

WilmerHale Webinar: Questions Counsel Should Ask When Negotiating AFAs

March 8, 2018

Natalie Hanlon Leh, Partner, WilmerHale

Mindy Sooter, Partner, WilmerHale

Greg Lantier, Partner, WilmerHale



WILMER CUTLER PICKERING HALE AND DORR LLP ®



Speakers



Natalie Hanlon Leh
Partner



Greg Lantier
Partner



Mindy Sooter
Partner



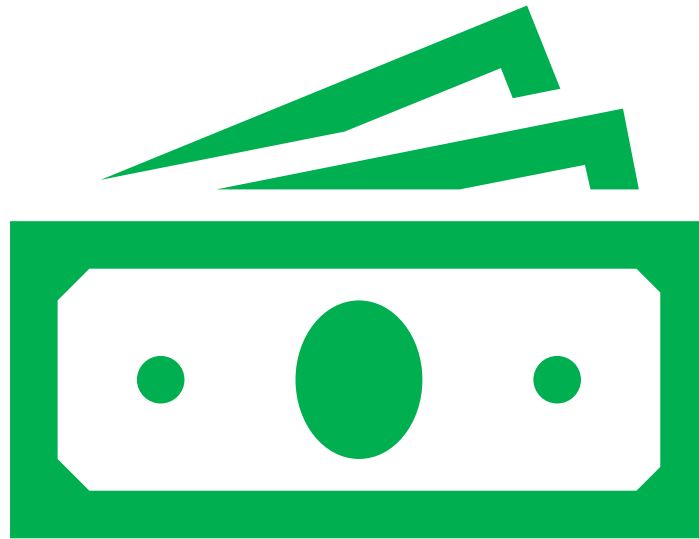
Webinar Guidelines

- Participants are in listen-only mode
- Submit questions via the Q&A box on the bottom right panel
- Questions will be answered as time permits
- Offering 1.0 CLE credit in California and New York*
- WebEx customer support: +1 888 447 1119, press 2

**WilmerHale has been accredited by the New York State and California State Continuing Legal Education Boards as a provider of continuing legal education. This program is being planned with the intention to offer CLE credit in California and non-transitional CLE credit in New York. This program, therefore, is being planned with the intention to offer CLE credit for experienced New York attorneys only. Attendees of this program may be able to claim England & Wales CPD for this program. WilmerHale is not an accredited provider of Virginia CLE, but we will apply for Virginia CLE credit if requested. The type and amount of credit awarded will be determined solely by the Virginia CLE Board. Attendees requesting CLE credit must attend the entire program.*



What are Alternative Fee Arrangements (AFAs)?





AFAs can provide predictable costs to clients, and simplify billing for outside counsel



Examples of AFAs

Retainers

Monthly
Variable
Rates

Discrete
Tasks

Discount +
Bonus



When might AFAs be most useful?



Case has---

Predictable outcomes

Discrete tasks

High likelihood of settlement



When might AFAs not work?

- Client cannot articulate a “win”
- Complex matter with many unknowns





Crafting an AFA

Primary Goal and Purpose

Value of the Matter to the Client

Underlying Assumptions

Realistic Staffing

Level of Client Involvement

Lessons Learned

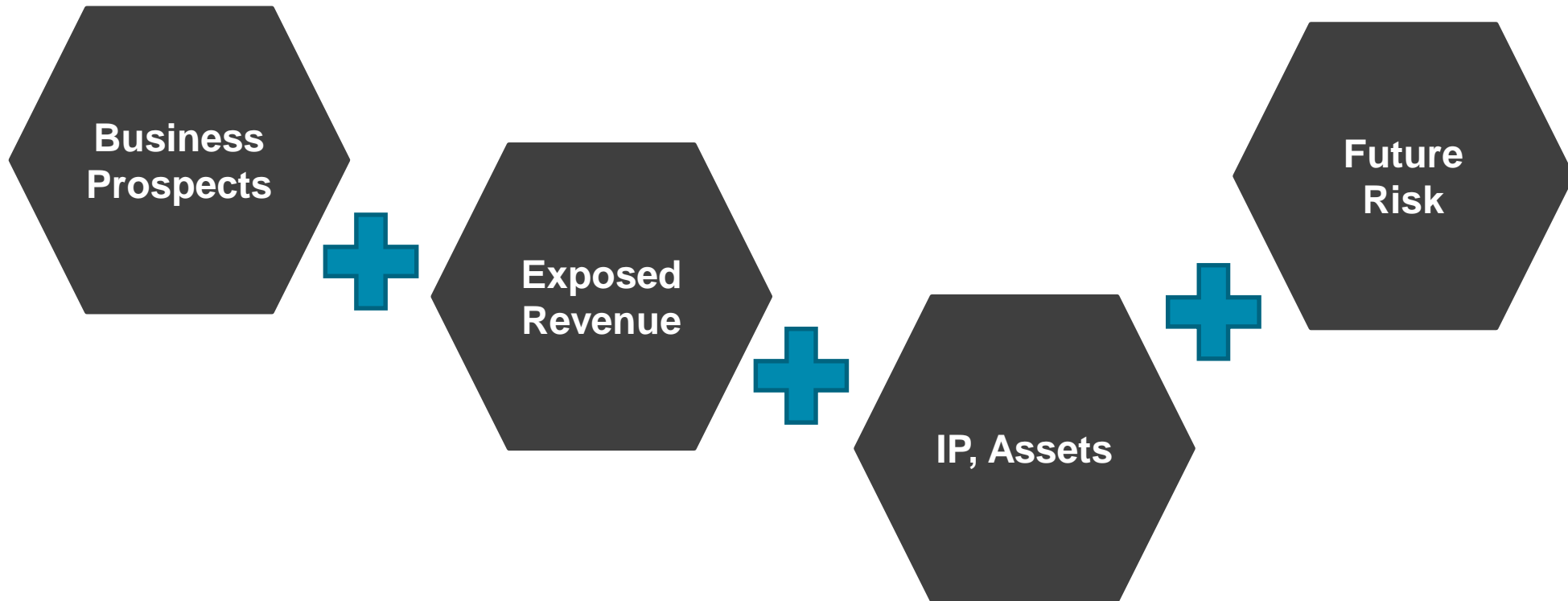


Primary Goal and Purpose

Client and outside counsel are
aligned in goals and incentives



Value of the Matter to the Client





Underlying Assumptions

of
Depositions

Discovery

Motion Practice

Expert
Discovery and
Reports

Trial/Settlement



Underlying Assumptions

of
Depositions

- How many party and third-party depositions are included in the AFA?



Underlying Assumptions

Discovery

- Will there be extensive written discovery?
- Are document collection, first level review, and production included, or will the client handle separately?



Underlying Assumptions

Motion Practice

- Will there be an early round of dispositive motions?
- How many motions are foreseeable as the case proceeds?



Underlying Assumptions

Expert Discovery and Reports

- How many consulting/testifying experts does the case require?
- How many expert reports and expert depositions are included?



Underlying Assumptions

Trial /
Settlement

- Will this case settle?
- Will this case go to trial?
- Are there other parties who could join the case and share cost?



Realistic Staffing

Is the team tailored to meet the strategic needs of the client?

- Are there enough lawyers to do the work?
- Are they qualified?
- Do they have relevant experience?
- Is the associate-partner ratio appropriate?
- What happens if there are changes to staffing?





Level of Client Involvement



Sharing
Responsibilities



Frequency of
Consultations



Level of Client Involvement

Sharing Responsibilities

- Document collection and first level review
- Develop facts of the case



Level of Client Involvement

Frequency of Consultations

- Level of correspondence
- Standing meetings



Lessons Learned

Incorporate successful characteristics of past AFA arrangements

- Regular budget periods?
- Frequent status meetings?
- Close tracking against case plan/assumptions?
- Other features that worked for the firm/client

...and avoid any pitfalls from the past



Client: Evaluating an AFA Proposal

How did the firm
arrive at the
numbers?

Who is on the
team?

How will the firm
communicate
progress to the
client?



Outside Counsel: Evaluating an AFA Proposal

Who else is submitting a proposal?

- Gather insight into goals and strategies of the client
- Build a strategy that differentiates the firm

Does it make sense for our firm to submit a proposal?

- Evaluate how it fits into the firm's relationship with the client
- Does it make sense financially?

How long is this matter likely to last?

- Forecast an appropriate timeline based on past experience
- Build in mechanisms for modifying the AFA should circumstances change



Questions?

Natalie Hanlon Leh, Partner

+1-720-274-3160

Natalie.HanlonLeh@WilmerHale.com

Mindy Sooter, Partner

+1-720-274-3164

Mindy.Sooter@WilmerHale.com

Greg Lantier, Partner

+1-202-663-6327

Gregory.Lantier@WilmerHale.com

**WilmerHale has been accredited by the New York State and California State Continuing Legal Education Boards as a provider of continuing legal education. This program is being planned with the intention to offer CLE credit in California and non-transitional CLE credit in New York. This program, therefore, is being planned with the intention to offer CLE credit for experienced New York attorneys only. Attendees of this program may be able to claim England & Wales CPD for this program. WilmerHale is not an accredited provider of Virginia CLE, but we will apply for Virginia CLE credit if requested. The type and amount of credit awarded will be determined solely by the Virginia CLE Board. Attendees requesting CLE credit must attend the entire program.*

Wilmer Cutler Pickering Hale and Dorr LLP is a Delaware limited liability partnership. WilmerHale principal law offices: 60 State Street, Boston, Massachusetts 02109, +1 617 526 6000; 1875 Pennsylvania Avenue, NW, Washington, DC 20006, +1 202 663 6000. Our United Kingdom office is operated under a separate Delaware limited liability partnership of solicitors and registered foreign lawyers authorized and regulated by the Solicitors Regulation Authority (SRA No. 287488). Our professional rules can be found at www.sra.org.uk/solicitors/code-of-conduct.page. A list of partners and their professional qualifications is available for inspection at our UK office. In Beijing, we are registered to operate as a Foreign Law Firm Representative Office. This material is for general informational purposes only and does not represent our advice as to any particular set of facts; nor does it represent any undertaking to keep recipients advised of all legal developments. Prior results do not guarantee a similar outcome. © 2004-2018 Wilmer Cutler Pickering Hale and Dorr LLP