last few years." Indeed, as this issue went to press, a leading Washington, DC, firm announced that it was raising starting salaries for first-year associates to \$180,000.

Although the Rivera memorandum states that what law firms choose to pay their attorneys is their business, it expresses serious concern about "the impact of salary hikes on law firm billing rates."

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Wal-Mart is not alone in suggesting that law firms are overpaying inexperienced lawyers and then handing the bill to their clients. "Shell is concerned about the rapid escalation of legal costs, and starting salaries contribute to increasing hourly rates," agrees William C. Lowrey, Houston, General Counsel of Shell Oil Company and a member of the ABA's

Environment, Energy, and Resources Committee.

On the other hand, some see the Rivera memorandum as merely reflecting Wal-Mart's considerable purchasing power and its culture of cost-sensitivity, and note that not every client will be able to oppose rate increases. "This could be the first of many big-time clients to do this, but you have to be a Wal-Mart or an Exxon-Mobil. Smaller companies can negotiate, but cannot unilaterally dictate what they can or cannot be charged," says Horace W. Jordan Jr., Lake Forest, IL, Co-Chair of the Section of Litigation's Corporate Counsel Committee.

"Beneath the rhetorical exchanges and strong positions, there will still be de facto rate increases in areas in which the outside law firm has market leverage—e.g., it is irreplaceable for the particular case," says Columbia Law School Professor John C. Coffee Jr., New York City, member of the ABA's Legal Education Committee.

In response to client concerns, some firms are creating multiple tiers of associates that consist of permanent contract attorneys and associates who can elect a lower salary in exchange for reduced billable hour requirements.

"Law firms are trending more toward what other companies are like," says Neil Paterson, Boston, managing director of New England Legal Search, Ltd. "Law firms have become more flexible. Instead of having just partners and associates, the way of law firms of the future will be to have multiple levels of personnel, which will allow the firms to provide the right services to their clients." According to Paterson, this is a positive trend for all concerned. Clients get better rates, firms are able to maintain positive relationships with their clients, and lawyers obtain employment opportunities that might otherwise be unavailable to them.

Still, skyrocketing billing rates suggest that clients may eventually take their business elsewhere and will look for qualified firms that do more for less. Coffee predicts that if associate wages continue to skyrocket, clients might begin to outsource directly some of their routine business to firms outside the United States. "But," he adds, "this is still years off." □

Resource:

Memorandum from Miguel R. Rivera Sr. to Relationship Partners: Wal-Mart Outside Counsel Network, Nov. 1, 2007, available at <http://online.wsj.com/public/resources/documents/walmartrates.pdf>