

DECEMBER
2013

Corporate Counsel Agenda 2014: Ohio

Survey Results

Written by

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PREFACE

Corporate Counsel Agenda 2014: Ohio is a white paper published by ALM Legal Intelligence and sponsored by Benesch. ALI conducted the survey, gathered the data and administered the online survey. Philippa Maister wrote the report. Jennifer Tonti was the report editor. We would like to thank all those who participated in the survey and agreed to be interviewed for this report.

- December 2013

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TABLE OF CONTENTS

Introduction	6
Executive Summary	7
About the Report.....	8
Limited Resources, More Regulation	9
Streamlining Operations	11
Relationships with Outside Counsel.....	11
Conclusion	12
Appendix: Survey Results	13

FOREWORD

BENESCH IS PLEASED TO SPONSOR THIS SURVEY OF OHIO GENERAL counsel conducted by ALM Legal Intelligence because we value the perspectives of our legal colleagues and clients working directly in business and industry. Understanding factors such as how they and their companies are being affected by broader economic and regulatory trends... their outlook on and priorities for 2014...what they value in their relationships with outside counsel—these are insights that enable us to provide a higher level of service and support.

Being able to offer specialized capabilities in targeted areas—whether expertise in a specific legal concentration or strength in project management or an administrative function—is where outside counsel becomes particularly valuable. For example, knowing that general counsel are cautious in the recovering economy and looking at ways to curb costs and increase efficiency to support growth means outside counsel must share the responsibility to streamline, including considering alternative fee arrangements. Similarly, general counsel concerns over increasingly complex regulations and the resulting compliance risk exposure present a clear opportunity for outside counsel to add value.

Benesch will continue to explore the views and needs of Ohio's corporate counsel through our day-to-day interactions and at targeted events such as *The Corporate Counsel Agenda: Ohio Breakfast Briefing*, held in Cleveland in April 2014. Keeping an open dialog helps ensure that all of us as attorneys, whether inside or outside, are overseeing and acting in the best interests of our clients. To stay viable, we must stay informed.

Ira C. Kaplan
Managing Partner
Benesch

INTRODUCTION

A CORPORATION'S GENERAL COUNSEL TENDS TO HAVE A BROAD VIEW OF risk and opportunity, encompassing not only legal issues, but business concerns that invariably end up as legal matters. And their advice is critical to the CEO and other top-level executives in keeping the company running smoothly while encouraging growth.

Given the crucial role of the legal department, we took the pulse of general counsel at U.S. corporations in the state of Ohio to find out what were the major issues likely to keep them up at night. The results of the survey provide an insight not only into the thinking of senior legal officers, but also into the level of confidence of U.S. corporations about the prospects for 2014.

EXECUTIVE SUMMARY

A S 2013 DREW TO A CLOSE, THE OVERALL U.S. ECONOMY APPEARED TO BE SETTLING into a gradual recovery, with fewer job losses and a falling unemployment rate. Nevertheless, responses to ALM Legal Intelligence's survey of general counsel in Ohio indicated that economic uncertainty remains a factor clouding their horizon.

The main findings of this year's surveys include the following:

1 OHIO GCS REMAIN CAUTIOUS ABOUT THE ECONOMIC outlook for 2014, with two-thirds concerned about a change in business conditions affecting their company or an economic downturn in the U.S. or global economy.

2 AROUND 30 PERCENT CONSIDERED COST SAVINGS AND EXPENSE reductions to be the factor most critical to their organization's growth strategy.

3 TO A GREATER EXTENT THAN NATIONALLY, Ohio GCs said their top concern was to do more with fewer resources.

4 A HIGHER PERCENTAGE OF GCS in Ohio than nationally expects to cut legal staff and face reduced budgets in 2014.

5 MINIMIZING LEGAL LIABILITY AND CREATING A CULTURE OF COMPLIANCE in their company was at the top of the 2014 agenda for many GCs. Almost one in five GCs also worried about compliance risks arising from their company's global operations.

6 A SIGNIFICANT PERCENTAGE OF GCS ARE CONSIDERING OPPORTUNITIES to enhance efficiency by improvements like task automation and project management, as well as records retention and e-discovery technology.

7 SOME 21 PERCENT OF THE GCS SAID THEY ARE IMPLEMENTING LEGAL PROJECT MANAGEMENT techniques in day-to-day matters. To a greater extent than nationally, project management skills in external counsel were ranked as very important.

About the Report

ALM Legal Intelligence, in association with Benesch, conducted a survey to assess the most important issues faced by corporate counsel in 2014. The survey was sent to corporate counsel at companies located in the state of Ohio, and respondents were primarily composed of General Counsel (51%) and Deputy General Counsel (32%) who worked in a broad spectrum of corporate industries (the majority of which were in manufacturing, health care and finance).

The survey was fielded from September 10 to November 8, 2013. Invitations were sent to 1,950 General Counsel or Deputy General Counsel in the state of Ohio. There were 47 total respondents, for a rate of return of 2.4%, a level that is at par with other surveys focusing on general counsel.

As a point of comparison, we compared the results to the Corporate Counsel: Agenda 2013 (national) survey, with 126 respondents. For the majority of questions that matched between the two surveys, the pattern of responses for companies in the state of Ohio were very similar to those of the national survey.

One in three of the GCs responding considered the biggest threat to their business in the coming year to be a change in business conditions affecting their company or industry. Another third cited the risk of a downturn in the U.S. or global economy.

This uncertainty may explain why the highest percentage of respondents (30 percent) considered cost savings and expense reductions to be the factor most critical to their organization's growth strategy. In contrast, only around one in five named more proactive strategies such as new product development, talent acquisition, a different marketing approach or acquisitions as critical for company growth. Survey responses suggest legal departments are also feeling the squeeze.

LIMITED RESOURCES, MORE REGULATION

THE TOP CONCERN OF GCs IN OUR SURVEY WAS HOW TO DO MORE WITH fewer resources. In contrast, an ALM national survey¹ shows doing more with less ranks only fifth among GCs' concerns. And Ohio's GCs may indeed have more reason to worry than most, since 7 percent of them expect to cut their legal and non-legal staff in 2014 and 19 percent expect their department's budget to be trimmed, compared to only 1 percent and 8 percent nationally.

Managing outside counsel costs and navigating regulatory changes were also high on the list of Ohio GCs concerns. Not surprisingly, so was supporting company growth. One in three wanted the law department to be viewed as a strategic business partner, as well as to have a seat at the table in order to be brought into matters earlier.

Compliance was at the top of the 2014 agenda for many of the GCs responding. Half planned to focus on improving business processes to minimize legal liability. The same number saw opportunities to train and educate employees on compliance issues and create a culture of compliance in the company. And almost one in five GCs also worried about compliance risks arising from their company's global operations.

That is certainly the case for Robert E. Veillette, vice president and general counsel of Nordson Corp., a publicly traded Westlake, Ohio-based manufacturer of precision dispensing equipment for applying industrial coatings, with 2012 global sales of \$1.4 billion and operations in more than 30 countries. What he loses sleep over, Veillette says, is a multiplicity of export-control regulations.

Almost 75 percent of Nordson's sales are to overseas markets, and they are shipped not just from the U.S. but also from its subsidiaries in other countries. As a result, the company has to keep up with export control regulations and boycotts imposed not just by the U.S. but by other countries, and advise its global compliance team accordingly.

¹ Corporate Counsel Agenda: 2014, ALM Legal Intelligence, November 2013.

“You have to know who you are selling to and what you are selling,” Veillette says.

But while that may seem obvious, in practice it can be difficult to disentangle, especially when a component is part of a larger machine. In one case, for example, a part in a machine to make diapers turned out—unknown to Nordson—to have an alternative use in a nuclear device and was subject to specific export controls of which the company was also unaware. When the problem came to light, the company halted all shipments and self-disclosed to regulators.

“Most companies don’t know precisely what classifications their products fall under as a part of an assembly,” Veillette notes. To prevent potential problems, Veillette says Nordson now has six or seven dedicated staff, including engineers, to focus on export controls affecting its global trade.

The Foreign Corrupt Practices Act presents other headaches, especially given the company’s growing markets in Asia, including China, and Russia. In both countries, Veillette says corruption presents significant challenges. “I have one paralegal assigned to this [in addition to] me worrying full time,” he comments.

Within the U.S., the Securities and Exchange Commission’s rules on disclosure are another source of headaches. “We over-disclose. And we provide online training and send regulatory updates to all employees in 14 languages,” Veillette says. The SEC’s rules on conflict minerals have also required a time-consuming analysis of Nordson’s supply chain to ensure compliance, he notes. And he sees further headaches ahead if the SEC’s proposed rule requiring companies to disclose how the pay of their CEO’s compares to that of rank-and-file workers goes into effect.

For Bridgette Roman, GC of Dublin, Ohio-based Community Choice Financial Inc., the biggest compliance challenges are presented by the Consumer Financial Protection Bureau (CFPB) newly established by Dodd-Frank. CCFI is a privately held retailer of financial services to unbanked and underbanked consumers with storefronts in 15 states and also offers online consumer financial services.

“The CFPB is an entirely new regulatory structure and it is regulating by caveat,” Roman says. In her view, the agency operates by issuing guidance that the companies it oversees are expected to take as regulations. “We are more exposed when they don’t go through a proper rule-making process,” she adds.

Roman says the company has incurred a great deal of expense on outside counsel to help it analyze and comply with the CFPB’s rules, and has increased its legal and compliance staff by 50 percent to keep up.

STREAMLINING OPERATIONS

GCS IN OHIO, AS IN THE REST OF THE NATION, CONTINUE TO TRY TO control costs whenever feasible by streamlining their operations. Some 45 percent of respondents identified opportunities to enhance efficiency by improvements like task automation and project management, and one-third are considering records retention and e-discovery technology.

In addition, 21 percent of the GCs responding said they are implementing legal project management techniques in day-to-day matters. These techniques apply a structured, systematic approach to legal work that is intended to result in more effective planning, cost control, and overall management of projects.

RELATIONSHIPS WITH OUTSIDE COUNSEL

AS PART OF THEIR COST-REDUCTION STRATEGY, 21 PERCENT OF GCs ARE handling most of their corporate transactions in-house when possible and an additional 62 percent are using combined teams of in-house and outside counsel on transactions.

Interestingly, only one-in-four Ohio GCs considered the hourly rate a key factor in their relationships with outside lawyers – compared to 42 percent of GCs who responded to an ALM national survey. For example, if he feels he is getting value from outside counsel he is satisfied to pay based on the billable hour, says Nordson's Veillette. Even though he is trying to bring as much work in-house as possible, and has added staff, for run of the mill matters in certain subject areas, he has a few firms on retainer.

Nevertheless, most respondents were weighing alternative billing arrangements not based on the billable hour. Indeed, only 10 percent said they were not exploring other payment structures. The most commonly identified alternatives were flat fees, contingency fees and success fees, as well as requesting budgets in advance. Over half the respondents were interested in seeking fee discounts, and 41 percent in sending out requests for proposals. Many were considering the use of more than one technique. For example, Roman says she is experimenting with fixed fee and capped fee arrangements.

Yet despite their focus on the bottom line, GCs continue to rely on outside counsel in specialized situations. Litigation is the prime example, identified by 77 percent of GCs. Mergers and acquisitions, as well as labor and employment, are other areas where external counsel are likely to be brought in, according to almost half the respondents. Around 28 percent said they use outside firms for corporate transactions or intellectual property matters.

GCs are also likely to turn to outside lawyers with expertise in anti-trust, government relations, or tax law as needed. Demand for other specialties is more limited.

When GCs do call on external counsel, there was virtually unanimous agreement that the main characteristic they demand, besides work quality, is responsiveness. This was followed by pricing predictability and project management skills. For 40 percent, a personal relationship with the attorney(s) was also important.

Project management skills were ranked as very important by almost half of Ohio GCs—the third most important factor—while nationally only one-third of GCs considered them significant. This finding, along with the lower priority given to the hourly rate in Ohio, suggests that local peers may influence state practices.

As to what aggravates Ohio GCs in their relationship with law firms, lack of responsiveness and overstaffing topped the list. Other annoyances included total cost, pricing uncertainty, and a law firm's failure to consider the company's business objectives when giving advice.

What makes a specific law firm a good match for a specific company's needs? Primarily, a GC selects a firm that has the particular expertise he or she is looking for, respondents said. A referral from a colleague or trusted advisor, an existing relationship with an attorney in the firm and the firm's prominence in an industry are also persuasive.

A presentation or article by a partner in the firm, or an award or firm ranking, are unlikely to be decisive when a GC selects a law firm. However, they can reinforce a good impression or encourage a GC to look more closely at the firm involved, the survey found.

CONCLUSION

GENERAL COUNSEL IN OHIO REPORT GENERALLY FAVORABLE CONDITIONS in their legal departments, but maintain a cautious attitude toward the economic outlook for 2014. Nevertheless, intensifying regulatory pressures are creating concerns and driving a push to improve compliance standards within their companies.

The cost of legal services continues to be a major source of concern. GCs are experimenting with new methods of paying for these services and considering the use of technologies that could streamline business processes and reduce the need for outside legal services. In addition, GCs are focusing more intensively on the qualities they consider most desirable in outside counsel, with cost now just one among many important factors that drive hiring and retaining particular law firms. For better or for worse, these are issues that general counsel across the U.S. are similarly facing.

APPENDIX: SURVEY RESULTS

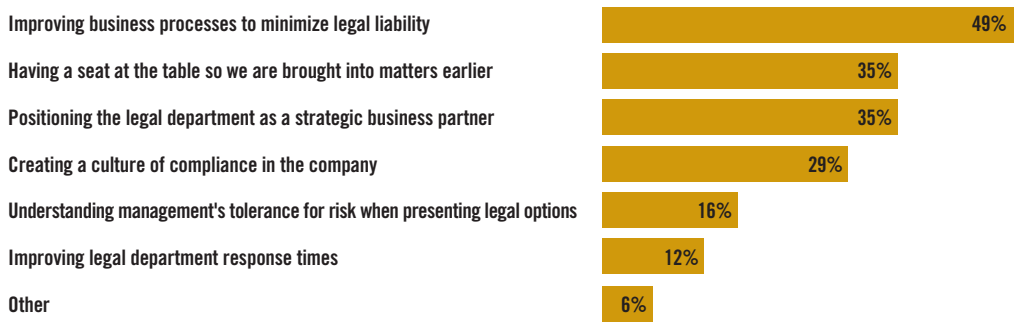
1. Your title



2. Report to

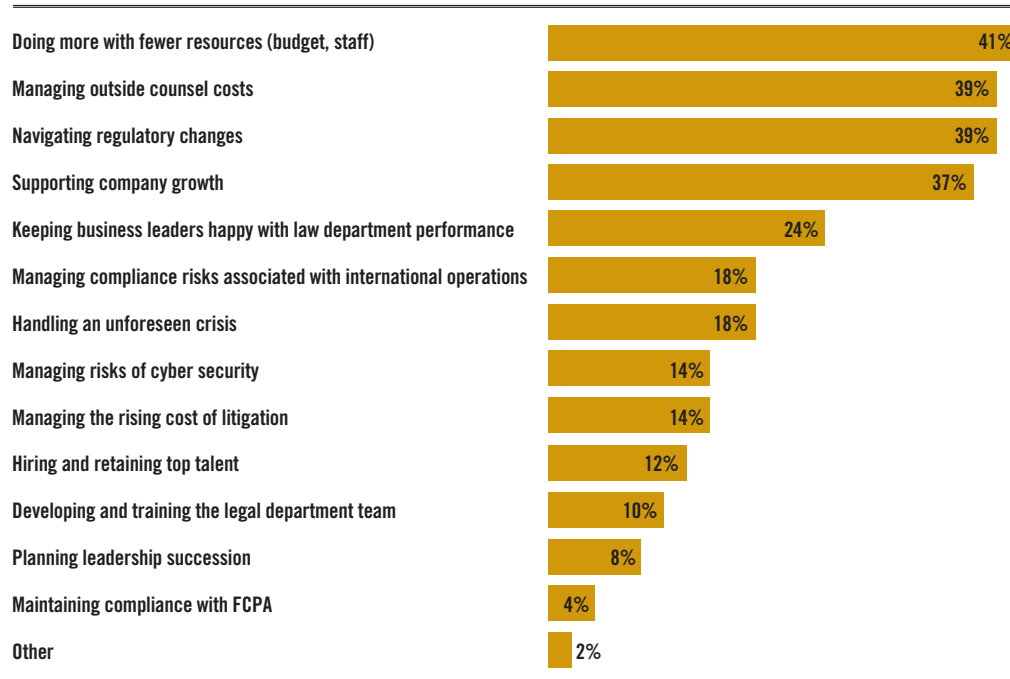
	2013	2014
The CEO	59%	56%
The CFO	4%	4%
The board	4%	4%
Other	33%	35%

3. On which of the following legal department issues would you most like to focus in 2014? (Please select up to two)



APPENDIX: SURVEY RESULTS

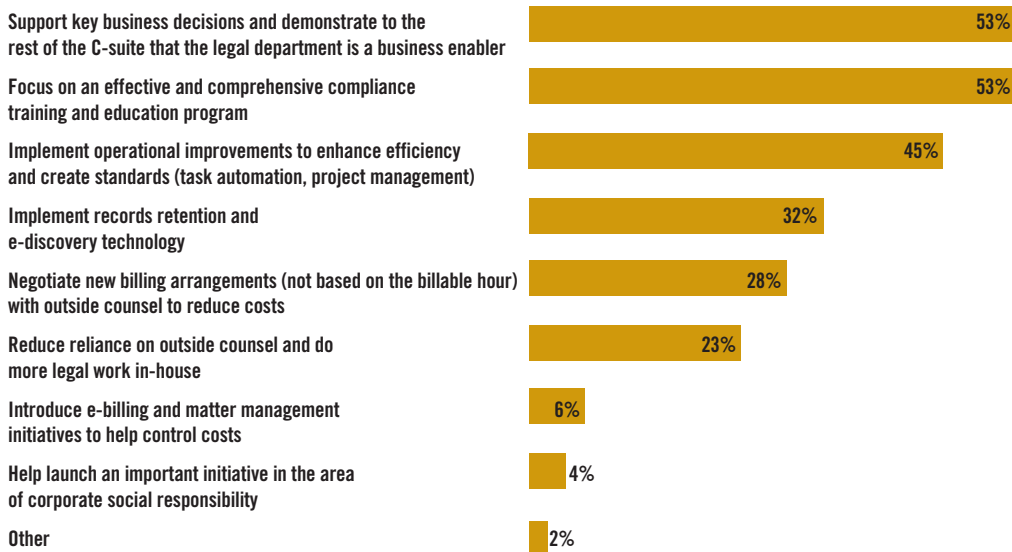
4. What issues do you expect will be of most concern to you in 2014? (Please select up to three)



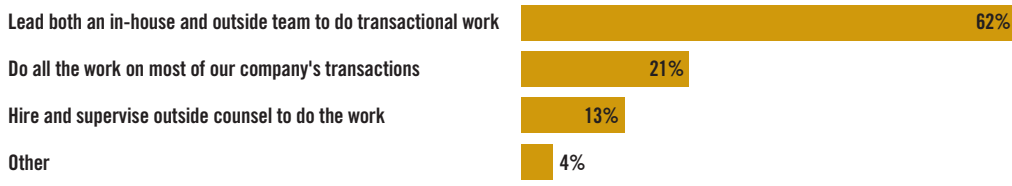
APPENDIX: SURVEY RESULTS

5. What are the biggest opportunities you face as corporate counsel in 2014? (Please select up to three)

The Legal Department plans to...

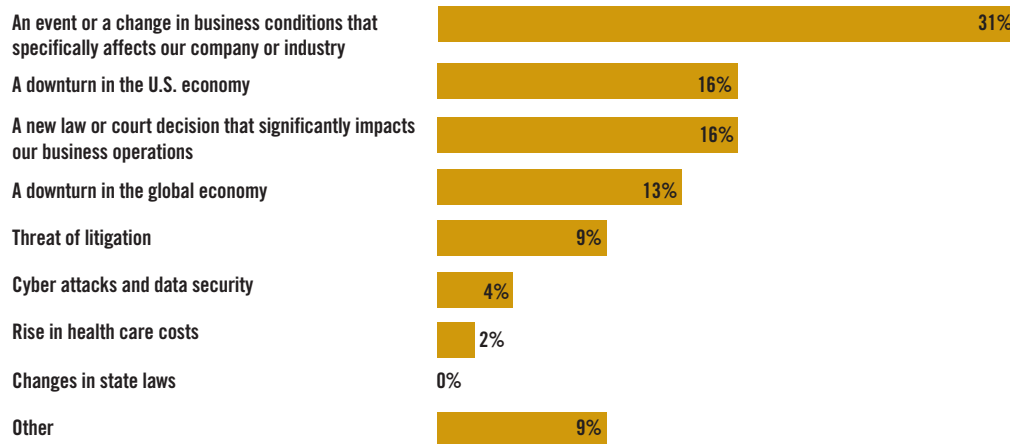


6. When it comes to corporate transactions in the coming year, my department will...



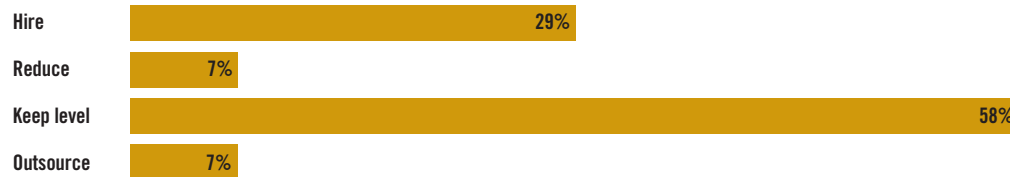
APPENDIX: SURVEY RESULTS

7. The biggest risk to our business next year is likely to be:

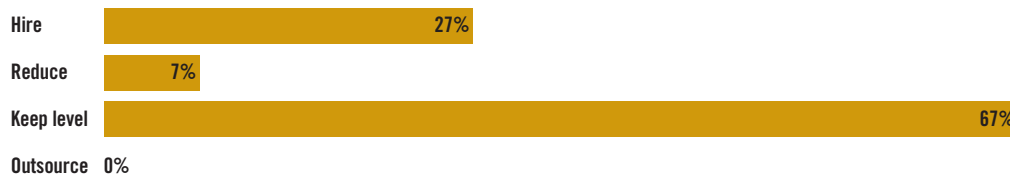


8. Next year, our legal department will make the following adjustments in staffing:

Attorneys

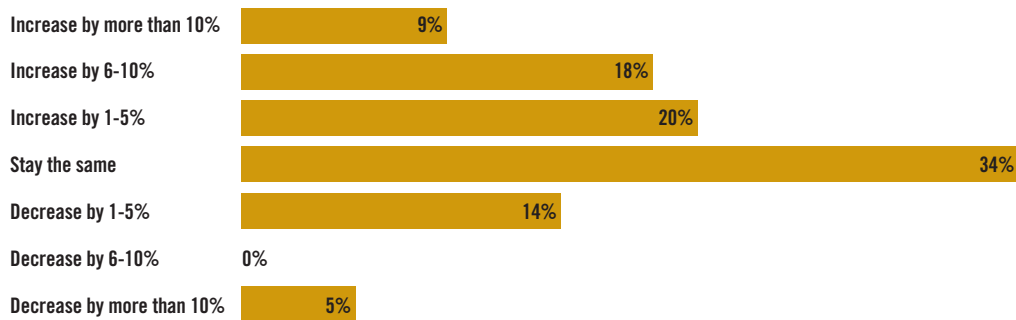


Staff

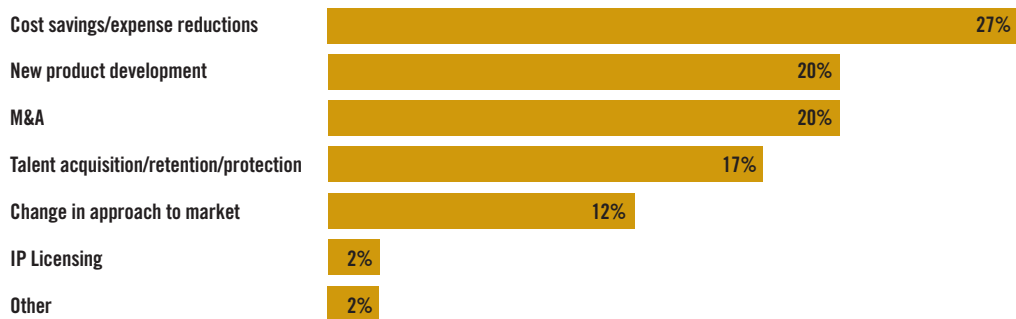


APPENDIX: SURVEY RESULTS

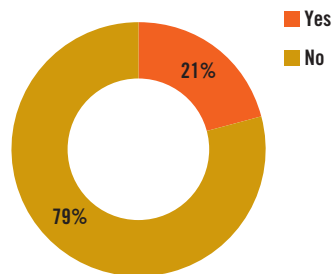
9. I expect that our legal department's annual operating budget in 2014 will:



10. Which areas do you characterize as most critical to your organization's growth strategy? Please rank the top 3 in order of importance.

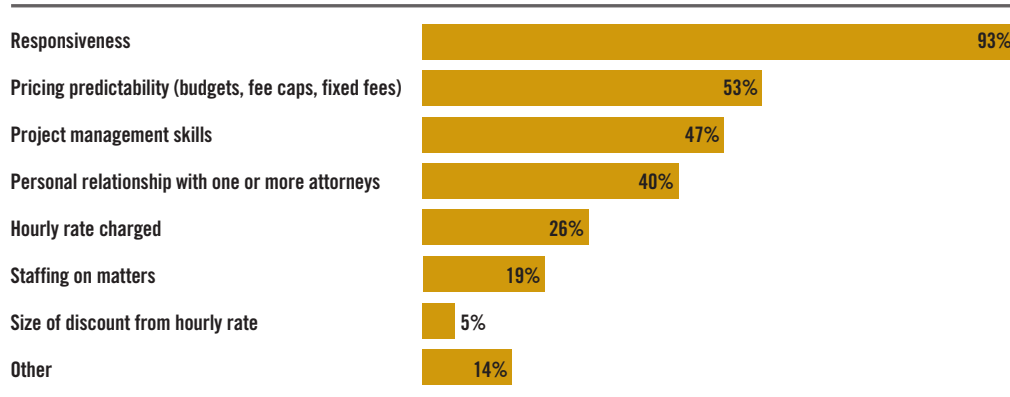


11. Is your legal department currently implementing Legal Project Management tactics in day-to-day matters?

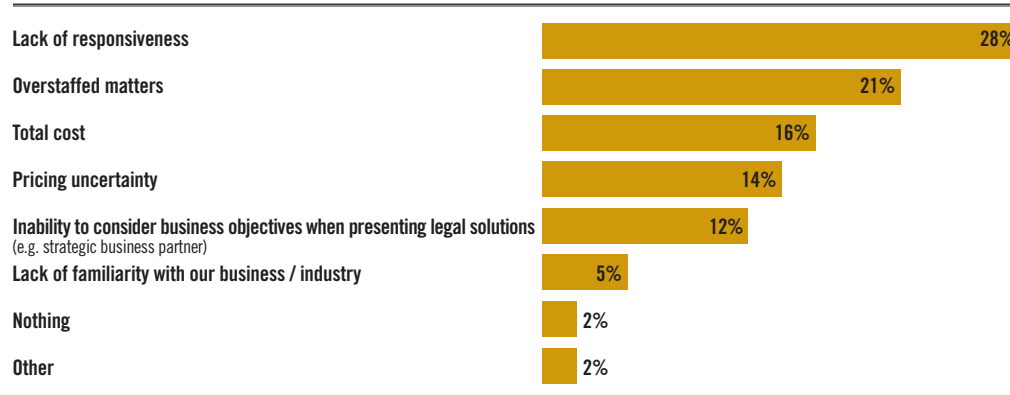


APPENDIX: SURVEY RESULTS

12. With respect to your relationship with your most valued law firms, quality work is now expected. Which of these other qualities are the three most important?

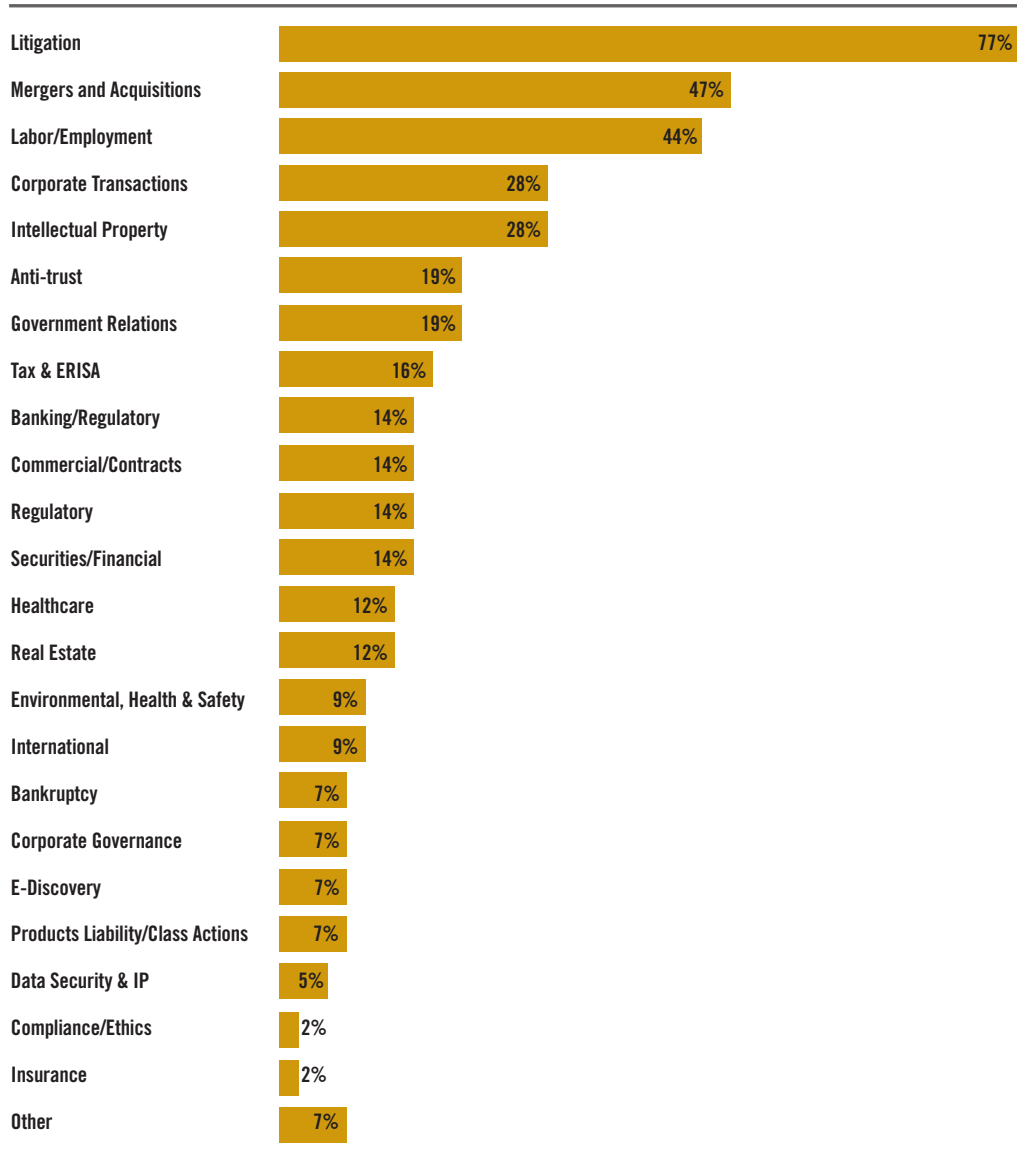


13. And what aspect of your relationship with your most valued law firms irritates you the most?



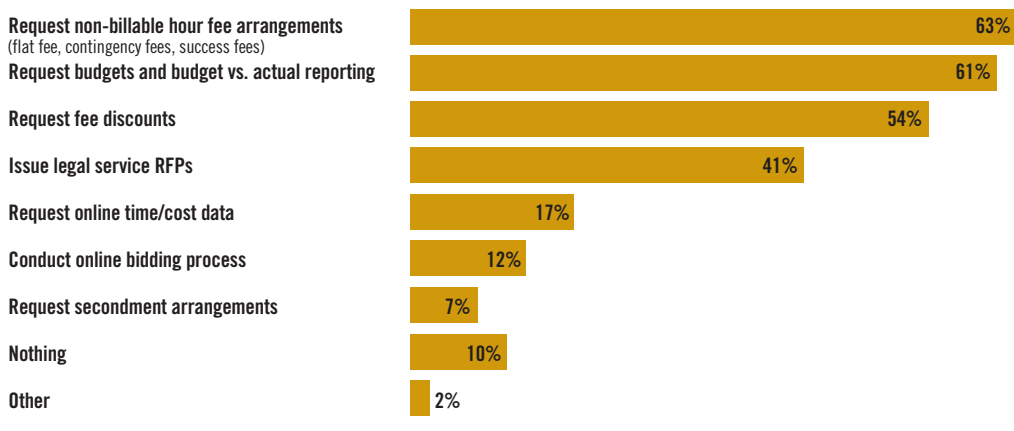
APPENDIX: SURVEY RESULTS

14. In what areas do you rely on outside counsel most often? Please check the top 5.



APPENDIX: SURVEY RESULTS

15. In an increasingly competitive legal market, which of the following tactics are you considering using to change how you work with outside counsel? (Please choose all that apply)

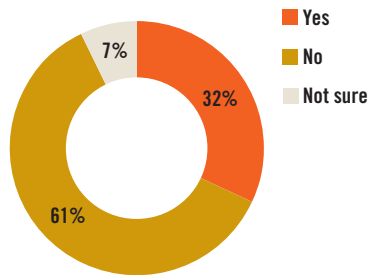


16. What influence does each of the following have on your decision to hire or consider using a new law firm?

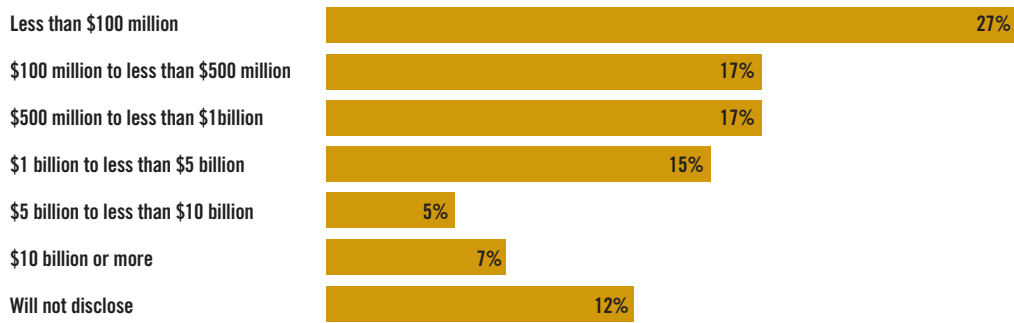
	Very influential	Somewhat influential	Not at all influential
Particular area of expertise	95%	2%	2%
Awards, rankings, directory listings	0%	41%	49%
Relationship with attorney	56%	39%	2%
Referral from a colleague or trusted advisor	63%	29%	5%
Lunch or entertainment events	0%	10%	80%
Presentations, seminars or articles	12%	54%	24%
Pro-bono or social/civic activities	0%	29%	63%
Association memberships or sponsorships	0%	37%	54%
Industry prominence	46%	44%	7%
Other	2%	2%	2%

APPENDIX: SURVEY RESULTS

17. Does your company intend on doing business in China any time in the next three years?

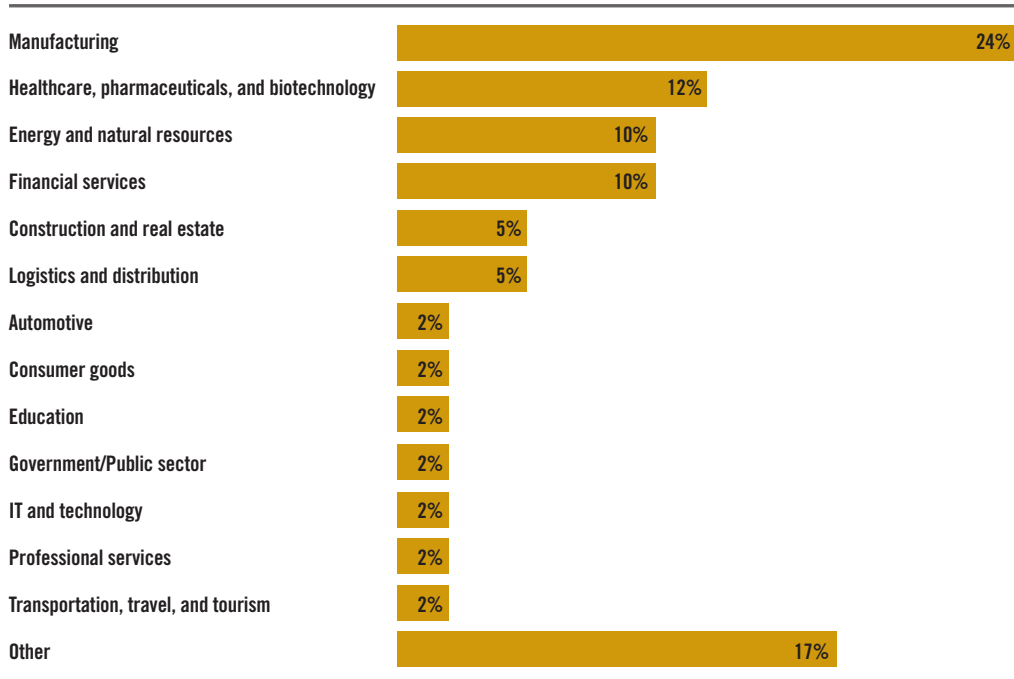


18. What is your company's annual revenue?



APPENDIX: SURVEY RESULTS

19. What is your company's primary industry?



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