

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

2701 SCOMM 122: COMMISSION ON PRIVATIZATION. ., 1999

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Exxon Valdez Oil Spill Claims Settlement

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The only statutes that have been suggested to have potential impact on that settlement authority are the Alaska statutes concerned with oil and hazardous substance release remedies. However, those statutes can not be fairly said to preclude expressly the Settlement Agreement or its joint Trust Fund mechanism, for several reasons.

First, AS 46.08.020 and AS 46.08.010 require "money received by the state" to be "deposited in the general fund and credited to the special account called the 'oil and hazardous substance release account'." As discussed earlier in this memorandum in the context of the appropriations and dedicated fund issues, the joint Trust Fund monies are not monies "received by the state." Therefore, the statutory requirement to deposit such monies in the general fund, as a matter of plain statutory language, simply does not apply.

Furthermore, the most plausible reading of these statutes is that they deal only with monies recovered by the State as reimbursement for costs, as the February 15, 1991, memorandum to Senator Cotten from the Assistant Revisor of Statutes stated at page 4, ¶II(C). AS 46.08.070(a) empowers the Attorney General to seek compensation for State cleanup related expenditures. That section states:

The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(a), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(emphasis added).

AS 46.08.020 similarly makes clear the cost reimbursement nature of the recoveries subject to the statutory chapter, in outlining potential appropriations of these proceeds:

²⁷/(...continued)

Legislative Budget Committee, 347 So.2d 160 (La. 1977) (legislature may not appoint officers to enforce its laws because that would invade the exclusive realm of the executive).

Some courts have held that the legislature may not restrict the attorney general's common law powers. See, e.g., Gust K. Newberg, Inc. v. Illinois State Toll Highway Authority, 456 N.E.2d 50, 55 (Ill. 1983) (Attorney General's duties are prescribed by law and include those powers traditionally held by Attorney General at common law; while legislature may add to his powers, it cannot reduce his common-law authority in directing legal affairs of state); Murphy v. Yates, 348 A.2d 837 (Md. 1975) (legislature may not abrogate common-law powers of Attorney General).

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(a) The legislature may appropriate from the following sources to the ["Oil and Hazardous Substance Release Response] fund:

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific cite [sic]...; [and]

(3) fines, penalties, or damages recovered under this chapter or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

(b) Money received by the state under (a)(2) and (a)(3) of this section shall be deposited in the general fund and credited to the special account called the "oil and hazardous substance release mitigation account."

The relevant sections thus require on their faces that only those damages, penalties or fines recovered for "costs incurred by the State" for "clean up and containment" be placed in the special account in the general fund.²⁶/

Additionally, it is important to recognize that if any Alaska statute were interpreted to preclude the Attorney General from pursuing or agreeing to Clean Water Act trust fund remedies,

²⁶/ The Legislature's concern was that the general fund be reimbursed for outlays of money. The legislative Fiscal Note to HB 205, the source of AS 46.04.010 as it presently reads, states, "This procedure is designed to reimburse the general fund and thus hold down overall state cleanup costs. It is intended that about 20% of all cleanup costs can be recovered." 1980 House Journal Supp. No. 43, Apr. 8, 1980. Similarly, in introducing this legislation, Representative Miles stated that "it provides for prompt clean up of oil spills and for prompt reimbursement of those spills." House Floor debates, Apr. 15, 1980.

With respect to AS 46.08, Representative Navarre noted in support of the new fund that "it appeals to me because although it offers the opportunity to charge back to the responsible party, if we can identify them, the cost of cleaning up these areas as we discover them." House Resources Comm., Jan. 29, 1986. Former DEC Commissioner Ross similarly told the House Finance Committee on Feb. 17, 1986, that "we would anticipate operating this fund in exactly the same manner, of looking for liability, and assigning it accordingly when we found it, and reimbursing the state." (emphasis added). See also Statement by Representative Pourchot before House Finance Committee, Mar. 10, 1986; statement by Representative Davis on House Floor, Mar. 19, 1986.

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serious federal supremacy and preemption issues would be raised.²⁹/ While the State may in many contexts provide remedies more liberal or protective than those provided by federal law,³⁰/ the courts might well rule invalid an attempt by the Legislature effectively to eliminate a remedy clearly provided under federal law.

In brief, were a State statute interpreted to preclude the State from participating in trust fund recoveries under the Clean Water Act, that statute would likely be held preempted, because it would frustrate and serve as an obstacle to the Clean Water Act's purposes. See International Paper Company v. Quelling, 479 U.S. 481, 491 (1987) ("[i]n addition to express or implied preemption, a state law also is invalid to the extent that it 'actually conflicts with a ... federal statute'"; Clean Water Act preempts private water pollution suit based upon the common law of nuisance of the state in which the alleged injury occurred, when the source of the alleged injury is located in another state).

Finally, it would make little sense for the legislature expressly to constrain the Attorney General's discretion by prohibiting him or her from agreeing to a settlement, based on federal laws, that establishes a joint State-federal environmental restoration trust fund, even when that settlement mechanism would provide the best overall outcome for the State. The Legislature clearly, and wisely, has not done so.

VI. THE SETTLEMENT STRUCTURE WAS NEGOTIATED AND AGREED TO REASONABLY AND IN GOOD FAITH

It was thus certainly within the Attorney General's authority and discretion to decide to settle the State's Oil Spill litigation with Exxon, in part by agreeing to the creation of a resource restoration Trust Fund jointly administered by State and federal Trustees. As quoted previously in this memorandum, the

²⁹/ The Supremacy Clause provides:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

U. S. Const., Art. VI.

³⁰/ See, e.g., Webster v. Bechtel, 621 P.2d 890 (Alaska 1980) (federal Fair Labor Standards Act did not preempt State from providing greater protection and more expansive remedies under the Alaska Wage and Hour Act).

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Alaska Supreme Court has strongly declared that where the Attorney General has the "legal authority" to make a particular decisions with respect to the State's litigation, Alaska's courts "do not have power to control the exercise of the Attorney General's discretion" To attempt to do so would be "an infringement upon the discretionary powers residing in the executive branch" "not within the province of the court." Public Defender Agency, 534 P.2d at 951.

Even if the Supreme Court's clear statement in that regard were disregarded, at most an Attorney General's decision concerning the conduct and disposition of State litigation can be legally challenged only if that decision was made in bad faith or, perhaps, for entirely arbitrary and capricious reasons. See Weaver v. Blue Cross and Blue Shield of Alabama, 570 So.2d 675, 677 (Ala. 1990) (courts have either "refused to interfere with the attorney general's use of his discretionary power" or "left undisturbed the use of the power to control litigation as long as the attorney general's actions are not arbitrary, capricious, or in bad faith").^{31/}

The Governor and the Attorney General must be allowed to exercise discretion to settle cases in good faith and on whatever lawful basis they think to be in the State's best interests. They are not required to doggedly pursue in every case all potential State positions and claims. In some cases, they might decide for a variety of reasons, including litigation strategy or problems of proof, simply to abandon potential claims, without seeking any recovery for them. In other cases, they might determine that injunctive relief would provide the best settlement consideration (for instance, an agreement by Exxon itself to undertake certain cleanup or restoration work at the direction of State and federal agencies), rather than seek any monetary recovery under any State or federal law.^{32/}

^{31/} See also Seaverns v. Wilmington Medical Center, Inc., 421 A.2d 1334 (Del. 1980) (Supreme Court will not interfere with performance of attorney general's discretionary duties, absent bad faith); Fesney v. Commonwealth, 366 N.E.2d 1262 (Mass. 1977) (attorney general's discretionary power not to be used in arbitrary or capricious manner); State ex rel. Carmichael v. Jones, 41 So.2d 280 (Ala. 1949) (consent agreement between attorney general and taxpayer settling unliquidated claim for taxes was lawful because made in good faith and within power of Attorney General); Cooley v. South Carolina Tax Commission, 28 S.E.2d 445 (S.C. 1943) (attorney general acted in good faith in compromising estate tax).

^{32/} See also Rubin v. Board of Environmental Protection, 577 A.2d 1189, 1192 (Me. 1990) ("Attorney General is entitled under the common law to seek injunctive relief against violations" of law).

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There is no sense in which the Exxon Settlement Agreement was negotiated and agreed to in bad faith or arbitrarily and capriciously. Instead, for the reasons discussed in this memorandum and which will be discussed further with the Legislature during the public comment and legislative approval process, the conclusion was reached that it was in the best interests of the State of Alaska to settle the Oil Spill litigation in large part through the mechanism of a joint Trust Fund, rather than pursue separately the State's various claims for damages. For present purposes, this memorandum will merely summarize the basic reasons why the joint Trust Fund was a reasonable, even essential, component of a settlement.

As a fundamental matter, it was important for the State and Federal governments to act in concert in seeking a settlement. By acting and settling together with the Federal government, the State was able to achieve a better overall settlement for the people of Alaska, both in terms of receiving reasonable reimbursement damages (as to which the Legislature will have appropriations authority), and obtaining the greatest benefit for Alaska's damaged natural resources.

A joint Trust Fund recovery for natural resource damages and restoration was reasonably necessary to such a joint settlement because of potential disputes concerning which sovereign is trustee for which resources. It was desirable to avoid such disputes for several reasons, including: 1) the expense and considerable time unquestionably required for litigating -- undoubtedly including through the available appeals processes -- the numerous resource trusteeship issues presented; 2) the uncertain outcome, always attendant to litigation even in more clearly charted legal waters, of such disputes because of numerous unsettled questions of law concerning trusteeships of various resources; 3) the arguable prospect that some resources or restoration efforts might ultimately be held by the courts to be subject to joint trusteeship by the State and Federal governments; 4) the practical fact that even with respect to resources that might be identified with some confidence as subject to the trusteeship of a single sovereign (e.g., state tidelands and federal uplands), both the damage to those resources and restoration efforts affecting them are very much intertwined; and, finally, 5) as a tactical matter, resource trusteeship disputes could certainly have been used by Exxon to complicate hugely the litigation by interjecting at various stages issues as to which sovereign could recover and bore the burden of proving damages with respect to which resources, thereby both dividing the State and Federal governments and likely prolonging further Exxon's day of reckoning and payment.

The State believes that it has a stronger claim to many of the fish, wildlife and other natural resources impacted by the spill than does the Federal government and might well have

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prevailed to that effect after lengthy and costly litigation. However, in light of the considerations mentioned above, it was more appropriate and in the best interests of the State to agree instead to a settlement that in part employed a joint State-federal resource restoration Trust Fund. Such a Trust Fund was a necessary ingredient of a settlement designed to produce the greatest benefit to the people of Alaska.

CONCLUSION

This memorandum has discussed the clear authority of the Attorney General to agree to the settlement of the EXXON VALDEZ litigation on the terms contained in the Settlement Agreement.

However, despite that authority, the settlement is obviously politically sensitive, not only because of the magnitude of the resource and economic issues addressed by the Settlement Agreement, but also because of the profound impact of the EXXON VALDEZ Oil Spill on both Alaska's political culture and -- very directly -- on the lives of many Alaskans.

Therefore, in recognition of the public's interest in the settlement and the Legislature's perceived desire to review the Settlement Agreement, the Settlement Agreement was made subject both to a public comment period and review by the Alaska Legislature. As paragraph 37 of the Agreement provides, if the Legislature does not approve the Settlement Agreement within a prescribed time period, the Agreement may be terminated by the State merely by giving notice to Exxon and the United States government.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

October 4, 1999

Mark K. Johnson
Attorney at Law
13631 Windward Circle
Anchorage, Alaska 99516

Dear Mr. Johnson:

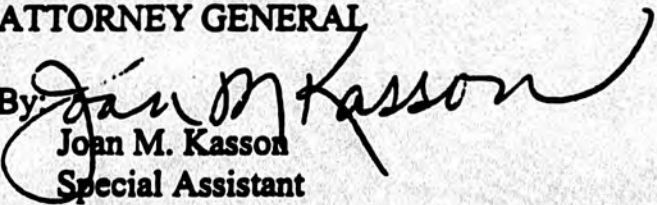
The subcommittee requested copies of any solicitations from legal auditing firms the Department of Law might have. Enclosed is one we received last year from the firm of Stuart, Maue, Mitchell and James, Ltd.

Also enclosed is the list of tort litigation contracts, with total expenditures, that I faxed to you today.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Joan M. Kasson
Special Assistant

Enclosures

cc: All members
Subcommittee on the Department of Law
Commission on Privatization and Delivery of
Government Services



**FACSIMILE TRANSMISSION
COVER SHEET**

Office of the Attorney General
Dimond Courthouse, 123 Fourth Street, 4th Floor
P.O. Box 110300
Juneau, AK 99811-0300
PHONE: (907) 465-5370 FAX: (907) 465-2075

DATE: October 4, 1999

FROM: JOAN KASSON
SPECIAL ASSISTANT
Joan_Kasson@law.state.ak.us

Total number of pages including this cover sheet: 2

Please deliver the following pages to:

SCOTT BRANDT-ERICHSEN, 247-6625
BLAKE CALL, 263-8320
REP. JOHN COWDERY, 269-0223
MARK JOHNSON, 273-5382
RICHARD MCVEIGH, 373-8036
WILLIAM OBERLY, 258-7282
BETTY ROLLINS, 488-6614
BILL SATTERBERG, 452-4454
BRUCE WEYHRAUCH, hand delivered

MESSAGE:

As requested by Mr. Satterberg, attached is the list of tort litigation contracts, with total expenditures to date.

In preparing this spreadsheet, we discovered that two more have been closed than was indicated on the original list of contracts by type of legal services sent to you on August 31. The line for "Tort Litigation" should read 8 single matter and 2 multi-matter contracts closed, and 6 single matter contracts open.

**Please inform us immediately
if you do not receive this transmission in full
(907) 465-2133 Ask for: Kathy**

**TORT LITIGATION CONTRACTS
FY94-FY99**

FIRM	CLIENT	LITPROJ	SUBJECT	BEGIN	DATE	ENDDATE	TOTAL EXP
Atkinson, et al.	Revenue	AHFC Legal Counsel	Tort Litigation	7/1/94		6/30/98	\$177,905
Bankston & McCollum	Admin/RM	Davis v. State	Tort Litigation	2/18/98		1/1/2015	\$455,355
Birch Horton et al.	Revenue	AHFC Legal Counsel	Tort Litigation	7/1/94		6/30/98	\$203,298
Delaney Wiles et al.	Admin/RM	Peel v. State	Tort Litigation	12/21/93		6/30/98	\$439,438
Delaney Wiles et al.	Admin/RM	Walden v. State	Tort Litigation	12/11/95		1/1/2015	\$846,190
Delaney Wiles et al.	Admin/RM	Bartek v. State	Tort Litigation	12/1/98		1/1/2015	\$155,494
DeLiso Moran et al.	Admin/RM	Sanders v. State	Tort Litigation	7/12/94		6/30/98	\$99,627
DeLiso Moran et al.	Admin/RM	McCubbins v. State	Tort Litigation	10/10/94		1/1/2015	\$189,307
Jamin, Ebell, et al.	Admin/RM	Markham v. Gamache	Tort Litigation	9/27/94		6/30/97	\$22,832
Koziol, Frank S.	Admin/RM	Dinamore v. Hall	Tort Litigation	11/6/95		6/30/98	\$27,669
Lessmeier & Winters	Admin/RM	Frederick v. State	Tort Litigation	4/17/95		2/18/99	\$90,776
Lessmeier & Winters	Admin/RM	Brunk v. State	Tort Litigation	4/25/95		1/1/2015	\$125,058
Moran & Serafin	Admin/RM	McKenzie v. State	Tort Litigation	1/29/96		9/30/97	\$7,509
Robertson, et al.	Admin/RM	Sanders v. Whitaker	Tort Litigation	1/29/96		1/1/2015	\$44,012
Stephen H. Williams	Admin/RM	Noble v. State	Tort Litigation	9/11/95		6/30/97	\$22,870
Young Sanders et al.	Law	Hellen v. State	Tort Litigation	5/6/93		6/30/94	\$17,005



Stuart, Maue, Mitchell & James, Ltd.
Legal Auditors and Consultants

3840 McKelvey Road • Saint Louis, Missouri 63044 • Telephone 314.291.3030 • Facsimile 314.291.6546

www.smmj.com

Via Priority Mail

September 14, 1998

**Ms. Joan M. Kasson
Special Assistant
State of Alaska
P.O. Box 110300
Juneau, AK 99811-0300**

Dear Ms. Kasson:

Thanks for taking a moment to speak with me today. Stuart, Maue, Mitchell & James, Ltd. (SMMJ) is the oldest legal auditing firm in the nation. Our clients include insurance companies, state and municipal governments, bankruptcy courts, product manufacturers, and service providers. We have the most technically advanced system in the nation supported by a full staff of attorneys and accountants.

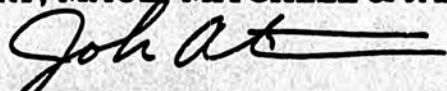
SMMJ provides On-site Legal Audits, Desk Audits, Automated Bill Review (LIBRA™), Compliance Audits, Consulting Services, and Claims Auditing Services.

SMMJ can review, analyze, and process billing statements on a prospective or retrospective basis. The LIBRA™ System is specifically designed to process data in an efficient, cost-effective manner, and the audits will conform to a client's normal pay cycle. LIBRA™ may be utilized with our staff or with your internal staff. SMMJ will provide the training necessary. A typical compliance review program can lower legal fees by 15% or more. In addition, analysis is improved by our data warehousing and archiving.

Enclosed please find some information about our company and services along with the past two editions of *The Journal of Legal Auditing*. I will be in touch soon to confirm receipt of this material and to answer any questions. Should you wish to speak to me sooner please contact me at 941-364-8410 or at our corporate office in Saint Louis. Thanks for your time and consideration.

Sincerely,

STUART, MAUE, MITCHELL & JAMES, LTD.


by: **John P. Antonucci**
Vice-President and Director of National Accounts

JPA/cp

Enclosures



LIBRA™

Legal Invoice/Billing Review and Analysis



Prepared by

Stuart, Maue, Mitchell & James, Ltd.

Legal Auditors and Consultants



LIBRA™

WHAT IS LIBRA™?

LIBRA™ (Legal Invoice/Billing Review and Analysis) is a sophisticated, state-of-the-art auditing system utilizing proprietary software and methodology developed and maintained by Stuart, Maue, Mitchell & James, Ltd. (SMMJ) exclusively for legal auditing. The LIBRA™ software is designed to perform those functions in the legal audit process that will aid the user in the analysis of legal fees and expenses and then summarize the audit information derived in the form of exhibits and audit summaries. With the LIBRA™ System, computer-assisted audits can be performed by either SMMJ's professionals or on-line by the client's personnel in the familiar Windows environment.

By utilizing the LIBRA™ System, SMMJ can review, analyze, and process large volumes of billing statements on a continuing basis and provide recommendations to the client regarding prompt payment of charges that conform to the client's requirements and billing guidelines (compliance audits). The LIBRA™ System is specifically designed to process data in an efficient and cost-effective manner and to produce exception reports within a time frame that conforms to the client's normal pay cycle. EXHIBIT A displays the flowchart for the typical audit process for the LIBRA™ System. The steps of the audit process can be adjusted to meet the needs and expectations of the individual client.

SMMJ's exhibits and LIBRA™ exception reports are specifically tailored to quantify and display all fees and expenses determined not to be in compliance with the client's established directives, standards, billing guidelines, expense cost provisions, and governing agreements. While the LIBRA™ System software is developed to identify, sort, track, and report on issues of non-compliance, the auditors are in total control of the audit process and exercise their judgment, experience, and expertise as audit professionals on any identified non-compliance issue.

SMMJ's compliance audit methodology utilizing the LIBRA™ System incorporates an analysis of projects and activities in apparent conflict with recognized attorney/client agreements and billing guidelines instituted by the client. SMMJ will also assist the client with the development of billing guidelines or with the modification of existing guidelines. SMMJ's analysis includes identification of the following types of activities and/or problem areas:

- **Unapproved timekeepers;**
- **Duplicative activities;**
- **Unauthorized billing rate increases;**
- **Double billings;**
- **Wrong case billings;**
- **Administrative/clerical activities;**
- **Vague entries;**
- **Intra-office conferences;**
- **Multiple attendance;**
- **Unauthorized research;**
- **Other fees inconsistent with the billing guidelines;**
- **Expenses that are not relevant to the litigation such as: wrong case billings, gifts, and personal amenities;**
- **Expenses that are not properly receipted;**
- **Markups or enhancements to direct cost reimbursements such as: telephone expenses, computer research, facsimiles, and photocopies;**
- **Overhead items such as: word processing, overtime, office supplies, local telephone expense, and routine postage; and**
- **Other expenses inconsistent with the billing guidelines.**

The LIBRA™ System can also be employed to evaluate the individual law firm's compliance with the Uniform Task-Based Billing Management System (UTBMS)¹, should that be a component of the client's billing requirements.

The LIBRA™ System can perform any number of on-line audit steps and activities, the process and results of which are completely automated. This includes the review of both fee and expense billing entries determined by the program as potentially being in violation of specific non-compliance categories. Using the LIBRA™ System's automated search capabilities, the user can identify those entries that should be segregated into various questioned categories established by the user. The user can also create customized searches using any combination of date ranges, timekeepers, hours, words, or word phrases as criteria and segregate the results into the same or additional categories. The user can also add or delete individual billing entries or groups of billing entries to or from any of these categories with a simple mouse click. Finally, the user can prepare summaries of all of these searches and generate audit findings contained in detailed LIBRA™ exception reports and exhibits for presentation to the law firm making the submission.

Additionally, a connection can be established between the LIBRA™ System and the client utilizing an equipment and software configuration. This connection will provide the client on-line access to the LIBRA™ System on any of its Windows-based desktop computers while retaining efficiency, speed, and data security. The connection to SMMJ's application and database servers, maintained at SMMJ's headquarters in Saint Louis, Missouri, can be achieved through any of the presently available technologies, including the T1, frame relay, ISDN, dedicated phone line, or other electronic means. The connection allows the client access to the LIBRA™ System as a "thin-client" that provides the client with parallel auditing capabilities. When connected into the LIBRA™ System, the client's personnel can perform the same compliance audit functions as SMMJ's professionals and obtain immediate on-line access to SMMJ's compliance audit findings. EXHIBIT B displays an example of the LIBRA™ exception report that can be generated using the LIBRA™ System. The LIBRA™ exception report and associated exhibits can be tailored to

¹ The Uniform Task-Based Management System Litigation Code Set and definitions attached hereto was developed by a tripartite initiative of the American Bar Association Section of Litigation, the American Corporate Counsel Association, and a sponsoring group of major corporate law departments and law firms coordinated and supported by Price Waterhouse LLP, and initially dated May 1995. It may also be found on the Internet at www.abanet.org/litigation/utms.html.

conform with the individual client's billing guidelines and reporting expectations. SMMJ will also train the client's personnel in the use of the LIBRA™ System and SMMJ's audit methodology.

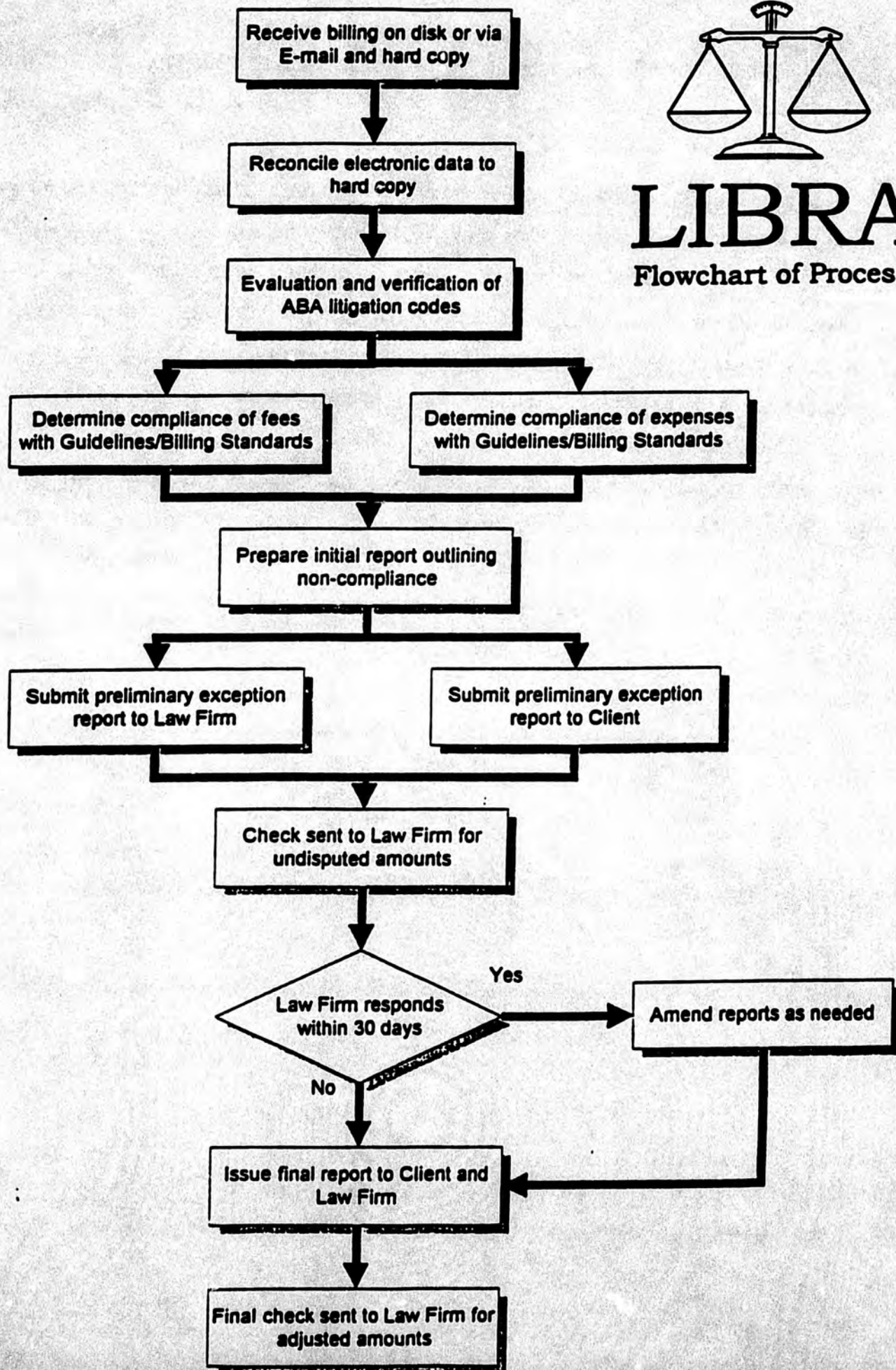
In addition to the immediate goal of auditing the law firms' billing statements as a part of the payment approval process, the data provided from the individual fee and expense billing entries, UTBMS codes, audit results, and pertinent claim data can be incorporated into a data warehouse to create high-level management reports for trend analysis. For example, this information can enable the client to evaluate the litigation costs of various law firms performing similar representation functions. EXHIBIT C shows examples of the types of data elements that can be maintained in the historical database. The data elements warehoused for future benchmarking purposes may vary between clients depending upon the individual needs of each client. EXHIBIT D provides some examples of the output that can be derived from the database (presented here in the form of charts and graphs to assure the maintenance of client confidentiality). Actual client information from the database can be presented in whatever degree of detail the client directs, such as to include an all-encompassing overview or on a law firm, claim, or line-of-business basis.

EXHIBIT E represents the summary audit results obtained by SMMJ for two clients utilizing the LIBRA™ System (again presented here in the form of an abbreviated summary to assure the maintenance of client confidentiality). Actual client information from the database can be presented in whatever degree of detail the client directs, such as to include an all-encompassing overview or on a law firm, claim, or line of business basis.



LIBRA™

Flowchart of Process



Client Insurance Company Exception Report Summary Sheet

Firm: Kellog & Knight
Address: 1234 Main Street
Bridgeton, MO 63044
Period: October 1, 1997 through October 31, 1997
Tax ID: (not specified)
Vendor: KEL-101

Total amount to be paid: \$12,348.88

Claim Number	Invoice Number	Invoice Date	Dates of Service	Payable Amount
111111-081	015	10/31/97	09/21/97 - 10/31/97	\$671.00
222222-001	016	10/31/97	10/06/97 - 10/31/97	\$43.30
333333-123 *	006	10/31/97	10/02/97 - 10/31/97	\$120.00
444444-123	041	10/31/97	10/02/97 - 10/31/97	\$11,444.58
555555-123 *	014	10/31/97	10/06/97 - 10/31/97	\$70.00
666666-123	012	10/31/97	10/06/97 - 10/31/97	\$0.00
Total amount for all claims:				<u>\$12,348.88</u>

* denotes a claim with shared responsibility with another insurance company

If you have any questions concerning this report, please respond in writing to:

Stuart, Maue, Mitchell & James, Ltd.
3840 McKelvey Road
Bridgeton, MO 63044

re: Submission #1690

Client Insurance Company List of Submitted Claims

Firm: Kellog & Knight
Address: 1234 Main Street
Bridgeton, MO 63044
Period: October 1, 1997 through October 31, 1997
Tax ID: (not specified)
Vendor: KEL-101

Listed below is selected information for each claim referenced in your recent submission to Client Insurance Company. Please review your records and confirm that your future submissions contain this information. Should you not agree with this information, please contact your Client Insurance Company examiner.

Firm File Number ⁺	Claim Number	Examiner Number	Date of Loss	Policy Number	Policy Holder
00021000018	444444	001	01/01/80	JMT0123089	JONES, LTD.
00021000023	222222	001	01/01/80	DEF2222222	JOHN SMITH, M.D.
00021000024	111111	081	01/01/80	ABC1234567	ABC CONSTRUCTION
00021000025	555555	055	01/01/80	XYZ9876541	BECK ENTERPRISES
00021000026	666666*				
00021000028	333333	125	01/01/80	SMM8989890	RCP PROPERTIES

+ firm file number as provided on diskette

* denotes an invalid claim number

Kelleg & Knight

Claim Number 111111

October 1, 1997 through October 31, 1997

Invoice Number 015, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED	\$1,083.00	
TOTAL EXPENSES BILLED	\$3.60	
TOTAL FEES AND EXPENSES BILLED		\$1,086.60

NON-COMPLIANCE FEES

Computational error

\$-19.00*

Itemization of non-compliance fee entries

Non-Compliance Category

N/C Fees

Wrong period billing

\$200.00

Blocked billing

\$99.00

Administrative/clerical tasks

\$20.00

Multiple attendance - disallowed

\$52.00

Vague billing entries

\$16.00

Excessive hours

\$44.00

Total itemization of non-compliance fee entries

\$431.00

TOTAL NON-COMPLIANCE FEES

\$412.00

NON-COMPLIANCE EXPENSES

Itemization of non-compliance expense entries

Non-Compliance Category

N/C Expenses

Not properly documented

\$3.60

Total itemization of non-compliance expense entries

\$3.60

TOTAL NON-COMPLIANCE EXPENSES

\$3.60

TOTAL NON-COMPLIANCE FEES AND EXPENSES

\$415.60

TOTAL COMPLIANCE FEES

\$671.00

TOTAL COMPLIANCE EXPENSES

\$0.00

TOTAL COMPLIANCE FEES AND EXPENSES

\$671.00

* - The negative computational error(s) displayed above has (have) been credited against the non-compliance fees and/or expenses up to the amount of said non-compliance fees and/or expenses.

Kelleg & Knight

Claim Number 111111

October 1, 1997 through October 31, 1997

Invoice Number 015, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
09/21/97	Hall, Carolyn F.	015-1	5.00	5.00	\$200.00	Wrong period billing
	1 PREPARATION OF MEDICAL FACTS FOR LITIGATION PLAN.					
10/01/97	Percy, Gerard F.	015-4	2.40	0.40	\$44.00	Excessive hours
	1 DRAFT, REVISE AND FINALIZE LITIGATION PLAN TO ROBIN DONOIAN. 2.00 hour maximum allowed					
10/09/97	Hall, Carolyn F.	015-9	1.30	1.30	\$52.00	Multiple attendance - disallowed
	1 ATTEND HEARING ON PLAINTIFF'S MOTION FOR PROTECTIVE ORDER.					
10/09/97	Percy, Gerard F.	015-7	0.90	0.90	\$99.00	Blocked billing Vague billing entries
	1 COMMUNICATE (OTHER OUTSIDE COUNSEL): PROPOSED ORDER, TO BE SIGNED BY JUDGE DOLE, REFLECTING HIS RULING ON OUR APPLICATION TO FILE AMENDED PETITION; LETTER TO PLAINTIFF'S ATTORNEY RE: SAME.					
10/09/97	Percy, Gerard F.	015-8	1.30	0.00	\$0.00	Multiple attendance - informational
	1 APPEAR FOR/ATTEND HEARING - JUDGE DOLE - PLAINTIFF'S MOTION FOR PROTECTIVE ORDER. (NOTE: JUDGE DOLE ALSO TOOK UP OUR PENDING MOTION FOR LEAVE TO FILE AMENDED ANSWER AND MOTION TO ENTER SCHEDULING ORDER).					
10/17/97	Hall, Carolyn F.	015-11	0.20	0.20	\$8.00	Vague billing entries
	1 FURTHER RECEIPT AND REVIEW OF DOCUMENTARY EVIDENCE.					
10/23/97	Hall, Carolyn F.	015-12	0.50	0.50	\$20.00	Administrative/clerical tasks Vague billing entries
	1 PLAN AND PREPARE OF DEPOSITION NOTICE.					
10/31/97	Hall, Carolyn F.	015-13	0.20	0.20	\$8.00	Vague billing entries
	1 REVIEW/ANALYZE OF DOCUMENTS TO LEARN THE FACTS OF THE CASE.					
Total hours and fees associated with non-compliance categories			8.50		\$431.00	

Kelleg & Knight

Claim Number 111111

October 1, 1997 through October 31, 1997

Invoice Number 015, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/31/97	Copying	015-1	\$3.60	\$3.60	Not properly documented
Total expenses associated with non-compliance categories				<u>\$3.60</u>	

Kellog & Knight
Claim Number 222222

October 1, 1997 through October 31, 1997

Invoice Number 016, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED	\$44.00	
TOTAL EXPENSES BILLED	\$23.30	
TOTAL FEES AND EXPENSES BILLED		\$67.30

NON-COMPLIANCE FEES

Itemization of non-compliance fee entries

Non-Compliance Category

N/C Fees

Administrative/clerical tasks

\$24.00

Total itemization of non-compliance fee entries

\$24.00

TOTAL NON-COMPLIANCE FEES

\$24.00

TOTAL NON-COMPLIANCE EXPENSES

\$0.00

TOTAL NON-COMPLIANCE FEES AND EXPENSES

\$24.00

TOTAL COMPLIANCE FEES

\$20.00

TOTAL COMPLIANCE EXPENSES

\$23.30

TOTAL COMPLIANCE FEES AND EXPENSES

\$43.30

Kellog & Knight

Claim Number 222222

October 1, 1997 through October 31, 1997

Invoice Number 016, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
10/13/97	Hall, Carolyn F.	016-2	0.30	0.30	\$12.00	Administrative/clerical tasks Unit billing
	1 PREPARATION OF REQUEST FOR MEDICAL RECORDS TO DR. PAT BOSTON.					
10/13/97	Hall, Carolyn F.	016-3	0.30	0.30	\$12.00	Administrative/clerical tasks Unit billing
	1 PREPARATION OF REQUEST OF MEDICAL RECORDS TO MR. LELAND COLLINS.					
Total hours and fees associated with non-compliance categories				0.60	\$24.00	

Kellog & Knight
Claim Number 333333
October 1, 1997 through October 31, 1997
Invoice Number 006, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED			\$240.00	
TOTAL EXPENSES BILLED			\$0.60	
TOTAL FEES AND EXPENSES BILLED				\$240.60
TOTAL NON-COMPLIANCE FEES			\$0.00	
NON-COMPLIANCE EXPENSES				
Itemization of non-compliance expense entries				
<u>Non-Compliance Category</u>				
Not properly documented				
	<u>N/C Expenses</u>			
	\$0.60			
Total itemization of non-compliance expense entries		\$0.60		
TOTAL NON-COMPLIANCE EXPENSES			\$0.60	
TOTAL NON-COMPLIANCE FEES AND EXPENSES				\$0.60
TOTAL COMPLIANCE FEES			\$240.00	
TOTAL COMPLIANCE EXPENSES			\$0.00	
TOTAL COMPLIANCE FEES AND EXPENSES				\$240.00
Percentage allocated to Client Insurance Company				50.00%
TOTAL ALLOCATED TO CLIENT INSURANCE COMPANY				\$120.00

Kellog & Knight

Claim Number 333333

October 1, 1997 through October 31, 1997

Invoice Number 006, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/31/97	Copying	006-1	\$0.60	\$0.60	Not properly documented
Total expenses associated with non-compliance categories				\$0.60	

Kellog & Knight
Claim Number 444444
October 1, 1997 through October 31, 1997
Invoice Number 041, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED	\$13,972.50	
TOTAL EXPENSES BILLED	\$384.58	
TOTAL FEES AND EXPENSES BILLED		\$14,357.08

NON-COMPLIANCE FEES

Non-approved rates

Name	Hours	N/A Rate	App. Rate	N/C Fees
Mason, Robert E.	26.50	\$125.00	\$110.00	\$397.50

Total non-approved rates \$397.50

Itemization of non-compliance fee entries

Non-Compliance Category	N/C Fees
Blocked billing	\$1,687.00
Office conferences/memoranda	\$8.00
Administrative/clerical tasks	\$44.00
Vague billing entries	\$466.00
Non-defensive/no utility to litigation	\$104.00
Wrong case billing	\$4.00

Total itemization of non-compliance fee entries \$2,313.00

TOTAL NON-COMPLIANCE FEES \$2,710.50

NON-COMPLIANCE EXPENSES

Itemization of non-compliance expense entries

Non-Compliance Category	N/C Expenses
Not properly documented	\$39.70
Direct bill	\$150.00
Non-approved expenses	\$12.30

Total itemization of non-compliance expense entries \$202.00

TOTAL NON-COMPLIANCE EXPENSES \$202.00

TOTAL NON-COMPLIANCE FEES AND EXPENSES \$2,912.50

TOTAL COMPLIANCE FEES	\$11,262.00	
TOTAL COMPLIANCE EXPENSES	\$182.58	
TOTAL COMPLIANCE FEES AND EXPENSES		\$11,444.58

Kellog & Knight

Claim Number 444444

October 1, 1997 through October 31, 1997

Invoice Number 041, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
10/09/97	Mason, Robert E.	041-12	4.60	4.60	\$506.00	Blocked billing Vague billing entries
	1 CONTINUE REVIEW OF FILE, DEPOSITIONS, PLEADINGS AND EXHIBITS FOR TRIAL.					
10/10/97	Mason, Robert E.	041-14	2.80	2.80	\$308.00	Blocked billing Vague billing entries
	1 CONTINUE TRIAL PREPARATION, DEPOSITION, PLEADINGS AND EXHIBIT REVIEW.					
10/16/97	Hall, Carolyn F.	041-24	0.20	0.20	\$8.00	Vague billing entries
	1. FURTHER RECEIPT AND REVIEW OF DOCUMENTARY EVIDENCE.					
10/16/97	Hall, Carolyn F.	041-25	0.10	0.10	\$4.00	Administrative/clerical tasks
	1 MANAGE DATA/FILES: FURTHER TRIAL PREPARATION.					
10/20/97	Hall, Carolyn F.	041-26	0.50	0.50	\$20.00	Administrative/clerical tasks
	1 PREPARATION OF NOTICE TO TAKE DEPOSITION AND SUBPOENA FOR DR. WHEELER.					
10/21/97	Hall, Carolyn F.	041-30	1.30	1.30	\$52.00	Blocked billing
	1 COMMUNICATE (OTHER EXTERNAL) WITH BETTY HANSON AT GRAHAM VILLAGE IN RE: DOCUMENT REVIEW AND SUBPOENA FROM PLAINTIFF'S ATTORNEY (3 CALLS).					
10/22/97	Mason, Robert E.	041-37	2.20	2.20	\$242.00	Vague billing entries
	1 APPEAR FOR/ATTEND: MEDICAL EXAMINER - LARRY BACON.					
10/23/97	Hall, Carolyn F.	041-42	4.00	4.00	\$160.00	Vague billing entries
	1 PLAN AND PREPARE FOR TRIAL.					
10/23/97	Hall, Carolyn F.	041-44	0.50	0.50	\$20.00	Administrative/clerical tasks
	1 DELIVER DOCUMENTS TO PLAINTIFF'S ATTORNEY IN RE: DOCUMENT PRODUCTION (NO MILEAGE ACCURED).					
10/24/97	Hall, Carolyn F.	041-47	0.80	0.80	\$32.00	Vague billing entries
	1 FURTHER REVIEW OF DOCUMENTARY EVIDENCE.					
10/27/97	Hall, Carolyn F.	041-55	0.20	0.20	\$8.00	Office conferences/memoranda
	1 COMMUNICATE (IN FIRM) WITH REM AND GFP IN RE: STRATEGY ON CASE.					
10/28/97	Percy, Gerard F.	041-60	4.50	4.50	\$495.00	Blocked billing
	1 DRAFT/REVISE JURY INSTRUCTIONS (INCLUDING LEGAL RESEARCH IN CONNECTION WITH SOME OF THE INSTRUCTIONS).					
10/29/97	Hall, Carolyn F.	041-64	0.20	0.20	\$8.00	Vague billing entries
	1 PLAN AND PREPARE FOR: FURTHER TRIAL PREPARATION.					
10/29/97	Hall, Carolyn F.	041-66	0.80	0.80	\$32.00	Non-defensive/no utility to litigation
	1 COMMUNICATE (OTHER EXTERNAL) WITH STATE TAX COMMISSION - FRANCHISE AND BANKRUPTCY DIVISIONS IN RE: BACK TAX LIABILITIES.					
10/29/97	Hall, Carolyn F.	041-68	1.00	1.00	\$40.00	Blocked billing Travel - non-approved/local Travel - improper rate
	1 TRAVEL TO AND FROM COMPENSATION COURT; REVIEW OF BILL FORD'S COMPENSATION FILE.					
10/29/97	Percy, Gerard F.	041-69	0.40	0.40	\$44.00	Non-defensive/no utility to litigation
	1 COMMUNICATE (WITH CLIENT): CALL FROM MARK MARSHALL RE: DISCUSS CLIENT PAYING THE FRANCHISE TAXES; OTHER AREAS OF TRIAL PREPARATION.					
10/29/97	Percy, Gerard F.	041-72	2.60	2.60	\$286.00	Blocked billing
	1 APPEAR FOR/ATTEND DEPOSITION OF DR. WALTERS AND DR. SMITH.					
10/30/97	Hall, Carolyn F.	041-74	0.40	0.40	\$16.00	Non-defensive/no utility to litigation
	1 COMMUNICATE (OTHER EXTERNAL) WITH NANCY ROSE AND STAN ALEXANDER AT THE STATE TAX COMMISSION IN RE: TAX LIABILITIES THAT MUST BE PAID BEFORE RE-INSTATEMENT OF CORPORATION.					
10/31/97	Hall, Carolyn F.	041-78	0.40	0.40	\$16.00	Vague billing entries
	1 REVIEW/ANALYZE OF DOCUMENTS TO LEARN FACTS OF CASE.					
10/31/97	Hall, Carolyn F.	041-79	0.30	0.30	\$12.00	Non-defensive/no utility to litigation
	1 COMMUNICATE (OTHER EXTERNAL) WITH STATE TAX COMMISSION LEGAL COUNSEL IN RE: OUTSTANDING TAX WARRANTS AND FRANCHISE TAX.					
10/31/97	Hall, Carolyn F.	041-80	0.10	0.10	\$4.00	Wrong case billing
	1 COMMUNICATE (OTHER EXTERNAL) WITH ROSEMARY SMITH IN RE: STATUS OF MITCHELL WARD'S APPEAL FROM FINAL ORDER.					
Total hours and fees associated with non-compliance categories			27.90		\$2,313.00	

Kellog & Knight
Claim Number 444444
October 1, 1997 through October 31, 1997

Invoice Number 041, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/21/97	Experts - Witness Fee for Dr. Balding	041-1	\$150.00	\$150.00	Direct bill Non-approved expenses
10/31/97	Copying	041-2	\$39.70	\$39.70	Not properly documented
10/31/97	Local travel	041-4	\$12.30	\$12.30	Non-approved expenses Local travel
Total expenses associated with non-compliance categories				\$202.00	

Kellog & Knight
Claim Number 555555
October 1, 1997 through October 31, 1997
Invoice Number 014, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED	\$240.00	
TOTAL EXPENSES BILLED	\$0.60	
TOTAL FEES AND EXPENSES BILLED		\$240.60

NON-COMPLIANCE FEES

Itemization of non-compliance fee entries

Non-Compliance Category

Vague billing entries

N/C Fees

\$100.00

Total itemization of non-compliance fee entries

\$100.00

TOTAL NON-COMPLIANCE FEES

\$100.00

NON-COMPLIANCE EXPENSES

Itemization of non-compliance expense entries

Non-Compliance Category

Not properly documented

N/C Expenses

\$0.60

Total itemization of non-compliance expense entries

\$0.60

TOTAL NON-COMPLIANCE EXPENSES

\$0.60

TOTAL NON-COMPLIANCE FEES AND EXPENSES

\$100.60

TOTAL COMPLIANCE FEES

\$140.00

TOTAL COMPLIANCE EXPENSES

\$0.00

TOTAL COMPLIANCE FEES AND EXPENSES

\$140.00

Percentage allocated to Client Insurance Company

50.00%

TOTAL ALLOCATED TO CLIENT INSURANCE COMPANY

\$70.00

Kellog & Knight
Claim Number 555555

October 1, 1997 through October 31, 1997

Invoice Number 014, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
10/06/97	Kellog, Susan A. 1 REVIEW/ANALYZE GRIEVANCE.	014-1	0.60	0.60	\$60.00	Vague billing entries
10/06/97	Kellog, Susan A. 1 TELEPHONE CONFERENCE WITH GRETA JONES.	014-2	0.40	0.40	\$40.00	Vague billing entries
Total hours and fees associated with non-compliance categories				1.00	\$100.00	

Kellog & Knight

Claim Number 555555

October 1, 1997 through October 31, 1997

Invoice Number 014, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/31/97	Copying	014-1	\$0.60	\$0.60	Not properly documented
Total expenses associated with non-compliance categories				\$0.60	

Kelleg & Knight
Claim Number 666666
October 1, 1997 through October 31, 1997
Invoice Number 012, dated October 31, 1997

Reconciliation of Compliance and Non-Compliance Fees and Expenses

TOTAL FEES BILLED		\$1,127.00	
TOTAL EXPENSES BILLED		\$9.70	
TOTAL FEES AND EXPENSES BILLED			\$1,136.70

NON-COMPLIANCE FEES

Itemization of non-compliance fee entries

Non-Compliance Category

Invalid claim

N/C Fees

\$1,127.00

Total itemization of non-compliance fee entries

\$1,127.00

TOTAL NON-COMPLIANCE FEES

\$1,127.00

NON-COMPLIANCE EXPENSES

Itemization of non-compliance expense entries

Non-Compliance Category

Not properly documented

Invalid claim

N/C Expenses

\$0.70

\$9.00

Total itemization of non-compliance expense entries

\$9.70

TOTAL NON-COMPLIANCE EXPENSES

\$9.70

TOTAL NON-COMPLIANCE FEES AND EXPENSES

\$1,136.70

TOTAL COMPLIANCE FEES

\$0.00

TOTAL COMPLIANCE EXPENSES

\$0.00

TOTAL COMPLIANCE FEES AND EXPENSES

\$0.00

Kellog & Knight

Claim Number 666666

October 1, 1997 through October 31, 1997

Invoice Number 012, dated October 31, 1997

Itemization of Non-Compliance Fee Entries

Date	Name	Invoice/Entry	Entry Hours	N/C Hours	N/C Fees	Non-Compliance Category
10/06/97	Hall, Carolyn F.	012-1	1.50	1.50	\$60.00	Invalid claim Vague billing entries
1 RECEIPT AND REVIEW OF DOCUMENTARY EVIDENCE.						
10/08/97	Percy, Gerard F.	012-2	2.10	2.10	\$231.00	Invalid claim
1 PLAN AND PREPARE FOR MEETING WITH VITA WILSON, PROGRAM COORDINATOR AT CLIENT'S OFFICE, RE: DEPOSITION PREPARATION.						
10/08/97	Percy, Gerard F.	012-3	3.30	3.30	\$363.00	Invalid claim
1 APPEAR FOR/ATTEND DEPOSITION OF VITA WILSON (TAKEN BY PLAINTIFF'S COUNSEL).						
10/16/97	Percy, Gerard F.	012-4	1.00	1.00	\$110.00	Invalid claim
1 APPEAR FOR/ATTEND HEARING ON PLAINTIFF'S MOTION TO ENTER.						
10/16/97	Percy, Gerard F.	012-5	0.30	0.30	\$33.00	Invalid claim
1 COMMUNICATE (WITH CLIENT): LETTER TO JOEL LEVIN RE: ENCLOSE SCHEDULING ORDER AND DISCUSS STATUS AND STRATEGY.						
10/31/97	Percy, Gerard F.	012-6	3.00	3.00	\$330.00	Invalid claim
1 MEETING WITH VITA WILSON AT CLIENT RE: REVIEW VITA'S DEPOSITION TRANSCRIPT; REVIEW BILLUPS' PERSONNEL FILE; REVIEW "REQUEST FOR LEAVE" FILE; DISCUSS STATUS AND STRATEGY.						
Total hours and fees associated with non-compliance categories				11.20	\$1,127.00	

Kellog & Knight

Claim Number 666666

October 1, 1997 through October 31, 1997

Invoice Number 012, dated October 31, 1997

Itemization of Non-Compliance Expense Entries

Date	Name	Invoice/Entry	Billed Expenses	N/C Expenses	Non-Compliance Category
10/31/97	COPYING	012-1	\$0.70	\$0.70	Not properly documented Invalid claim
10/31/97	OUTSIDE PRINTING	012-2	\$9.00	\$9.00	Invalid claim
Total expenses associated with non-compliance categories				\$9.70	

INVOICE AND CLAIM SPECIFIC DATA

INVOICE INFORMATION

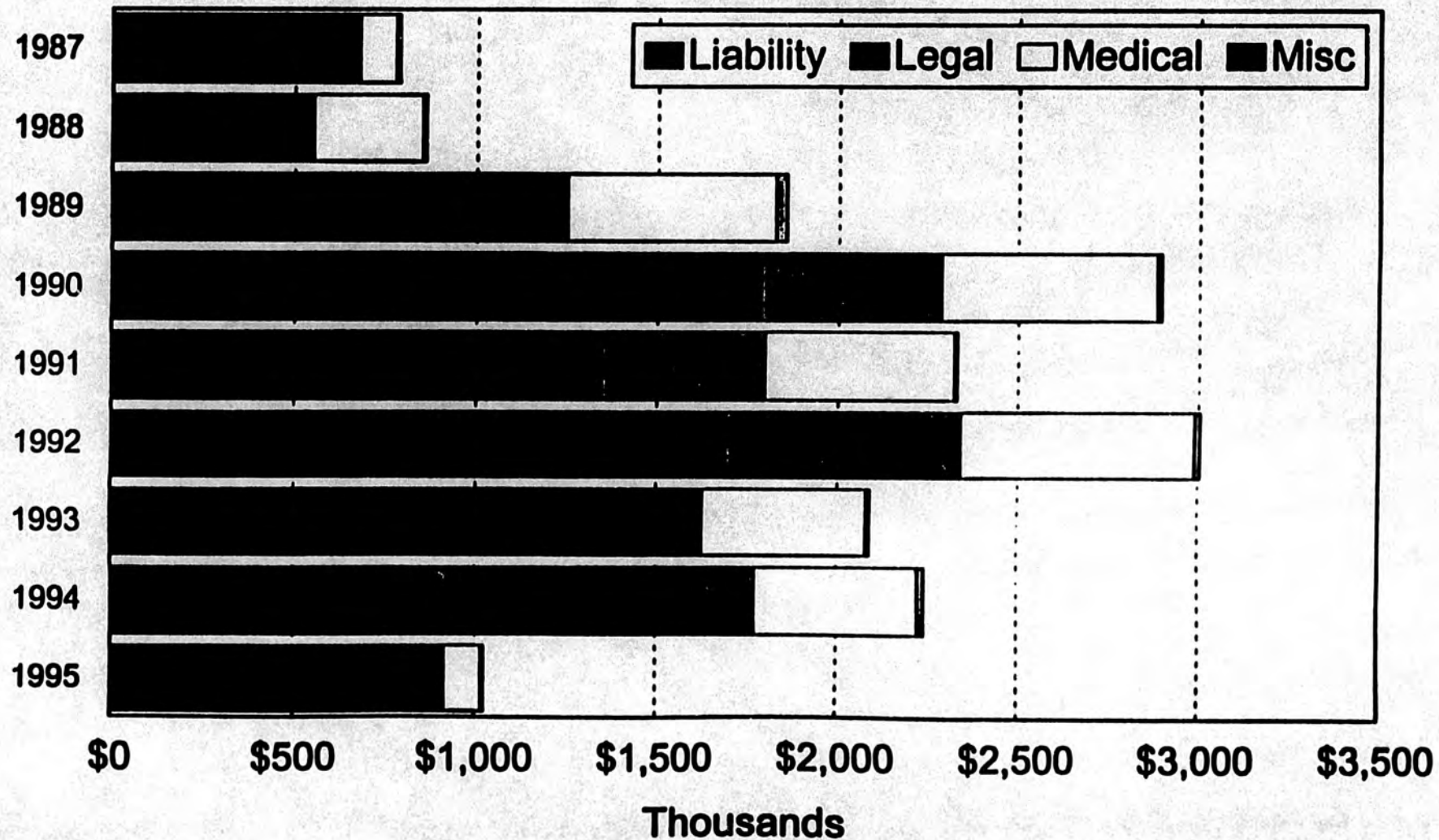
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- Invoice Number
- Dates of Service
- Fees Billed/Expenses Billed
- ABA Litigation Code Amounts
 - ◆ Litigation Codes
 - ◆ Activity Codes
 - ◆ Expense Codes
- ABA Litigation Code Amounts Violating Billing Guidelines
 - ◆ Litigation Codes
 - ◆ Activity Codes
 - ◆ Expense Codes
- Categories and Amounts in Violation of Billing Guidelines
 - ◆ Double Billing
 - ◆ Wrong Case Billing
 - ◆ Administrative/Clerical
 - ◆ Inadequately Described
 - ◆ Intra-office Conferences/Memos
 - ◆ Getting Up-to-Speed
 - ◆ Minimum Billing Increment
 - ◆ Duplicate Effort/Review/Revision
 - ◆ Multiple Attendance
 - ◆ Unauthorized Research
 - ◆ Travel Time
 - ◆ Long Billing Days
 - ◆ Grouping Functions/Blocked Billing

CLAIM INFORMATION

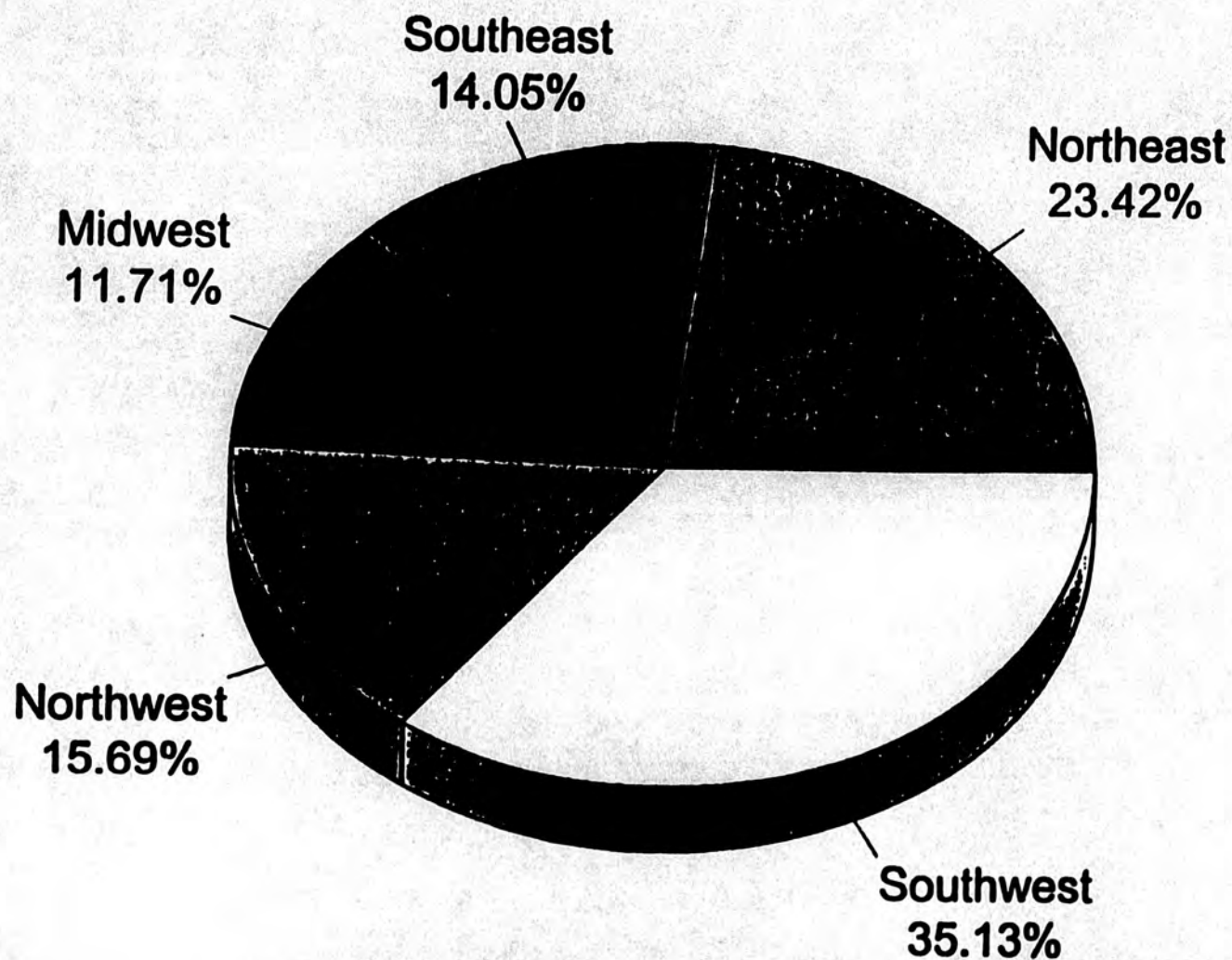
- Claim Number
- Date of Loss
- Date of Claim
- Type of Claim
- Description of Injury
- Claim Examiner
- Claim Office
- Jurisdiction Location
- Claim Resolution
- Closure Date
- Reserve Amounts
 - ◆ Liability
 - ◆ Legal
 - ◆ Medical
 - ◆ Miscellaneous
- Demand Amounts
 - ◆ Liability
 - ◆ Legal
 - ◆ Medical
 - ◆ Miscellaneous
- Award Amounts
 - ◆ Liability
 - ◆ Legal
 - ◆ Medical
 - ◆ Miscellaneous

Reserve Amounts By Year

XYZ Law Firm

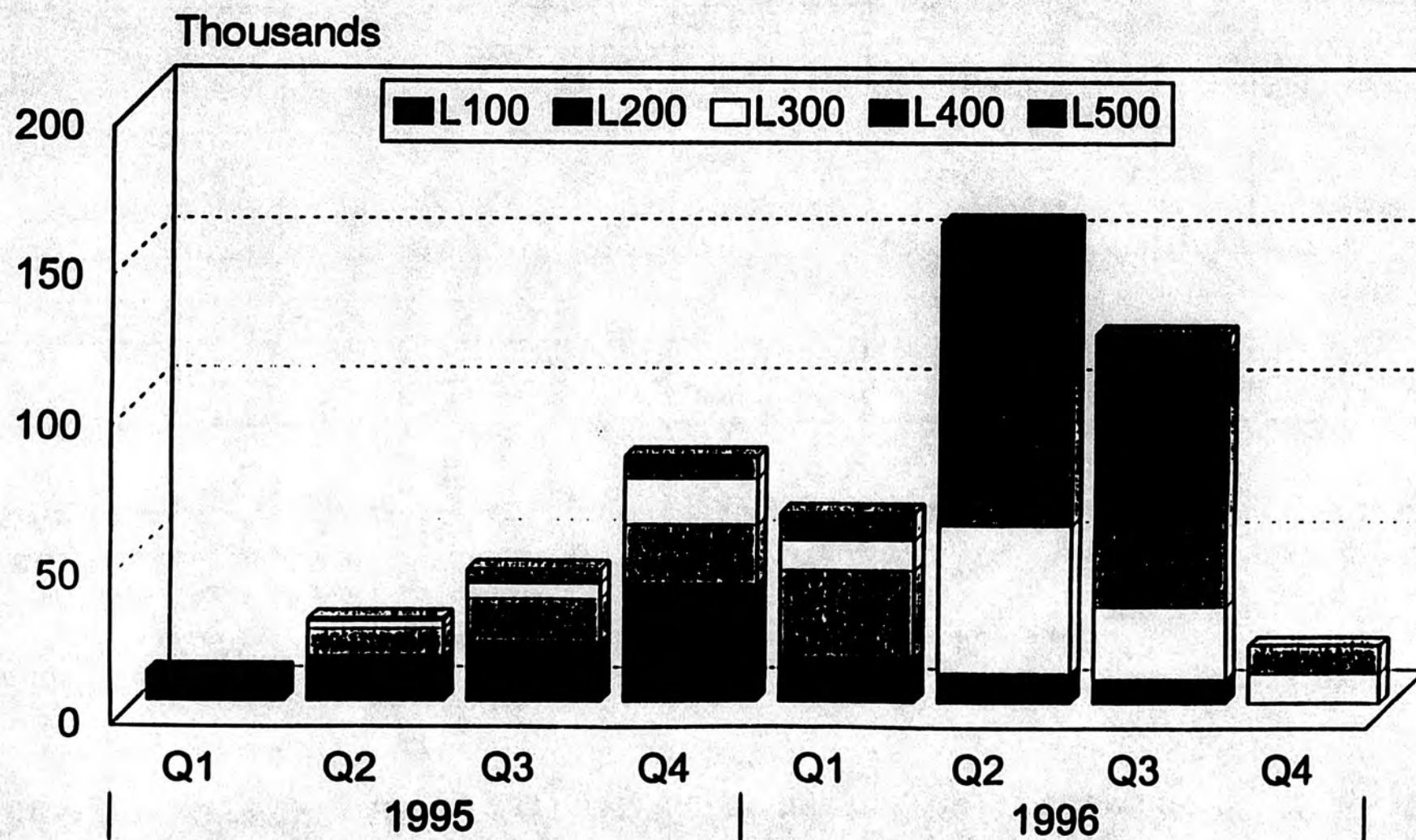


Comparison of Litigation Costs by Region



Quarterly Comparison of Litigation Codes

XYZ Law Firm



**COMPARISON OF (LAW FIRM) FEES BY TYPE OF CLAIM
UTILIZING ABA LITIGATION CATEGORIES FOR ALL CLAIMS**

Type of Claim	Open Claims	Closed Claims	L100		L200		L300		L400		L500		Total Fees Incurred	
			Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees
1. Construction Defect	1	0	\$52.50	100.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$52.50	100.00%
2. General Liability	936	31	\$37,204.20	31.01%	\$21,850.10	18.21%	\$44,686.50	37.25%	\$16,235.90	13.53%	\$0.00	0.00%	\$119,976.70	100.00%
3. Professional Liability	6	1	\$57.00	46.08%	\$0.00	0.00%	\$53.20	43.01%	\$13.50	10.91%	\$0.00	0.00%	\$123.70	100.00%
4. Transportation	142	25	\$7,312.10	36.32%	\$3,912.70	19.43%	\$7,904.30	39.26%	\$1,004.70	4.99%	\$0.00	0.00%	\$20,133.80	100.00%
5.														
6.														
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9.														
10.														
11.														
12.														
13.														
14.														
15.														

L100 Case Assessment, Development, and Administration
 L200 Pretrial Pleadings and Motions
 L300 Discovery
 L400 Trial Preparation and Trial
 L500 Appeal

M/CLAIM

COMPARISON OF (LAW FIRM) FEES BY TYPE OF CLAIM
UTILIZING ABA ACTIVITY CATEGORIES FOR ALL CLAIMS

Type of Claim	Open Claims	Closed Claims	A101		A102		A103		A104		A105		A106	
			Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees
1. Construction Defect	1	0	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$0.00	0.00%
2. General Liability	936	31	\$8,921.50	7.44%	\$435.60	0.36%	\$29,527.70	24.61%	\$23,822.00	19.86%	\$636.20	0.53%	\$8,848.70	7.38%
3. Professional Liability	6	1	\$18.00	14.55%	\$0.00	0.00%	\$9.00	7.28%	\$21.00	16.98%	\$26.20	21.18%	\$10.50	8.49%
4. Transportation	142	25	\$1,319.60	6.55%	\$0.00	0.00%	\$5,106.30	25.36%	\$3,190.20	15.84%	\$218.10	1.08%	\$1,651.80	8.20%
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9.														
10.														
11.														
12.														
13.														
14.														
15.														

- A101 Plan and Prepare for
- A102 Research
- A103 Draft/Revise
- A104 Review/Analyze
- A105 Communicate (in Firm)
- A106 Communicate (With Client)

RM/CLAIM

**COMPARISON OF (LAW FIRM) FEES BY TYPE OF CLAIM
UTILIZING ABA ACTIVITY CATEGORIES FOR ALL CLAIMS**

Type of Claim	Open Claims	Closed Claims	A107		A108		A109		A110		A111		Total Fees Incurred	
			Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees	Fees	% Fees
1. Construction Defect	1	0	\$52.50	100.00%	\$0.00	0.00%	\$0.0	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$52.50	100.00%
2. General Liability	936	31	\$5,110.40	4.26%	\$10,639.50	8.88%	\$28,784.90	23.99%	\$175.50	0.15%	\$3,054.70	2.55%	\$119,976.70	100.00%
3. Professional Liability	6	1	\$0.00	0.00%	\$39.00	31.53%	\$0.0	0.00%	\$0.00	0.00%	\$0.00	0.00%	\$123.70	100.00%
4. Transportation	142	25	\$928.20	4.61%	\$1,668.30	8.29%	\$5,239.40	26.02%	\$22.50	0.11%	\$789.40	3.92%	\$20,133.80	100.00%
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A107 Communicate (Other Outside Counsel)

A108 Communicate (Other External)

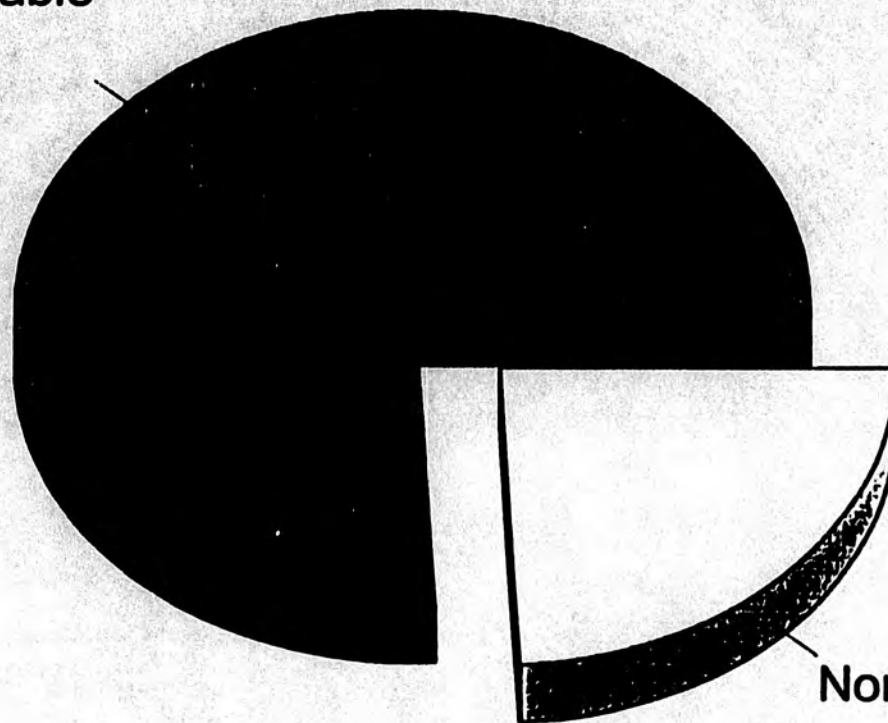
A109 Appear for/Attend

A110 Manage Data/Files

A111 Other

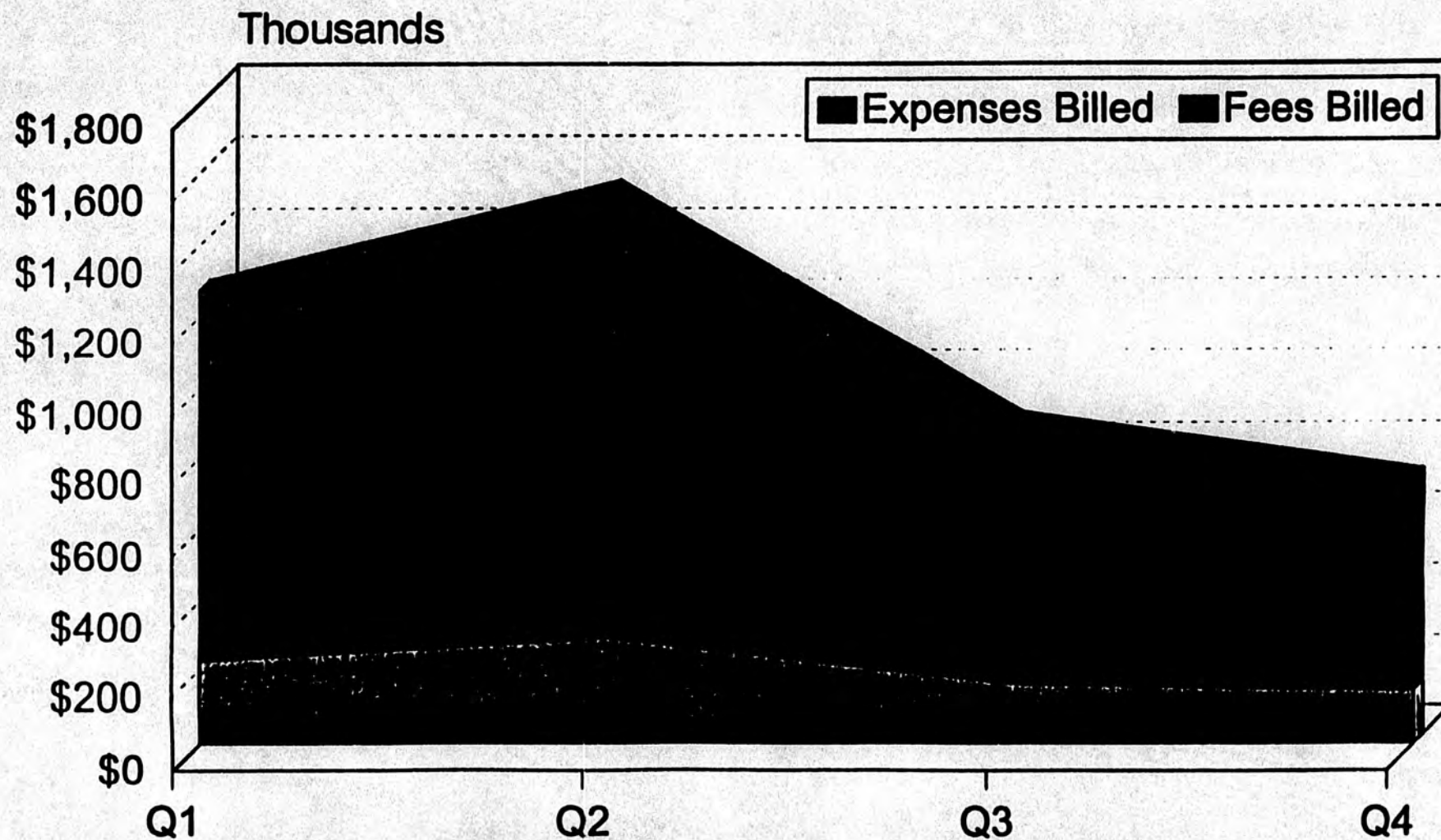
Percentage of Non-Compliance

Amount Payable
75.88%



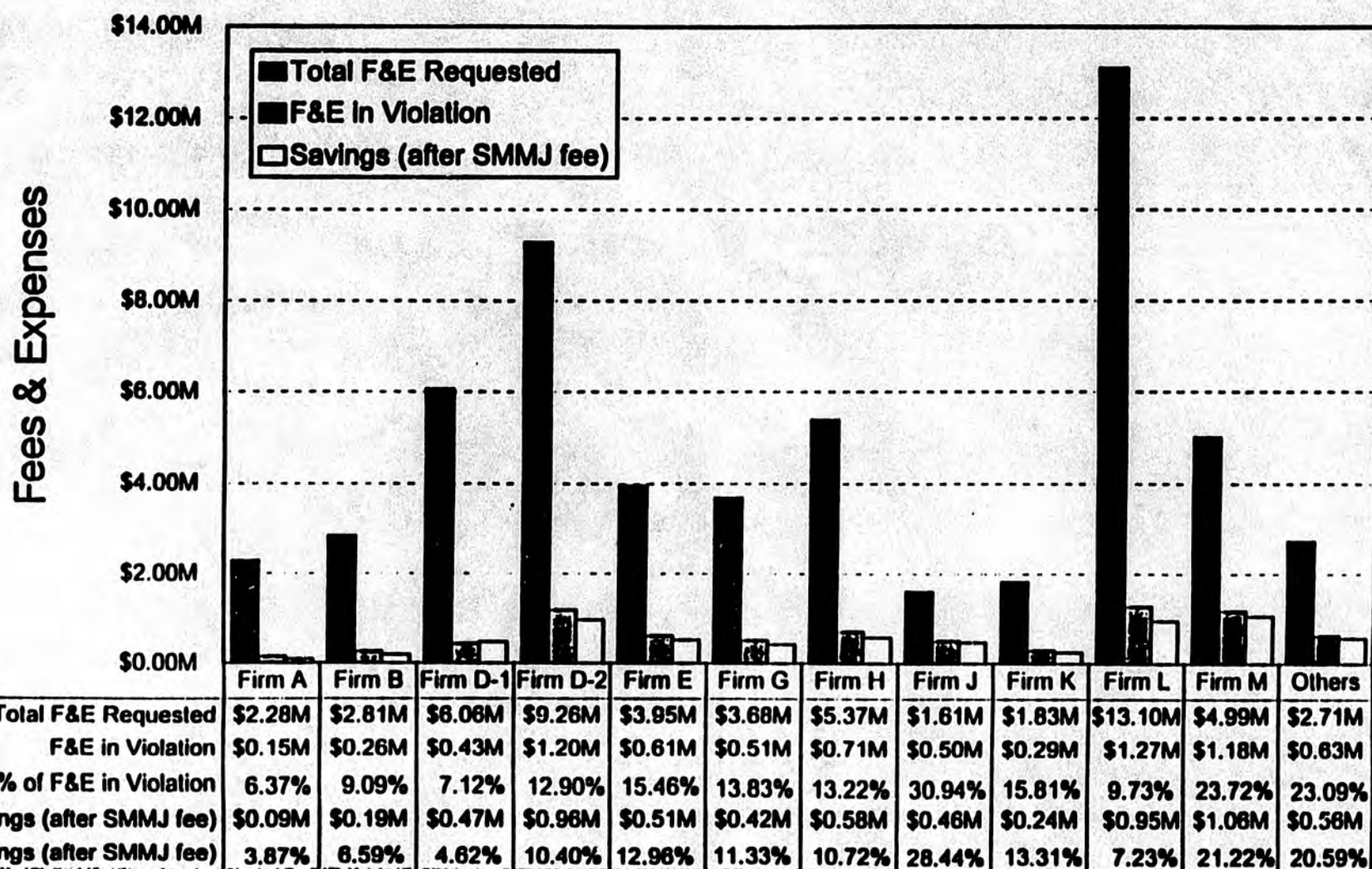
Non-compliance Amount
24.12%

Legal Costs by Quarter



Comparison of Fees & Expenses by Firm

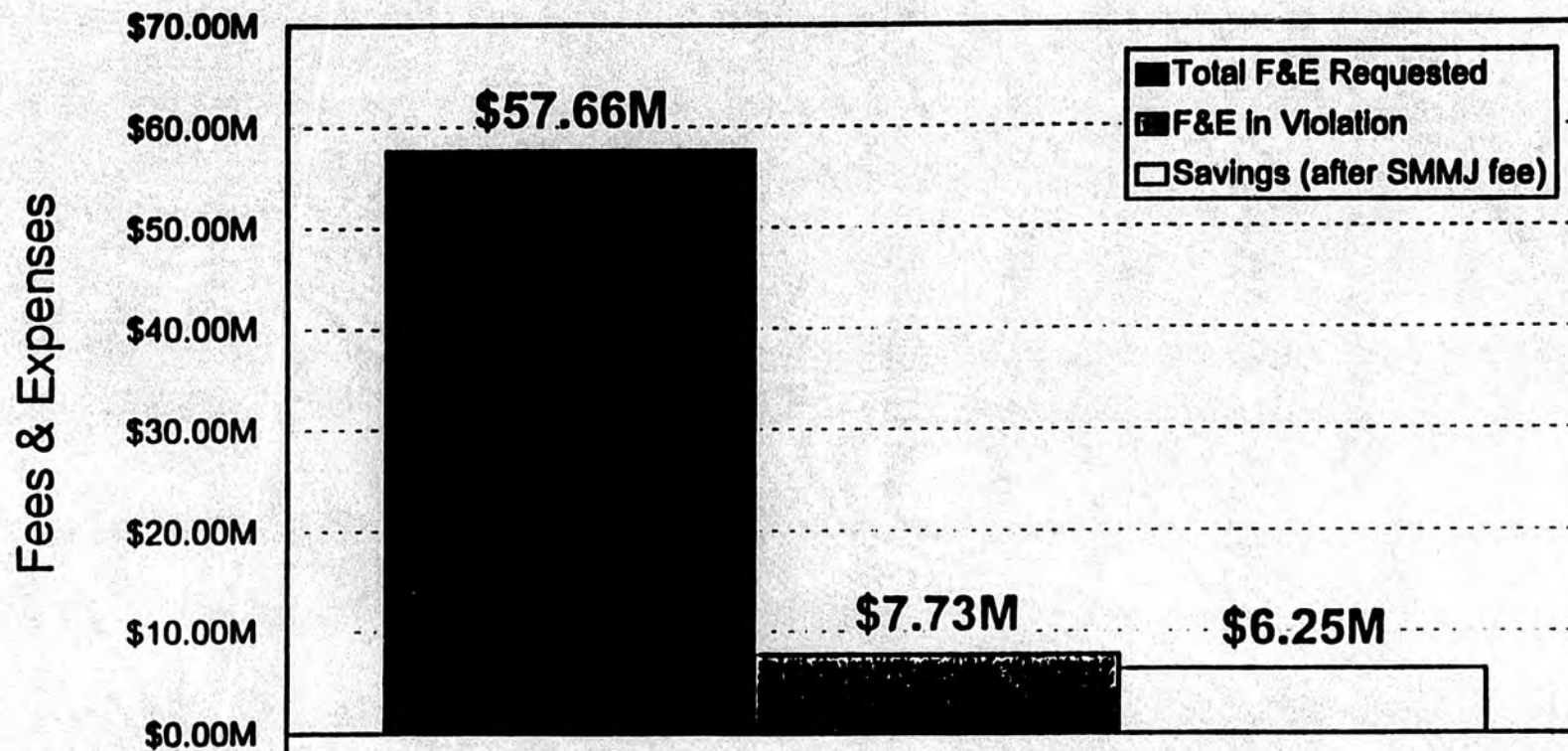
Total Requested versus Total in Violation



Note: savings based on SMMJ fee of 2.5% of fees and expenses reviewed

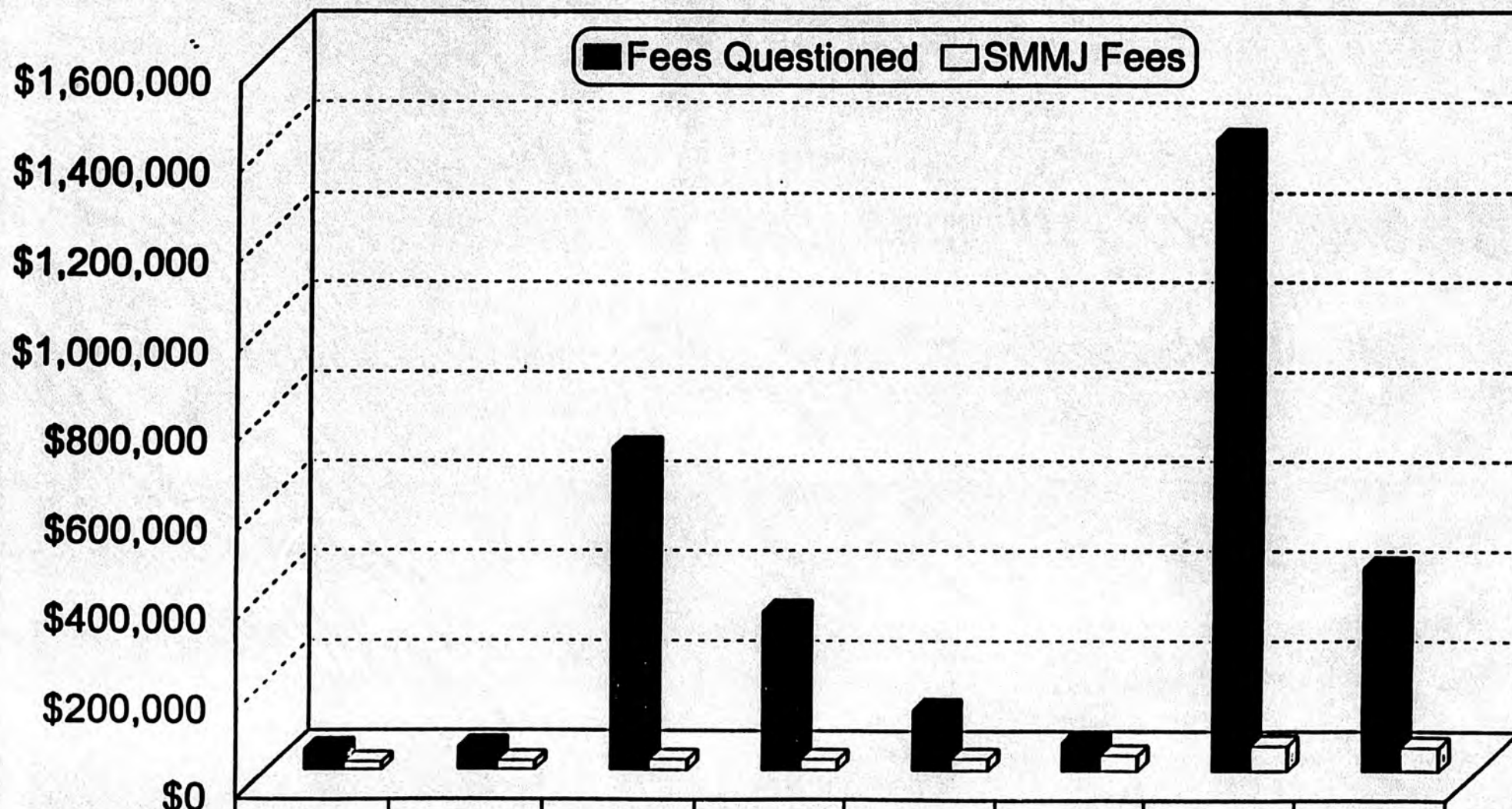
Comparison of Fees & Expenses for All Firms

Total Requested versus Total in Violation



Total F&E Requested	\$57.66M
F&E In Violation	\$7.73M
% of F&E In Violation	13.40%
Savings (after SMMJ fee)	\$6.25M
% Savings (after SMMJ fee)	10.90%

Note: savings based on SMMJ fee of 2.5% of fees and expenses reviewed



Firm Identification	G	J	V	BB	FF	I	W	Other Firms
Fees Audited	\$905,270	\$1,039,218	\$1,228,670	\$1,241,551	\$1,389,332	\$1,853,709	\$2,893,714	\$2,760,239
Fees Questioned	\$50,272	\$56,209	\$721,952	\$355,797	\$139,776	\$67,916	\$1,408,476	\$454,382
% Fees Questioned	5.55%	5.41%	58.76%	28.66%	10.06%	3.66%	48.67%	16.46%
SMMJ Fees	\$18,105	\$20,833	\$24,573	\$24,598	\$27,787	\$37,080	\$57,874	\$54,783
% of Net Questioned Fees	3.55%	3.40%	56.76%	26.68%	8.06%	1.66%	46.67%	14.48%

Stuart, Maue, Mitchell & James, Ltd.

SUMMARY OF SERVICES

I. DESK AUDIT

The desk audit is performed at the offices of SMMJ in Saint Louis, Missouri. The desk audit determines the mathematical accuracy of both the fee and expense portions of the law firm's billing statements; classifies billing entries within the law firm's billing statements according to the activities described; determines approximate amounts of time devoted to each of several broad classifications of litigation activity; to quantify the activities which the fee-paying client may wish to review further to determine their compensability (e.g., multiple attendance, vague billing entries, etc.), and to identify expense items billed by the law firm which are more properly considered overhead items or otherwise not directly related to a particular matter or client.

II. MODIFIED DESK AUDIT

The modified desk audit option is similar to the analysis performed on the on-site audit but does not incorporate a visit to the law firm. The modified desk audit does, however, include an analysis of the law firm's work product, expense documentation, original daily time sheets, as well as an analysis of any interim billing steps used by the law firm such as prebills or billing memorandum. These items will have to be obtained and sent to our offices in Saint Louis, Missouri. With this documentation, SMMJ accounting personnel can ascertain whether any markups or write-downs in billed hours have occurred and whether any changes/alterations in original task descriptions have occurred between the original source document (time sheet) and the final billing statement.

III. ON-SITE AUDIT

The on-site legal audit is performed in part at the office location of the law firm subject of the on-site audit. It involves (i) a review by SMMJ of all entries for fees and expenses contained in the subject bills; (ii) a review of work product, expense documentation, prebills and time sheets, and interviews of key law firm personnel; and (iii) the preparation of a detailed audit report of SMMJ's findings. SMMJ's audit report is trial ready and suitable for use in arbitration, mediation, or litigation.

IV. EXPERT TESTIMONY

The testimony of SMMJ professionals (attorneys, accountants, and computer professionals) is available to provide expert testimony regarding the methodology of legal auditing in general as well as expert testimony regarding the specific findings derived from any audit performed on behalf of the client.

V. LIBRA™ COMPLIANCE AUDITS

LIBRA™ (Legal Invoice/Billing Review and Analysis) is a sophisticated, state-of-the-art auditing system utilizing proprietary software and methodology developed and maintained by SMMJ exclusively for legal auditing. The LIBRA™ software is designed to perform those

Stuart, Maue, Mitchell & James, Ltd.

functions in the legal audit process that will aid the user in the analysis of legal fees and expenses and then summarize the audit information derived in the form of exhibits and audit summaries. With the LIBRA™ System, computer-assisted compliance audits can be performed by either SMMJ's professionals or on-line by the client's personnel in the familiar Windows environment. By utilizing the LIBRA™ System, the user can review, analyze, and process large volumes of billing statements on a continuing basis and provide recommendations regarding prompt payment of charges that conform to the client's requirements and billing guidelines (compliance audits). The LIBRA™ System is specifically designed to process data in an efficient and cost-effective manner and to produce exception reports within a time frame that conforms to the client's normal pay cycle. The steps of the audit process can be adjusted to meet the needs and expectations of the individual client.

VI. ACCESS TO LIBRA™ SYSTEM

Additionally, a connection can be established between the LIBRA™ System and your offices to provide you on-line access to the LIBRA™ System on any Windows-based desktop computers while retaining efficiency, speed, and data security. The connection to SMMJ's application and database servers, maintained at SMMJ's headquarters in Saint Louis, Missouri, can be achieved through any of the presently available technologies, including the Internet, frame relay, or other electronic means. The connection allows the client access to the LIBRA™ System as a thin-client that provides your client with parallel auditing capabilities. When connected into the LIBRA™ System, your client's personnel can perform the same compliance audit functions as SMMJ's professionals and obtain immediate on-line access to SMMJ's compliance audit findings. The LIBRA™ exception report and associated exhibits can be tailored to conform with your client's specific billing guidelines and reporting expectations. SMMJ will also train your client's personnel in the use of the LIBRA™ System and SMMJ's audit methodology.

VII. DATA WAREHOUSING AND MANAGEMENT REPORTS

In addition to the immediate goal of auditing the law firms' billing, the data provided from the individual fee and expense billing entries, UTBMS codes, audit results, or pertinent claim data can be incorporated by SMMJ into a data warehouse to create high-level management reports for trend analysis. For example, this information can enable the client to evaluate the litigation costs of various law firms performing similar representation functions. The data elements warehoused for future benchmarking purposes may vary between clients depending upon the individual needs of each client and reports generated can be custom-tailored to any specifications. This information is always available through the connection mentioned above.

VIII. WEB SITE DEVELOPMENT

Finally, SMMJ can develop and maintain a web site identified in the manner you direct for all audit-related information needed to be available to all law firms subject to review under the compliance audit program. We would anticipate this would include announcements, billing guidelines, policies, reporting procedures, and any other information you considered pertinent.

Stuart, Maue, Mitchell & James, Ltd.

A M I S S O U R I C O R P O R A T I O N

LEGAL AUDITORS AND CONSULTANTS

SAINT LOUIS, MISSOURI, U.S.A.

INTRODUCTION

Stuart, Maue, Mitchell & James, Ltd. has built its legal auditing, litigation management, and claims auditing business with great care and attention to the needs of our clients. We have made a significant investment in assembling a staff of quality professionals and in equipping our staff with sophisticated computer capabilities. This investment reflects our dedication to quality, service, cost effectiveness, and industry leadership. We believe our success and growth are measures of our clients' satisfaction. We invite you to review the following pages describing some of our capabilities, to visit our offices, and finally, to come to know and trust Stuart, Maue, Mitchell & James, Ltd.

"The nation's oldest legal auditing firm."

THE COMPANY

Stuart, Maue, Mitchell & James, Ltd.'s offices are located in Saint Louis, Missouri. Our offices are fully staffed with professionals holding law degrees and advanced degrees in business and accounting.

CONFIDENTIALITY

At Stuart, Maue, Mitchell & James, Ltd., we recognize that maintaining the confidentiality of the information provided to us is critical. We also make every effort to perform our assignments with a minimum of disruption to our clients and to the law firms whose bills are being analyzed.

INDEPENDENCE

Stuart, Maue, Mitchell & James, Ltd. is a Missouri corporation that is independently owned and operated. No client has an ownership interest in our company, and we hold no ownership interest in any of our clients. No assignments are undertaken that would impair our independence and objectivity.



HARRY J. MAUE, J.D., Ph.D.

Chairman and Managing Director

Legal auditing involves the complete review of all entries contained in a law firm's billing statements, and the complete review of all receipts that are billed as expenses. Legal auditing is premised on the belief that a law firm's billing should accurately and adequately inform the client of the services provided and the fees and disbursements billed. The law firm's bill should be verifiable as an itemized statement.

The traditional bill-by-the-hour approach for legal billing fosters inefficiencies: over-staffing; duplication of effort; excessive review, analysis, and research; and work inconsistent with billing guidelines and scope of employment. Mounting pressure to increase law firm revenue may also lead to inappropriate and excessive claims for reimbursement of expenses, in excess of necessary and actual costs.

We believe long-standing relationships built on trust and cooperation are important. Our analysis and approach is neither confrontational nor accusatory. Stuart, Maue, Mitchell & James, Ltd.'s goal is to enhance the relationship between you and your outside counsel by improving communications and establishing a

mutual understanding of acceptable billing practices.

OUR APPROACH

Stuart, Maue, Mitchell & James, Ltd. is the industry leader in analyzing legal bills for complex litigation and other legal matters. Our staff of professionals and our sophisticated computer capabilities provide our clients with an independent, timely, and thorough review of their law firm's billing statements.

Our depth of knowledge and experience enables our professionals to design a program precisely tailored to each client's situation and requirements. Whether our staff conducts an on-site audit, a desk audit, or a compliance review, we have the

flexibility to help clients maximize savings for their investment.

The problem has always been how to identify and quantify questionable billing practices. Stuart, Maue, Mitchell & James, Ltd. has solved that problem. What distinguishes our legal auditing process is our sophisticated, proprietary computer system and the experience and credentials of our legal auditors.

We have developed a custom software program of unmatched versatility to analyze law firm billing statements. A software program alone, no matter how sophisticated, is only a tool. The quality of the legal audit depends on the quality of the legal auditors. At Stuart, Maue, Mitchell & James, Ltd., we are engaged in the business of

"Stuart, Maue was crucial in uncovering billing abuses."

legal auditing with a full-time staff of professionals (lawyers, accountants, computer specialists, and a statistician). Our lawyers are all former corporate counsel and litigators from law firms and the public sector.

Stuart, Maue, Mitchell & James, Ltd. is not a law or accounting firm. Although many of our associates have law degrees and legal backgrounds, we do not offer legal advice or second guess your chosen lawyers. Instead, we will use our legal expertise to help you locate and eliminate unnecessary and wasteful legal expenses, without sacrificing the quality of your legal representation. Many clients can save thousands of dollars simply by eliminating duplication of legal services and marked up expenses. However, that's only the beginning.

M E T H O D O L O G Y

Our legal audit is a professional analysis, aided by our proprietary computer system, which identifies and quantifies inefficiencies and other improper charges in legal bills. Those bills typically consist of unintelligible computer printouts of attorney daily time reports. We enter this data, in its entirety, into



our computer system for analysis and then organize it in a usable and understandable form. Our custom designed, proprietary software program permits nearly limitless varieties of examination of law firms' billing data.

"Audit teams" are created for each legal audit performed. Usually, at least one attorney and one accountant are teamed together. The teams may be larger, depending on the size of the bill and the amount of documentation to be verified. We begin by doing a standard set of analyses. We then examine the data "by time-

keeper" and "by project activity" to identify categories such as: duplicative staffing; projects or activities with no utility to the defense of the client; and administrative clerical tasks. Claimed reimbursable expenses are also examined for excessive or unnecessary charges. Your input is important as you may have in-house responsibility for the project and know what was done, how it was done, and the attorneys who were involved. In close consultation with you, our legal auditors continue the analysis in directions suggested by the results of the earlier preliminary work. Where

helpful, the assigned auditor will be knowledgeable and experienced in the subject matter specialty such as: banking; environmental law; product liability; etc.

The audit team, after review and analysis of the data, prepares a report of its findings. The audit report analytically profiles the project, draws conclusions, and makes specific recommendations as to fee adjustments, all fully documented and supported by graphs, charts, tables, and exhibits.

We believe it is extremely important to be able to support our audit findings utilizing a sound, proven methodological approach.

Our methodology includes, but is not limited to, the following:

- *Reconciliation of all fees, hours, and expenses billed per statement:*
- *Interviews with key billing personnel at the law firm:*
- *Verification of all the activities referenced in the billing statements. This includes confirming the existence of work product and scrutinizing billing entries chronologically, by individual, and by project/activity:*
- *Examination of all expenses charged in the legal bills, a reconciliation of these expenses against underlying receipts, and the identification of any mark-ups:*

■ *Quantifying (in both dollars and hours) all billing activities and expenses that cannot be verified by our methodology: and*

■ *Preparation of a final written confidential report containing our findings, along with supporting exhibits.*

SCOPE

The savings that result from legal auditing can be substantial. Stuart, Maue, Mitchell & James, Ltd. can custom design an audit to fit your needs and budget. To provide our clients with cost-effective solutions to rising legal costs, Stuart, Maue, Mitchell & James, Ltd. offers five different levels of legal audits tailored to each client's particular needs and budget.

First, the "on-site" audit, which is an analysis presented in final report form, based on a review of 100% of the law firm's fee and expense entries. It entails a visit to the law firm for the purposes of review of law firm work product, expense documentation, pre-bills, and time sheets, as well as an opportunity to interview key law firm personnel.

Second, we offer a "modified desk" audit, which is an analysis containing

preliminary findings, based on a review of 100% of the law firm's fee and expense entries, together with a review of such expense documentation, work product, pre-bills, and time sheets as may be provided by the client, but without the on-site portion of the audit.

Third, the standard "desk" audit, which is an analysis containing preliminary findings, based on a review of 100% of the law firm's fee and expense entries, but without both the on-site portion of the audit and the review of any expense documentation, work product, pre-bills, or time sheets. The modified desk audit as well as the standard desk audit are performed at our offices in Saint Louis, Missouri.

Fourth, after examination of the bills, we issue "letter reports" which are analyses addressing specific concerns or issues and which are less extensive in scope and length than the previously described audit reports.

Fifth, we have introduced a "compliance review," which is an analysis of outside counsel's billing statements via manual and computerized methods designed to determine the law firm's compliance with pre-existing client billing guidelines. The client is provided with a quantification of both

"Stuart, Maue will interview employees and sift through time sheets, taxi vouchers, and even building lobby sign in sheets to determine whether clients received the services for which they were billed."

hours and fees for those task descriptions that appear to violate established billing guidelines. This type of review is less comprehensive in scope and length than a legal audit; however, a compliance review is an extremely valuable tool both to determine law firm adherence with established policies and procedures, and to control legal costs.

Additionally, your audit strategy should take into consideration that:

■ *Stuart, Maue, Mitchell & James, Ltd. accepts auditing assignments from clients on the basis that we will absorb, and not pass through to the client, the following costs: word processing, postage, facsimile charges, Federal Express charges, and long distance telephone charges;*

■ *Stuart, Maue, Mitchell & James, Ltd. will provide 10 to 15 hours of technical backup, free of charge, in order to answer any of your or the audited law firm's questions regarding the final audit report; and*

■ *Stuart, Maue, Mitchell & James, Ltd. sends the assigned lead auditor, whenever possible, to give sworn testimony on behalf of the client at any arbitration or court hearing that may ensue over any potential fee dispute.*

What further distinguishes us from our competitors is our respon-



siveness, our complete independence, our 100% audit capability, our turnaround time, our proprietary software, and our experienced, professional staff.

COST

Stuart, Maue, Mitchell & James, Ltd.'s fees are determined on a client-by-client basis. Our fee is generally based on the total fees and expenses audited and the type of audit selected.

Depending on the needs of the client and the scope of the project,

some of the above audit options may lend themselves to an hourly billing rate arrangement, a percentage of total fees and expenses audited, or a flat rate.

CONCLUSION

We believe Stuart, Maue, Mitchell & James, Ltd.'s approach provides the most thorough, informative, objective, and, therefore, the most reliable results from our legal audits.

Although legal bill audits may be your premier tool for reduction of legal fees by identification of questionable billing patterns and practices, to be most effective, legal auditing should be part of a coordinated litigation management program.

Litigation Management is the application of methods and systems designed to ensure informed management control over the activities of the law firm during all phases of a case, with the objective of minimizing legal fees and expenses.

Through the effective use of litigation management, every client can take specific action to significantly reduce legal fees and expenses. A properly implemented litigation management program will lead to:

- *Informed strategy decisions;*
- *Avoidance of problems and surprises throughout the litigation process; and*
- *Improved cost-benefit analysis and decision making.*

Stuart, Maue, Mitchell & James, Ltd.'s professional staff will aid you by custom designing a litigation management program incorporating the following elements:

1. Guidelines for Billing Cycles and Billing Statement Format

Stuart, Maue, Mitchell & James, Ltd. will help you implement an interim billing process to assist in the recognition of how and why fees and expenses are incurred and to monitor fees and expenses throughout the litigation process.

2. Meaningful Billing Guidelines for Outside Counsel

Specific guidelines should be designed to ensure appropriate staffing levels. What is appropriate will, of course, depend on the complexity of the issues involved and the expertise of counsel. Care should be taken to ensure that the litigation is not used as a proving ground for young, inexperienced attorneys.

In addition to monitoring who is working on the litigation, guidelines should specify activities that are and

are not considered compensable. The purpose of guidelines in this area is to ensure that activities billed at professional rates make a substantive contribution to the litigation.

Billing guidelines should also address the expenses billed by a law firm. The actual costs of expense items directly related to the litigation are typically charged through to the client. Guidelines for expenses should ensure that you are not subsidizing the law firm beyond hourly rate charges by paying overhead costs, by paying a mark-up on expense items, by paying for expenses that cannot be fully documented, or by paying expenses that are not directly related to the litigation.

3. Litigation Plans, Budgets, and Reporting Requirements

The law firm should be required to prepare a suit plan and budget for each matter. This plan and budget

"Stuart, Maue has the most sophisticated software and computer capabilities."

should include an outline of all anticipated discovery and the estimated costs. Work that is outside the scope of the plan and budget, once submitted, should be approved in advance to be compensable. It is extremely important for the law firm to provide periodic status reports to enable proper evaluation of options and to assess potential liability. Reports should be provided every 90-120 days.

Our staff of trained professionals will help you develop and implement requirements for litigation plans, litigation budgets, and law firm reporting procedures.

4. Periodic Legal Audits of Outside Counsel

Legal audits of outside counsel's billing statements are an efficient and cost-effective way for clients to convert incomprehensible legal bills into meaningful data. Legal auditing involves the analysis of legal bills by computerized and manual techniques to reorganize them by projects and activities as well as by timekeeper. Work product, expense documentation, and billing backup (i.e., time sheets, pre-bills, billing memoranda) may also be reviewed.



5. Routine Monitoring of Billing Statements for Compliance with Billing Guidelines

Stuart, Maue, Mitchell & James, Ltd.'s staff will periodically review and analyze outside counsel's billing statements to evaluate compliance with pre-existing client billing guidelines. The client is provided

with a report quantifying both fees and hours for those task descriptions that appear to violate established billing guidelines. Although less comprehensive than a legal audit, routine monitoring for compliance with billing guidelines is an extremely cost-effective method to control legal costs.

Stuart, Maue, Mitchell & James, Ltd. recognizes that an important element of the management process is the control or reduction of possible catastrophic costs through better loss adjusting techniques. Direct savings from proper claims management can take the form of retrospective or dividend returns, lower self-insured claim costs, or lower future insurance premiums.

WHO USES THESE SERVICES

1. Entities with self-insured programs of workers' compensation, public or fleet liability...to improve efficiency and reduce direct costs.
2. Insured entities...to improve efficiency and reduce insurance costs of loss-responsive programs.
3. Insurance companies who wish to have an independent claims audit of their claims operations.
4. Claims Administrators and self-insureds who want to have their internal systems reviewed for overall claims handling efficiency.
5. Excess insurance companies who want to have the primary insurance carrier's claims handling practices audited.

CLAIMS AUDIT GOALS

1. Reduce claim payments.
2. Reduce claim handling expenses.
3. Test accuracy of reserves and loss reports.
4. Improve accuracy of reserves and loss reports.
5. Improve administrative efficiency.

An experienced Stuart, Maue, Mitchell & James, Ltd. claims auditor will investigate, report on, and attempt to reach conclusions concerning the following areas of concern:

- Initial handling of the claim/case:
- Early resolution and/or settlement attempts:
- Timeliness of notice of loss:

- Adjustor response to claim notification:
- Adjustor handling prior to litigation:
- Timeliness of file assignment to counsel:
- Adjustor/attorney relationship:
- Timeliness and appropriateness of initial reserve levels and subsequent adjustments:
- Handling of medical, employment, and other relevant records:
- Handling of necessary investigations:
- and
- File maintenance practices.

"Stuart, Maine conducted a very in-depth audit."

EVALUATION OF CLAIMS ADMINISTRATORS

To obtain the lowest cost and most effective claim handling, whether provided by employed claims adjusters or by a contract claims administrator, our staff of experienced professionals will utilize the following criteria to evaluate your claims administrator:

1. Self-Administration Costs

Personnel qualifications

Claims manual

Reporting procedures

*Check and settlement
authorities*

Controls

Loss reports

Implementation

Case loads

2. Contract Claim

Administration Services

Services required

Remuneration method

Trust funds

*Check and settlement
authorities*

Service contract review

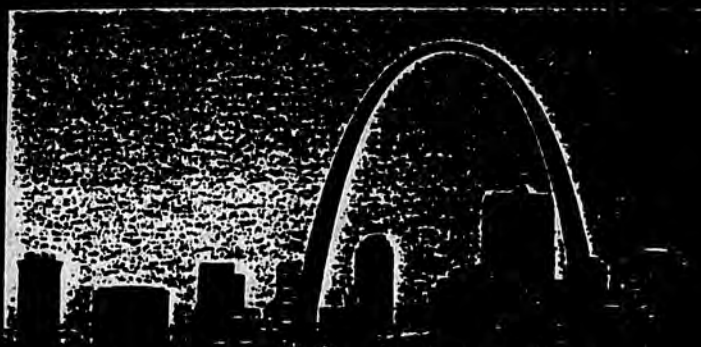
Case loads



"Stuart, Maue will give you an audit report that is untouchable."

PETER D. LICHTMAN, ESQ., PARTNER

LICHTMAN & BRUNING



Stuart, Maue, Mitchell & James, Ltd.

A MISSOURI CORPORATION

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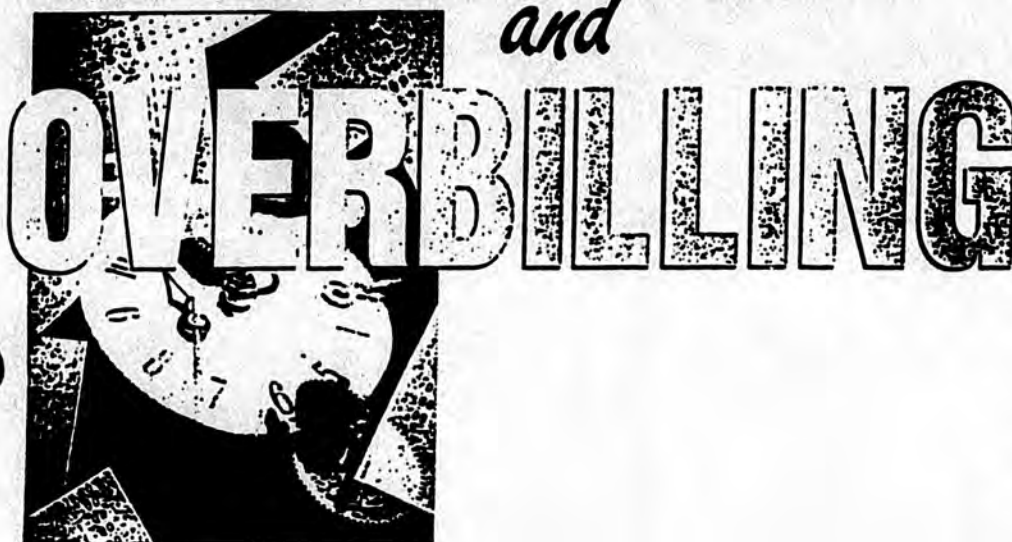
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JOURNAL

THE LAWYER'S MAGAZINE/AUGUST 1994

GREED, IGNORANCE

and



SOME LAWYERS HAVE GIVEN NEW MEANING TO THE TERM 'LEGAL FICTION.' NOW THE PROFESSION IS ASKING WHY, HOW WIDESPREAD AND HOW DO WE STOP IT?

BY DARLENE RICKER

Sixty-hour days, documents that don't exist, clerical work that fetches \$300 an hour. It's not an Alice-in-Wonderland fantasy, but a peek through the looking glass into the kaleidoscope world of law firm overbilling.

It is a world in which everything, even the most nonsensical, can—and does—happen. You can be two places at once: on an airplane 35,000 feet above St. Louis and at a law library in Los Angeles. Four hours on an airplane become four hours of travel for Client A and four hours of legal research for Client B. Before you even

step off the plane, you have billed an eight-hour day.

If such timekeeping seems to defy logic (and the dictates of a 1993 ABA ethics opinion), that fact hasn't been lost on clients and firms. With clients crying foul over vague bills for "services rendered," firms (including Hillary Clinton's former Rose Law Firm) are trying to distance themselves from partners who may have billed not wisely, but too well.

The issue clambered onto the stage of American public opinion and its assessment of lawyers when Webster Hubbell resigned in February as U.S. associate attorney general.

Partners at the Rose Law Firm were just then beginning to investigate charges that Hubbell, their former managing partner, had billed under his name for work performed by associates, paid personal expenses from a client account, and billed taxpayers more than \$20,000 for work on a savings and loan case in which he claimed to have averaged more than eight billable hours every day for three weeks, without resting even one weekend day.

Such allegations are not uncommon, nor are they limited to large corporate law firms. Other high profile cases include criminal defense attorney William Perrone, who pleaded guilty during July 1993 to overbilling the city of Philadelphia \$130,000 for representing indigent clients.

In Los Angeles, overbilling on appointed death penalty cases last year prompted the county to replace an hourly fee system with flat fees, after officials learned they paid some lawyers almost \$1 million a year to represent indigents on death row.

But beyond the notoriety, are such high-profile cases the tip of an iceberg or isolated instances of abuse? The truth is that without authoritative studies, no one knows. Louis R. Aidala, chair of the New York Criminal Bar Association's committee on indigent representation, suggests the perception of overbilling—particularly in appointed cases—is overblown.

He notes that a 1992 New York City comptroller's audit of payments to assigned counsel for the preceding five years found "only a handful" of suspected overbillings. "It may be that the lack of success in investigating the problem is due to the lack of a problem," he says.

At least one study, however, has indicated that lawyers *believe* the problem is pervasive. William Ross, a professor at the Cumberland School of Law at Samford University in Birmingham, Ala., conducted a survey on perceptions of overbilling, publishing it as an appendix to a 1991 *Rutgers Law Review* article on ethics of billing.

Ross' data came from 272 private attorneys and 80 corporate counsel selected from a nationwide cross-section—from solo practitioners to firms with more than 200 lawyers; corporations with annual sales from \$500,000 to \$30 billion; and lawyers in practice from one to 45 years, with a balance of racial, ethnic, gender and geographic backgrounds.

About 92 percent of respondents said they believed lawyers intentionally pad their hours; more than 60 percent admitted they had specific knowledge of such padding. About 50 percent of private-practice attorneys and 70 percent of corporate counsel said they have billed, or believe others have billed, two clients for work performed at the same time.

Despite respondents' widespread perception of overbilling, considerably fewer—12.3 percent of private practitioners and 15.3 percent of corporate counsel—said they believe lawyers "frequently" pad hours to bill clients deliberately for work never performed.

One respondent, in written comments, insisted that he and most other lawyers who bill more than 3,600 hours per year—equivalent to 52 69-hour weeks—do not perform unnecessary work nor exaggerate hours. But to Ross, the only way to explain such a view other than by "preternatural stamina or lying" is to presume that lawyers are so accustomed to rationalizing billing practices they may not recognize sometimes questionable ethics.

Ross estimates that in some firms, 50 percent of work on large cases is legally unnecessary, but he says that "very few attorneys consciously pad their hours." Rather, he chalks up the majority of overbilling to overzealous representation.

"Although fraudulent billing is more common than most lawyers are willing to admit, most dishonesty is the result of self-deception rather than conscious fraud," he says. "Big firm litigators have convinced themselves that the leave-no-stone-unturned approach and their Herculean hours serve their clients' best interest."

Ross' findings square with observations of those who regularly audit legal bills and say that only five to 10 percent of audited bills reveal outright fraud. Often, overbilling occurs at an unconscious level as a response to subtle pressure by firms to rack up hours. As Chief Justice William Rehnquist noted in a 1987 *Indiana Law Journal* article on the legal profession: "If one is expected to bill more than 2,000 hours per year, there are bound to be temptations to exaggerate the hours actually put in."

In other cases, lawyers may be sloppy about timekeeping, are ignorant of ethical bans on double-billing or feel justified tacking on a margin to disbursements. "Let's not



cut hairs too finely," says Hofstra Law School ethics professor Roy Simon. "Whether it's [calculated] as costs or hours, it's the same thing. It's wrong."

High hourly billing does appear to be a common denominator in many overbilling cases. Hotel magnate Leona Helmsley, previously convicted of tax evasion, claimed in a multimillion-dollar fee fight this year that former real estate lawyers Dreyer and Traub of New York City billed her for a 43-hour day. Jack S. Malkin, an Illinois solo practitioner convicted in 1992 of overbilling more than \$5,000 on appointed cases, once billed more than 22 hours in a day.

Consecutive days billing more than 10 hours each is generally a red flag for legal auditors, but auditors are split on whether time-based billing is the engine driving the overbilling machine.

The notion of detailed, task-based billing "may make you feel warm and fuzzy inside, but it's no panacea" to cure overbilling, says Dr. Harry Maue, chairman and managing director of Stuart, Maue, Mitchell & James, a legal auditing firm based in St. Louis. "Everyone can get lost in a 4-inch thick [task-based] bill. It's just another way to obfuscate the obvious."

Often what Maue uncovers is a pattern of improper billing practices over the course of the litigation, rather than a single, standout transgression.

About 85 percent of his audits, he says, revealed billing for work product that cannot be located, too many lawyers at conferences or depositions, and vague time entries such as "review file." Twenty to 35 percent showed "unverified" or "questionable"

William Ross: 'Most dishonesty is the result of self-deception rather than conscious fraud.'

billing, such as a law firm that researched the work "occurrence" in an insurance case and saw fit to bill every one of its clients for that time because a copy of the research memo went into each file.

About 10 percent of Maue's audits found actual fraud, he says, which attorneys often do not attempt to cover up. Some appalling examples: the initials "ERJ" on a bill, when no such person existed; a managing attorney who subcontracted work outside the firm, which turned out to be a \$700,000 windfall to a partner's brother who did no work on the file; billing a file that was not yet opened or that had been closed two years previously; and, of course, shamelessly padding hours (in one case, he found an attorney billing 62 hours in a single day).

The ABA's first formal opinion on billing practices (No. 93-379, issued Dec. 6, 1993), slams the door on "overstaffing a project for the purpose of churning out hours" and prohibits double-dipping on recycled work product, work done on travel time and simultaneous court appearances. It states:

"Rather than looking to profit from the fortuity of coincidental scheduling, the desire to get work done rather than watch a move [on an airplane], or the luck of being asked the identical question twice, the lawyer who has agreed to bill solely on the basis of time spent is obliged to pass the benefits of these economies on to the client. ... It goes without

saying that a lawyer who has under taken to bill on an hourly basis is never justified in charging a client for hours not actually expended."

Apparently that needed to be said. Consider once-celebrated Park Avenue attorney Harvey Myerson, who was convicted in 1992 of bilking more than \$2 million from his firm's major client, Shearson Lehman Hutton. In addition to testimony by three young partners that Myerson had ordered them to inflate their hours (in one instance charging 10 hours of fees for 12 minutes of work) or lose their jobs, there was evidence that Myerson had billed for personal expenses, such as family vacations, travel on the Concorde, even dry-cleaning for his toupee. Myerson was sentenced to 70 months in prison.

A very different—but equally troubling—picture emerged when billing practices of Chicago lawyer Richard A. Salomon came to light several months ago, prompting his employer, Mayer, Brown & Platt, to reimburse 10 corporate litigation clients almost \$500,000. Salomon, a rising-star young partner who consistently billed more than 3,000 hours annually, has claimed that a psychological disorder and large-firm billing pressures led him to adopt a routine of reclassifying nonrecoverable client costs for billing purposes.

After hiring the national accounting firm Price Waterhouse to conduct an independent audit of Salomon's bills, Mayer, Brown placed him on leave in February and contacted the Illinois Attorney Registration and Disciplinary Commission which began an investigation.

Salomon's formal hearing before the commission was scheduled for June 30.

Commission chief counsel James Grogan says he was "less startled" with the facts of the Salomon case than he would have been earlier in his career. "We're starting to see more and more top lawyers and prestigious firms get in trouble [with overbilling]. If you had told me about this 15 years ago, I'd have said, 'No way is this possible.'"

Today it is not only possible but sadly predictable that some amount of overbilling happens, judging by reports to state bar disciplinary units. Billing abuses generally fall into two categories of complaints: those involving fee disputes (such as unfair, excessive or unearned fees) and fraud (such as lying, falsifying documents or stealing). In Illinois, Grogan says, about one-third of complaints against lawyers that reach a board hearing involve one of those categories.

Tony Boggs, director of lawyer regulation for The Florida Bar, says the majority of complaints that go to hearing in his office involve allegations of excessive fees or fraudulent activity. In the past three years, his office has received 600 to 700 fee com-



Dr. Harry Maue (above): Task-

based billing 'may make you feel

warm and fuzzy inside,' but it won't

cure overbilling.

James Schratz (below): 'Curiously,

the problem is not decreasing—if

anything, it has worsened.'

plaints annually. Only 2.2 percent of fee cases resulted in disciplinary action. Truly fraudulent billing is not very common, he says.

Although overbilling has not been widely reported by clients, it is being reported by law firms themselves. Grogan says that cases are increasingly coming to him through firms concerned about some of their colleagues, as happened in the Salomon case.

Most billing abuses, say experts, occur in large firms that have high overhead expenses—and that have grown accustomed to the type of high profit margin that allowed Myerson to enjoy a lavish lifestyle. Many blame the financial heydays of the 1980s for causing lawyers to feel an undue entitlement to the high life.

"The rationale seemed to be, '[financiers] Michael Milken and Ivan Boesky are making \$5 million a year, so I should be able to make \$2 million—and if I have to overbill the client, that's okay,'" says James Schratz of Santa Rosa, Calif., a litigation-management specialist who investigates billing irregularities and has testified as an expert witness in numerous overbilling cases.

Although the freewheeling '80s have long since been dampened by recession, Schratz says that law firms have been slow to adjust. "Curiously, the [frequency] of the problem is not decreasing. If anything, it has worsened."

What could lead attorneys to believe that any amount of fraudulent billing is acceptable? "A firm's focus used to be on advocacy. You did the best job you could for your clients, then added up the money at the end of the year. If it was a good year, so much the better..."



A decade ago...firms began to see themselves as revenue-generators and professionalism became secondary. "The '80s were a bizarre time and the changes from that time have become endemic now."

Law firms today..."would manufacture widgets if they could make a profit on them. We've become victims of our own quest to become better businesspeople."

Greed aside, Schratz also attributes overbilling to market factors. When he was vice president for major litigation at Fireman's Fund Insurance Co., where he investigated law firm overbilling, he found the problem was particularly widespread. "One attorney told me he felt justified in billing more than 24 hours in a day because insurance companies pay such low rates."

While such practices are unethical, of course, clients "have to understand that you basically get what you pay for. Part of the solution [to overbilling] is the client's responsibility," Schratz says. That responsibility, he says, includes demanding law firm accountability for billing that appears improper and publicizing instances of overbilling.

The overbilling of Fireman's Fund, part of the so-called Alliance fraud case in California (in which a ring of nearly two dozen lawyers prolonged cases in order to bill more hours and bilked insurers of between \$50 million and \$200 million) received so much publicity that Schratz feels "anyone who overbills Fireman's Fund should be prosecuted for stupidity rather than fraud."

Yet the likelihood is that the practice will continue until clients take active steps to protect themselves. Few clients, however, can afford to retain a second legal counsel to investigate the first firm for suspected overbilling. Some successfully have used private investigators to debrief former law firm support staff, such as bookkeepers, secretaries and paralegals, who are often eager to purge their souls of troubling information.

A gem came that way to Schratz's investigator, who was told of an attorney who had purportedly worked on 5,000 cases in a single day. The attorney performed one task and had his secretary bill it at two-tenths of an hour to each of the files in a massive asbestos litigation matter. Without the inside information, says Schratz, such "creative" abuses are nearly impossible to detect.

Jack Pierce, managing partner at Burger & Wolen in San Francisco, has successfully litigated many incursions of billing abuse and has testified on the subject as an expert witness. Greed, he says, is a "significant motivating factor" in many such cases.

"In every law firm, a moral tone is set at the top. If there is an element of greed or overreaching, that is passed on below. The

sad part is that too few lawyers have decided to set their own moral compass. They have followed the partner over the cliff," says Pierce.

Stephen Gillers, an ethics professor at New York University School of Law, has spent 12 years counseling attorneys with ethical dilemmas. He cannot recall being asked about overbilling until the past two years, when five such instances were brought to his attention. Most often the issue has been fictitious billing, of which he said the motives ranged from "venal to just carelessness."

Whatever the cause, how can new generations of lawyers be taught not to overbill? Gillers does not think law school ethics classes are the full answer. Overbilling, he says, comes from "a basic character flaw. It's like telling law students it's wrong to perjure yourself. You should know it's wrong to steal by the end of grammar school."

Tell that to Edward S. Digges Jr., an attorney who was sued in 1989 in U.S. District Court in Maryland by former client Dresser Industries for overbilling in an asbestos litigation. In addition to more than \$1 million in time-based bill excesses, the court found that Digges had billed his client more than \$66,000 for Lexis research services that had actually cost \$395.

If that charge sounds criminal, in some cases overbilling results in exactly that—criminal charges. While most clients who sue

former law firms rely on such civil ground as breach of contract, breach of fiduciary duty or misrepresentation, others have cooperated with prosecutors in bringing criminal charges.

Last year the government prosecuted the San Francisco law firm of Crymes, Hardie & Heer and two of its partners on federal mail fraud charges. During a two-year period of workers' compensation cases, the firm padded billable hours and charged 15 percent of each bill for direct costs. The result: The firm's income increased more than 20 percent.

That \$2 million windfall, however, was short-lived. The firm pleaded guilty to 12 counts of felony mail fraud and paid \$25,000 in fines and \$125,000 in restitution. Charges against the partners were dropped.

Some believe it is only by prosecutions and publicity that overbilling will be curbed. For that reason, Pierce of Burger & Wolen says he generally does not advise clients to agree to confidential settlements with law firms that overbilled.

"The public has a right to know," he says. "For too many years, lawyer overbilling has been swept under the carpet. We can't solve the problem until we admit there is one."

Darlene Ricker, a lawyer, is a writer and editor for the Los Angeles Times.

AUDITING LAWYERS FOR A LIVING

Attorney overbilling has had a profitable—and legitimate—spinoff: legal auditing firms. While the "big eight" accounting firms are still hired guns in many legal billing disputes, clients increasingly have enlisted the aid of these specialized industry watchdogs, most of whom are attorneys with an accounting background.

About 70 percent of legal auditing firms' clients are insurance companies; the remainder are large corporations along with even a few law firms. (The firms oversee complex litigation for clients and have the authority to hire local counsel in different states.) Most auditors charge a flat fee (usually \$10,000 to \$20,000 for a lengthy audit) some charge hourly rates of \$125 and up. Among the major players in the legal auditing field:

- Stuart, Maue, Mitchell & James based in St. Louis. Attorney Harry Maue, chairman and managing director, founded the firm in 1981. It employs about 50 full-time auditors, more than a dozen of whom are attorneys.

- In 1991, after an audit by Stuart, Maue, the Los Angeles office of Buchalter, Nemer, Fields & Younger agreed to write off \$2.7 million in fees

disputed by its largest client, insurer American International Group Inc.

Another highly publicized case was the fee dispute between Fireman's Fund Insurance Co. and the San Francisco law firm of Tarkington, O'Connor & O'Neill. Last year, based on a Stuart, Maue audit, an arbitrator penalized the firm for misrepresenting time and tasks billed by cutting \$463,579 from Tarkington's request for fees and expenses of \$870,241.

- Jim Schratz & Associates of Santa Rosa, Calif. When he was vice president of major claims for Fireman's Fund, Schratz hired Stuart, Maue to audit a number of suspicious legal bills the company had received from lawyers in San Diego. The 1987 audit uncovered the so-called "Alliance" conspiracy, which resulted in about 20 attorneys being convicted of racketeering and mail fraud.

At Fireman's Fund, Schratz was responsible for management of all cases with an exposure of \$3 million or more, including the highly publicized *Art Buchwald v. Paramount Pictures* and *Brian Wilson v. A & M Records*. In January he established his own firm, where he works as a litigation-management specialist, investigates billing irregularities, and testifies as an expert witness in lawyer overbilling cases. ...

—Darlene Ricker

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signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there amendments to Section 14? Mr. Barr.

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BARR: Mr. President, I have an amendment to insert after Section 13. It is on the Secretary's desk.

PRESIDENT EGAN: Between Section 13 and Section 14?

BARR: Yes, it will be a new Section 14.

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PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

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CHIEF CLERK: "Page 6, line 16, after Section 13, insert a new Section 14, and renumber the following sections accordingly: "An Attorney General shall be elected at the same time and in the same manner as the Governor, and his term of office shall be four years. He shall be the chief law officer of the State, shall represent the State in all courts of law, and shall see that all laws are uniformly and adequately enforced throughout the State. He shall be legal advisor to the Legislature and all State officers, and shall perform such other duties as may be prescribed by law. He shall be responsible to the Governor and the Legislature for the faithful performance of his duties. The Attorney General shall receive for his services a compensation fixed by the Legislature which shall not be increased or diminished during his term of office. He shall devote his full time to his office and shall not receive any salary, fees or other compensation from any other source. In case of vacancy in the office of Attorney General for any cause, the Governor shall appoint his successor to complete the term of office with the consent of a majority of both Houses of the Legislature in joint session assembled, or, when not in session, a poll of the members may be taken by mail by the President of the Senate and Speaker of the House."

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PRESIDENT EGAN: What is your pleasure, Mr. Barr?

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BARR: I move the adoption of this amendment.

PRESIDENT EGAN: Mr. Barr moves the adoption of the amendment. Is there a second to the motion?

KNIGHT: I'll second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. The amendment is open for discussion. Mr. Barr.

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BARR: Mr. President, as this is rather a long amendment --

PRESIDENT EGAN: The Chair would like to make an announcement at this time, before you proceed, Mr. Barr. The News Miner just called and Guy Rivers, brother of Vic and Ralph, was found alive and safe about 30 minutes ago. (Applause) He has been picked up and is now on his way back to Fairbanks. Mr. Barr.

BARR: I have had placed on all the delegates' desks a mimeographed copy of the text of this amendment. It is not the complete amendment showing the lines and paragraph, it is merely the text. It provides for the election of the attorney general, that is the gist of it. He shall be elected at the same time and manner as the governor. He shall be legal adviser to the legislature and all state officers, and shall perform such other duties as may be prescribed by law. It outlines his duties and it provides for his replacement in case there is a vacancy. Now, in presenting this amendment, I do not go against the thought of the Executive Committee in that we should have a strong executive. Some people will think so. I went along with their committee report and I still do not disagree with it; however, the reason I decided finally to put this amendment in was the fact that I met innumerable people, speaking to them privately, who thought that the attorney general should be elected. In fact, they stated it in broader terms, they said they would like to elect more officials than the state governor. None of them stated that they wanted to elect as many as we have now, that they wanted to reduce the governor's power, but they thought they should elect enough so that they felt they had a hand in the government themselves. I felt that if another official should be elected, it should be the attorney general. Why the attorney general? Because all these other department heads are there expressly to carry out the governor's program and should agree with him in every detail on his policy. That makes up a good working team. The attorney general also should work with the governor, he is the governor's legal counsel and the legislature's legal counsel and also counsel for all the department heads, but he has one other duty that does not quite conform to the usual idea of a department head's duty under administration and that is, he is called upon to interpret the law at times. That is a semijudiciary function, I would call it, although it's not final. It is a temporary decision and may be taken into the courts. In interpreting the law, he should be impartial. Many times, of course, the governor might ask him to interpret the law to be sure that he is on the right ground when he proposes something. In case we had a governor who wanted to bulldoze something through anyhow, if it were a little bit questionable, the attorney general might feel that he was obligated to the governor if he were appointed and his opinion might be biased a little bit. I wouldn't say that he would flout the law, but he could be biased a little bit to either one side or the other.

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And even if he were entirely honest and tried to render an impartial decision, I'm afraid his conscience would hurt him a little bit because he was obligated to the governor and went against the governor's wishes, so to remove him from that embarrassing position, I think that he should be elected. Now I grant you in electing any man we cannot be sure that we will get a good man, and on the other hand, by appointment we cannot insure that we will get a good man, but I believe that if we are going to elect another official because the people want it, then it should be the attorney general.

PRESIDENT EGAN: Any further discussion? Mr. Marston.

MARSTON: Mr. President, if my recollection is right, in the past 14 years that I have definite recollection of, there have been only two attorney generals and the reason is that they just can't get attorneys to run for that job. I'd want to know that there are attorneys that will step up and lend themselves to be elected to that job before we pass on this. I have no argument with the mover of this amendment, Mr. Barr, except that is information that I would like to have. Maybe we have some lawyers here that could enlighten me on that.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: Mr. President, I think I could answer that. All the lawyers that favor the amendment will probably stand up, and those who don't will sit down. (Laughter)

PRESIDENT EGAN: The Convention will come to order. Is there further discussion of the proposed amendment? Mr. Nolan.

NOLAN: Mr. President, at a meeting that I had, I think there were 12 people there on an hour and a half's notice, that was the one thing they were unanimous on. They wanted the attorney general elected by the people. They seem to think it was the one independent arm that they would have, and for that reason they were unanimous that the attorney general should be elected, and therefore I think I will support Mr. Barr's amendment.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: Mr. President, I voted against the governor and secretary of state as co-runners on the belief that we had merely one elective office in the executive arm and that would suffice, because my other voting had been predicated, and other proposals had been predicated, on that belief we were going to have a strong executive. This is merely the introduction to other offices. I notice we have a Delegate Proposal No. 45 submitted by Mr. Barr, and we have a Delegate Proposal No. 44 also,

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providing for the election of a commissioner of labor. If we yield ground in one respect, we might as well elect our commissioner of welfare, our commissioner of education, and having provided those, I feel that we should go right down the list and completely dissipate the theory upon which the voting has taken place. It was with reluctance that I even voted in favor of the secretary of state as a co-runner for the governor. I am violently opposed to the election of the attorney general. I don't think the election of him accomplishes any purpose. The blunt fact is that there is a general misconception as to the function of the attorney general. The attorney general is a lawyer and his opinion is the equivalent of any other lawyer's. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is worth the paper it is written upon. It's impressive upon the state and the officials are bound by it until some irate taxpayer attacks it and the actions taken under the authority of it, and the courts can promptly overrule it. There is a misconception about the function of the attorney general, his functions are not quasi-judicial. He is another attorney giving an opinion, and if you could assure yourselves that he would have the wisdom of a deus, those lawyers don't exist in Alaska as it has been evidenced by the variety of opinions expressed here before this body. I do oppose it, I think if we are going to have an attorney general, the power should be vested in the governor to appoint him, and that is without any screening by any judicial council or anything of the sort. If you're going to elect him, elect him, but by and large if you're creating a strong executive, then give him the power to appoint his own attorney general. The discrepancy has been pointed out in New York under the series, Governors and Administration of New York, which is put out under the American Commonwealth Series, it's pointed out that because of the fact that the attorney general is an elective office under the constitution, that is, the governor, in substance, has to rely on a legislative act passed in 1900 authorizing him to have private counsel. You're putting a diverse and possibly a discordant element into the executive branch. It isn't necessary. The courts can protect the government from the opinions of an attorney general appointed by the governor, and that attorney general does, in a sense, bear the same relationship to the governor as any attorney bears to his private client. It is an attorney-client relationship and the relationship has to be based on faith and personal selection. I would strongly recommend that there be no other elective offices in the state.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, may I be allowed to close?

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PRESIDENT EGAN: If there is no other person who wishes to be heard. Mr. Stewart.

STEWART: Mr. President, may I ask Mr. McLaughlin a question?

PRESIDENT EGAN: You may, Mr. Stewart.

STEWART: Is it your idea that the attorney general, as such, he is or should act as the counsel for the legislature, as well as for the executive?

McLAUGHLIN: He should, in substance, act as counsel for the legislature. In many respects, you also have the unusual circumstance where the attorney general is of one party and the legislature is predominantly of another party.

STEWART: He may have to give decisions in one case that might favor the executive and in another case might favor the legislature?

McLAUGHLIN: That's right.

STEWART: I think that is an unwholesome situation, and should be corrected by having the attorney general purely and simply the adviser for the executive.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, this has developed to the point where I want to say a few words. I wasn't going to, but when I was attorney general, that office was legislative counsel for the legislature, advised the members of the legislature, advised the various administrative departments under the governor, and advised the governor, and wrote legal opinions interpreting the law. Since that time the legislature has created a Legislative Council, that Legislative Council has a political scientist in charge, Jack McKay. It could very well have a lawyer and is authorized to engage any legal services that may be required. The legislature has full power to hire all the legal assistance it needs during the sessions so that I believe that Mr. Stewart's thought is well taken, that the attorney general will be the attorney for the executive arm of the government and that if we have the governor appoint an attorney general, he is not going to be the adviser to the legislature nor the drafter of legislative bills. Now, he may draft proposed legislation for the administrative departments. If the department of health wants a bill, the governor will tell the attorney general to get out a good bill or the commissioner of health, or as the case may be. They'll fall back on the attorney general for some bill draft.

for the governmental departments, but the legislature from now on and under this setup, is not going to have the attorney general doing its bill drafting. It's going to have its own legal counsel. The present Attorney General, because of the press of business, gave up being legislative counsel for the legislature three years ago and told them they were too busy and were just looking after the executive department, and that they were to figure out how to get their own bills drafted. Two years ago that situation got so acute that the Legislative Council was created and it serves a very useful need, but I think that Mr. McLaughlin actually emphasized the wrong answer when he said that the attorney general would be the counsel for the legislature as well as for the executive arm, because under the present development with Legislative Council, he will be the attorney for the executive branch and the legislature can take care of itself. I might also say that I wrestled with this, I started out advocating that the attorney general be elected, but I wrestled with it, I told Mr. Barr that I felt the way he did four or five days ago. Because of my doubts though, I have talked to many people, they have said if you are going to let the governor's administration be held responsible for the conduct of that administration, you have got to at least give the governor an attorney of his own choice. Under this setup he might get an attorney of the opposite political faith. He might get one of his own party who is either inadequate or who is hostile to him, or who doesn't see eye-to-eye with him. In either case, the governor could say at the end of his term, if things haven't gone well, "We had a good program but that attorney general you foisted upon me wrecked our program." There again, you have got passing the buck as to who was to blame because things didn't go well. Now then, if we want to be sure that the strong executive who is going to have the responsibility of carrying out a successful administration is going to get the blame if he doesn't have a successful administration, let us not give him any outs. Let's not take him off the hook by giving him an attorney general that he can put the blame on.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: Mr. President, I don't intend being an applicant for the position of attorney general either by appointment or election, but I don't quite see Delegate Marston's point that there are no attorneys in the Territory who are willing to run to be elected attorney general. I can't see how there would be any attorneys who would be willing to accept the appointment. I support Mr. Barr's position in this matter. I, too, am in favor of a strong executive, but I don't think that the mere fact that because under the appointive system of governorships that the governor virtually has no powers, that we should let that carry

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us too far away. I think that it is a good thing for the people, to have their own elected attorney general who can check the legislation which the governor proposes to introduce and have introduced, and for that reason I am going to vote for this amendment.

BARR: Mr. President, may I close now?

PRESIDENT EGAN: You may, Mr. Barr.

BARR: I was also going to answer Colonel Marston much as Mr. Robertson did. If lawyers aren't available, they aren't available period. Mr. Rivers was talking about an entirely different thing. He mentioned our present Legislative Council. There is not a lawyer in charge. They do draft bills for the legislature. They have taken over a duty which the attorney general formerly did, that is as it should be. There is a lot of detailed work there, but it isn't legal work. If the legislature wants to ask a legal opinion, they will not go to our political science experts, they will go to the attorney general. Now he also stated that if an attorney general of the opposite political party were elected, the governor could pass the buck and say, "Well, you people see what you saddled me with here. I couldn't do anything. He wouldn't let me." Well, if there was an attorney general of the opposite political party there, he would make the governor toe the line pretty well as far as the law was concerned. All the governor could say to the people is, "You see that attorney general, he made me conform with the law." That's all this is designed to do. It isn't supposed to restrict his actions otherwise, just to conform with the law. Now, as Mr. McLaughlin said, because he was the legal counsel for the governor period, that this would not accomplish any particular purpose. It will accomplish several purposes. It is up to you people to decide how important they are. It might provide a little brake on the governor if he wants to go too far. If he wants to over-step the law just a little bit, but the principal purpose it has, the principal objective it will achieve is that it will allow the people to have more hand in the government and that is what we want.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: I request a roll call on this vote and will raise my hand to indicate that request. Under these rules, 10 people have to --

PRESIDENT EGAN: No, that rule failed of passage.

HELLENTHAL: Oh, I see.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Barr be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 12 - Barr, Collins, H. Fischer, Laws, McNealy, Metcalf, Nolan, Robertson, Smith, Sweeney, Taylor, Walsh.

Nays: 40 - Armstrong, Awes, Boswell, Buckalew, Cooper, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Stewart, Sundborg, White, Mr. President.

Absent: 3 - Coghill, VanderLeest, Wien.)

CHIEF CLERK: 12 yeas, 40 nays, and 3 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Mr. Barr.

BARR: Mr. President, I had another amendment which I had intended introducing providing for the election of a commissioner of labor. I would just like to state that the reason for that was that without destroying the powers of a strong executive, I thought the people would like to have a number of officials elected someplace between the number of two and four, but I can see that this body does not believe that that should be done.

McCUTCHEON: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order, Mr. McCutcheon.

McCUTCHEON: Isn't Mr. Barr speaking to a matter of personal privilege?

PRESIDENT EGAN: Do you ask to speak on a matter of personal privilege, Mr. Barr?

BARR: Yes, I will, if the tape is left on.

HURLEY: I'll move that Mr. Barr be allowed to speak on a matter of personal privilege.

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PRESIDENT EGAN: If there is no objection, the rules will be suspended and Mr. Barr may have the floor on personal privilege.

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BARR: I want to explain that since it is very clearly the intention of this body to have two elected officials, there is no point in me introducing this other amendment and holding up proceedings. I never intend to hold up proceedings at all. I realize the shortness of time here, so I will not introduce that amendment at this time, although in my own heart, I believe that we should have an attorney general and commissioner of labor elected.

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PRESIDENT EGAN: Mr. Sundborg.

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SUNDBORG: Mr. President, I believe this would be an appropriate place to bring up the matter which has been bothering our Committee on Style and Drafting, if I may have the floor on that matter.

PRESIDENT EGAN: Yes, if there is no objection, you may have the floor.

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SUNDBORG: I would like to know if we are creating anywhere in this constitution the office of the attorney general? And I ask it because in our article on direct legislation there is a provision that petitions for referendum and recall and the like, shall be filed with the attorney general who shall certify it to its sufficiency as to form, etc. Since we have not created that office, and I don't believe we should do it by indirection by assigning duties to the man whose office has not been created, I would like to be recognized at the end of this statement under the item of personal privilege, to make a motion and the motion would be that the rules be suspended and the Committee on Style and Drafting be instructed to make a substantive amendment in the article on direct legislation to provide that wherever the words "attorney general" appear, that they be changed to "secretary of state". I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least, besides the governor. He will be called the secretary of state. I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least besides the governor. He will be called the secretary of state. It occurred to us in Style and Drafting that it would be entirely proper that the secretary of state should be the officer of the state with whom petitions under the initiative and under the referendum should be filed, that if he required legal services in order to satisfy himself that they were sufficient as to form, etc., he could get them from whatever officer of the state might be provided by

legislation or otherwise for that purpose, but I think we are probably being inconsistent and maybe we are making a mistake if we set up duties for an official called the "attorney general" and don't set up the office itself in the constitution.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, believing as Mr. Sundborg does --

V. RIVERS: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order, Mr. Rivers.

V. RIVERS: Mr. Sundborg was talking under personal privilege.

BARR: Excuse me.

SUNDBORG: I will now, Mr. President, I am at the end of my statement under personal privilege, am I recognized to make a motion?

PRESIDENT EGAN: You are, if there is no objection, Mr. Sundborg.

V. RIVERS: I object. I wish to make a statement first.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Under personal privilege, there was a minority group in the Committee who felt that the attorney general should be mentioned in the executive article and that rather than have any individual who had obligations to repay to the governor or had favors to receive from the governor by reason of political support, that he should have a certain amount of screening, he should not be limited to one individual. Now I have an amendment available as we get to the end of Section 14 which would cover that, if the body so decides to adopt it, or if the desire to wipe out the screening principle, it still would cover the appointive attorney general and the method by which he might or might not be removed from office. The present executive article is identical in the matter of not mentioning the attorney general, it is identical with the State of Hawaii Constitution in that they also did not set up an attorney general specifically, they allowed the departments to be established as we have done here, but in order to carry out the consistency in connection with the fact that we have mentioned certain duties of the attorney general, we have got prepared, or Mr. Harris and I have prepared here an amendment for discussion covering that point.

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SUNDBORG: Mr. President, in view of Mr. Rivers' statement, I will withhold making my motion until the body decides whether it does wish to constitute the office of attorney general.

PRESIDENT EGAN: Are there amendments to Section 14? Mr. Buckalew.

BUCKALEW: I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment to Section 14.

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CHIEF CLERK: "Line 23 and line 24, page 6, strike 'quasi' and 'judicial'."

PRESIDENT EGAN: Mr. Buckalew, what is your pleasure?

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BUCKALEW: Mr. President, I move its adoption. Also, strike the "and".

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PRESIDENT EGAN: If there is no objection, it may be added to the amendment.

BUCKALEW: I move its adoption, Mr. President.

PRESIDENT EGAN: Mr. Buckalew moves the adoption of the proposed amendment.

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AWES: I'll second the motion.

PRESIDENT EGAN: Miss Awes seconds the motion. The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 14, line 23, page 6, strike 'and quasi' and line 24, strike 'judicial'."

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PRESIDENT EGAN: Mr. Buckalew.

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BUCKALEW: The reason I introduced this amendment is for the reason that there has been a dangerous tendency in the last 20 years to establish all kinds of boards that act almost in the capacity of a court. They have the power to fine, revoke licenses, and take all kinds of action. I think that it is setting a dangerous policy in the constitution to mention "quasi-judicial" boards with no limitations on it at all. I am opposed to quasi-judicial bodies and looking at this section with the rest of the sections, it seems to me you find yourself in the position of where you would have a fisheries board, for example, and then have at the same time have a board going

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on a matter that is far removed from Convention business.

PRESIDENT EGAN: Mrs. Hermann, if there is no objection.

(Mrs. Hermann spoke on a matter of privilege.)

PRESIDENT EGAN: Thank you, Mrs. Hermann. Did we have two reconsiderations of amendments that had been adopted, pending or was there one? The Chair only brings it up at this time inasmuch as it might be best if we consider any reconsiderations on this proposal as quickly as we can. That is, it would be up to the maker of the motion actually, but were there two reconsiderations or one?

CHIEF CLERK: One, I think.

PRESIDENT EGAN: If the Chair remembers it, Mr. Kilcher I think reconsidered on the last proposed amendment, but I had the feeling there had been another notice given during the day. If not, we will continue. Mr. Victor Rivers.

V. RIVERS: I have an amendment.

PRESIDENT EGAN: You have an amendment by the Committee?

V. RIVERS: By a minority group of the Committee, myself and Mr. Harris.

PRESIDENT EGAN: Mr. Victor Rivers, you may present your proposed amendment. The Chief Clerk may present the proposed amendment.

CHIEF CLERK: "After Section 14, page 7 of Committee Proposal No. 10/a, insert a new section as follows: 'Section 15.

The Attorney General shall be appointed by the Governor from two or more qualified persons nominated in the same manner as judges by the judicial council. He shall have been admitted to practice law in the State and shall have the other qualifications prescribed herein for heads of principal departments and shall be subject to approval by the Legislature in a similar manner.

The Attorney General may be removed by the Governor with the consent and approval of both houses of the Legislature meeting jointly.' Renumber successive sections to conform to the above insertion."

V. RIVERS: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves the adoption of the amendment. Are there copies available for the delegates? Is there a second to Mr. Rivers' motion?

HARRIS: I second the motion.

PRESIDENT EGAN: Mr. Harris seconds the motion. The matter is open for discussion. Mr. Victor Rivers.

V. RIVERS: Mr. President, this matter of the office of attorney general came up for a good deal of discussion in connection with the strong executive and in connection with the matter of having some screening for the man who would be the attorney general. Some of the Committee felt that it would interfere with the strength of the executive. Others of the Committee felt they wanted to see the attorney general elective and not removable by the governor. It seemed that the only thing that was of main concern to a great many of us was that while we recognize the value of the strong executive, we are not naive enough to think that the governor who is elected will not have certain obligations, commitments, endorsements to meet when he goes into office. We realize that on all the other department heads there may have to be on his part some compromise with his desires under this plan as we have it. We did, however, want to try to eliminate any matter of the return favors or endorsements or obligations to the man who he appointed as attorney general. We are trying to remove that particular office by a screening process we have set up here, so the man who went in there, his appointment would be based on merit and not on any other consideration. As you will note, we have recommended that the attorney general be screened by the Legislative Council in regard to his qualifications, that two or more be screened in accordance with the requirements to fill the job satisfactorily both on the basis of qualifications and on the basis of the governor's desires. The only intent in this is that the attorney general shall be one who is appointed not from the point of view of any obligations from the governor to him, and also the other intent is that the attorney general cannot be removed by the governor without also the approval of the legislature meeting jointly as they approved the appointment of the attorney general at the time he was actually put into office. He would be removed in the same manner, and by that manner only. There has been a good deal said here about diluting the power of the strong executive. I am of the opinion that perhaps a governor going into office where he had to make a large number of appointments, where he had been supported in his campaigns by many individuals who might be men of high degree of competence or average competence, I would be of an opinion that a governor in that position would probably welcome the possibility of the chance of appointing one office in such a manner that he would not have to repay any obligations or indebtedness or favors in that particular appointment. I for one feel the attorney general's office should have removed from it the need for making any concession to competence or qualifications because of political support on the part of the applicant to the governor in seeking election. That is my opinion and I feel there is sound justification for that opinion. I realize there are many divergent opinions here on that subject.

PRESIDENT EGAN: Is there further discussion? Mr. Buckalew.

BUCKALEW: Mr. President, from the beginning I would like to state that I don't like this proposal. The first objection I see is that we are shoving off on the judicial council a function that is not one of their duties. The judicial council was created by Mr. McLaughlin's department. He set up a judiciary. Now we are going to let Mr. McLaughlin's department select an attorney general. Not only does the attorney general have to be approved by the judicial council, the attorney general then has to be approved by the legislature. If the governor wants to remove him he has to get the consent of the legislature. Now, I don't think this matter would even have come up if we had not discovered that the initiative and referendum article referred to the attorney general. The reason I bring that up is that I think Mr. Sundborg had an excellent suggestion that we just insert the words "secretary of state". That is probably one of his functions. That is the only reason I think this business came up. We decided yesterday that we were not going to elect the attorney general. The argument put up by the Committee was they wanted to have a strong executive and today they are going to water it down a little. I think we ought to be consistent and vote this amendment down.

V. RIVERS: I rise to a point of order. I stated this matter had been discussed some time ago in Committee. It did not arise yesterday. This amendment was prepared during the time of the discussion. I also object to referring to any department of this constitution as being the department of some one individual. I don't believe it is either Mr. McLaughlin's or mine or anybody else's; it is the constitution of all the people of Alaska.

PRESIDENT EGAN: Mr. Harris.

HARRIS: I was going to correct Mr. Buckalew, but since Mr. Rivers has already done so, I will only state that I would favor this amendment. We talked about this quite a bit in Committee, and it is a check on the governor. It makes a bit of difference when the attorney general's word becomes law. It actually is law, unless it is disputed in court and found to be not exactly as it is supposed to be, then it is used as law. Therefore, we feel the attorney general should be a qualified man and in order to insure that his qualifications are up to par we needed some type of screening process. Now, we did not screen the man because we wanted to connect him with the judicial department as Mr. Buckalew suggests. The only reason for using the judicial council we feel is that the judicial council is qualified to screen the attorney general. Therefore, that was the reason for bringing up this amendment.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: I agree with Mr. Victor Rivers that the judicial

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council is not the idea that it was limited to one person; it was the product of the Judiciary Committee's combined thought. I am personally opposed to such a method of selection. Within my knowledge there is only one equivalent method of selection of the attorney general, and that is probably in New Hampshire where the attorney general is selected by the justices of the supreme court. I believe that Mr. Buckalew is right in that he says that the attorney general is not otherwise mentioned in the constitution except in the initiative and referendum, and if you can recall, the only reason he was mentioned in the article on the initiative and referendum was originally they had a proposal as it came out of committee, my recollection is, that the 10 qualified voters could submit a proposition to the attorney general, and secure his opinion as to its legality. That is why the attorney general was mentioned. We chopped the portion requiring an opinion of legality from the attorney general, we chopped the portion, if I recall, requiring review of his opinion, and in substance what we did is we made it a function as it stands now, the true function of the secretary of state. The attorney general is in there by happenstance and no other reason. Yesterday we determined that the attorney general should not be elected and implicitly what we determined was it should be within the discretion of the governor subject possibly to confirmation that the governor alone in his discretion would select the attorney general and would be responsible for him. The attorney general, apparently, under the concept that we have implicitly accepted, is an attorney largely for the executive department. In any event, he is a political appointee, he is an executive appointee. I don't believe that we should be putting him through a means test and running him in substance through the judicial council. Under such circumstances, the governor may well say when the attorney general proves unsatisfactory to the electorate at large, the governor should have the direct responsibility, he should not be able to evade it by saying, "It was not my selection." I am opposed to it. The judicial council was designed in the constitution deliberately for one reason. That was for the selection of the justices of the superior and supreme courts, when in substance we are now utilizing them to provide a rather cathartic attorney general. I think that this is a mere compromise, it is not a majority opinion of the Committee on the executive and certainly it has not been considered by the Judiciary Committee. I cannot speak for them, but I feel sure that the majority would feel the same way. Our choice is not a compromise. He is either elected or he is appointed. If he is appointive and if he is going to be one of the consorts of the governor and one of his confidants, he should be selected directly by the governor and the governor should be responsible. If we accept this, then in premise we should accept a screening of every other public official appointed by the governor in his cabinet. I believe the attorney general, if he has to be mentioned, and I don't think it necessary, I don't think he should be embodied in the constitution. The attorney general should be like the attorney general of the

United States, appointed by the executive and the executive is responsible for him. This is, frankly, I think on its face, a compromise measure and I believe the attorney general is without our sphere, and in substance should not even be mentioned in the constitution, let alone nominated by the judicial council.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: May I ask a question of Mr. McLaughlin? Would we gather from your statements that the judicial council is limited only in its purpose to the selection or the recommendation of judges?

MCLAUGHLIN: That is not so, Mr. Rivers, because we have a specific provision in there saying that they shall perform such other duties as are provided by law. I am sure it was the intent of the Convention that their functions would be limited to the judicial. In fact, I think by error you did remark that the attorney general was selected by the Legislative Council when you supported this matter, but I would oppose it just as I would oppose the judicial council selecting the sites of the court houses. I think they are participating now in the executive functions of government and I believe the judicial council should be limited as it has been historically to judicial affairs and not to executive affairs.

V. RIVERS: Do you agree with the judicial council in the matter of screening this man as to qualifications, would be doing the same thing as if he were screening a judge? Isn't it for qualifications and to remove the judge from direct political election or appointment that we put up the judicial council? Isn't the process of screening identical in the two cases?

MCLAUGHLIN: Yes, the process of screening is identical except for this one thing. A judge is supposed to be dispassionate. He is not supposed to be acceptable to the people who appear before him. In the case of the attorney general the attorney general will have a client-attorney relationship to the governor and frankly I believe the governor should have wider choice and discretion. It is like selecting the presidential physician by vote of a selection board. The relationship is something that is intimate, and there is an intimacy of relationship that does not exist between the judiciary and the general public. We are selecting an attorney for the governor and saying, that's it, without regard to personality or anything of the sort.

V. RIVERS: I would like to ask another question, and that is, do you think the attorney general should also be removable at will by the governor at any time after he has been appointed and confirmed?

MCLAUGHLIN: I think that is so, yes.

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V. RIVERS: Do you think the attorney general represents the people of the Territory in the matter of his interpretations of law, or does he represent the administration? I realize the interests at most times are coincidental and the same, but at times when there is any divergence would you also say he represents the people?

MCLAUGHLIN: Frankly, I think the attorney general represents the executive department of the government.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I cannot follow the reasoning either of Mr. McLaughlin or Mr. Buckalew. I think the screening set up in this proposed amendment to Article 10/a is I think a happy choice. It may be a compromise, but I think it is a very fine compromise, in between the two propositions that have been advanced in choosing the attorney general. I believe the judicial council is the proper body to, what you call, screen the attorney general. The duties if given to the judicial council will be the same as they are in regard to the justices of the supreme court and the judges of the superior court. It is to select a competent lawyer to fill the office of attorney general just as they are duty bound to select the best men they can for judicial office. The office of attorney general is a very important office. There has been numerous times in the history of the Territory of Alaska when we have had an extremely weak attorney general and the Territory has suffered by it. If we have a capable attorney general I think we will be a great deal better off if the attorney general is vigorous and follows out the instructions of the governor in fulfilling his office. I feel the attorney general is only, his duties should primarily be the attorney for the executive branch of the state government. In the past there has been times that the attorney general has had to be the legal officer for the executive, Legislative Council, and the counsel for all departments of the Territory. That was extremely a difficult position. I know Mr. Rivers had it for a number of years and he can explain, perhaps better than I can, the difficulties of filling of positions such as that, but I believe primarily the attorney general is the attorney for the governor and the department heads, the departments established by this constitution and who would be under the direct supervision of the governor. I feel that some provision maybe should be made here or the legislature should make one for the employment of a legislative counsel during the sessions of the legislature, and so the attorney general would not have to take a part in that particular matter. I feel that the adoption of this amendment with the governor being given the right to remove the attorney general without the consent of the legislature would be a happy choice.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it seems to me from the arguments

we have heard that probably we are going at this backwards. The arguments have been as to how we should select an attorney general. Now it is my thought on the basis of the bill that we have here that probably what we want to decide is whether we want a constitutional attorney general or not. It seems to me on the executive department, as we have outlined it here so far, that we probably don't want a constitutional attorney general at all; that that matter should be left to the legislature as to whether we do or don't and to what his powers are when the legislature decides to set up an attorney general, and accordingly it seems to me pointless to discuss as to how the attorney general is to be selected. If it is wise in the view of the legislature when they set up an attorney general that he should be screened by the judicial council, these arguments could be made at that time, but at the minute we have not mentioned an attorney general, and it seems to me that the executive department is going to be a whole lot more what the Committee had in mind if we don't set up an attorney general as such in this article. Now I realize that if we don't set up an attorney general we are going to have to do something to the initiative, but that is a different problem and no problem from my standpoint.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: It has been said that perhaps we could omit mentioning an attorney general in this article and that the secretary of state could take over the function of the attorney general with regard to the initiative and referendum. In the initiative and referendum article we said that the initiative should consist of a petition with a proposed bill that the sponsors wished to have made into law and that the attorney general would scrutinize it as to sufficiency for form and the attorney general would condense the matter for appropriate petition heading so that the people that sign it would have an adequate draft as to what they are signing. Afterwards the attorney general shall prepare the ballot title, assuming that enough signatures were obtained and that this bill were to go before the voters. It is a little difficult I think for the secretary of state to engage in all of those legalities, and I think as far as the initiative and referendum is concerned, we ought to have that in the hands of the attorney general just as the initiative and referendum article suggests. However, I see difficulties with this proposed amendment. The judges are banned from politics. They are picked on an absolutely nonpartisan basis. The attorney general presumably should be a member of the same party as the governor. The attorney general, if he is a member of the same party, as attorney general, would take the normal part in politics, but if he is picked on a nonpartisan basis as the judges are, then we have to ban him from engaging in politics and he also could turn out to be somebody of the opposite party. So I believe we are getting crossed up if we try to put the attorney general through legislative council. I think we are getting -- the judicial