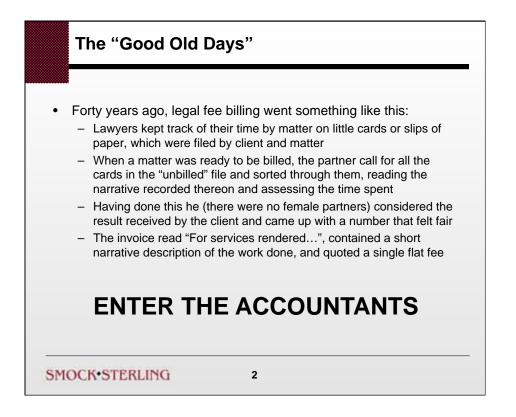
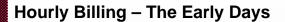


#### Alternative Fees: Are We REALLY Serious This Time?

Las Vegas, October, 28 2009 Peter A. Giuliani Partner Smock Sterling Strategic Management Consultants Weston, Connecticut pgiuliani@smocksterling.com (203) 341-0601 www.smocksterling.com





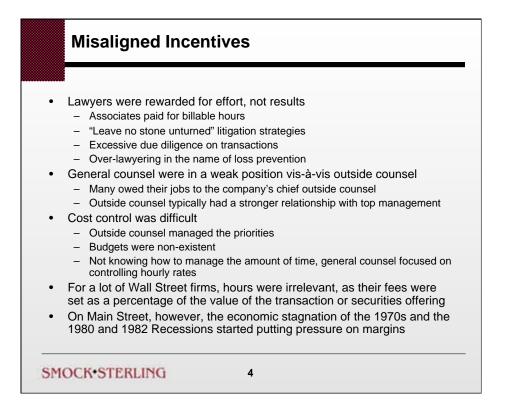
- Hourly billing was in common use by accountants and engineers long before 1969
  - Government cost-plus contracts
  - Services rendered outside the scope of annual audits
- Accountants and software companies began to offer crude computerbased time recording and billing systems
  - Early systems were magnetic-stripe card ledger systems
  - 1967/68 Cravath Swaine & Moore
  - 1969 Price Waterhouse
- Minicomputers offered affordable entry for smaller firms

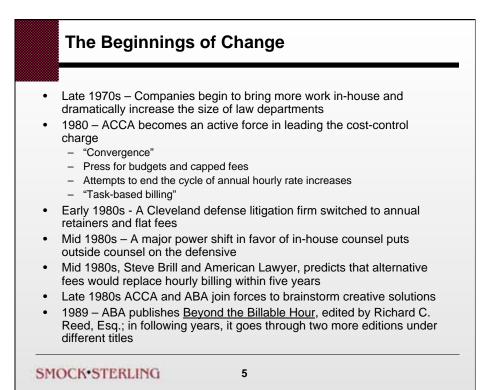
   Barrister, Informatics, CTLaw, Harris & Paulson, et. al.
- As more and more "passed-over" associates were placed in in-house counsel positions, clients became increasingly comfortable with hourly billing, especially the insurance companies

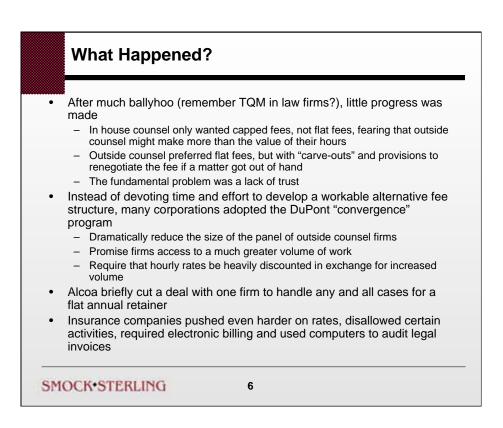
## But, good ideas eventually go bad

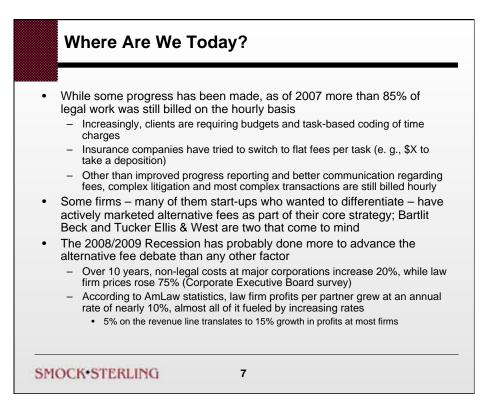
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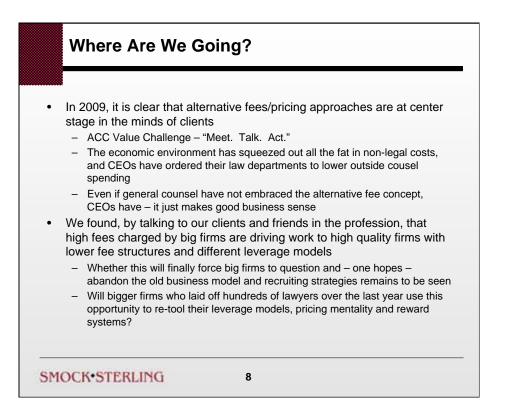
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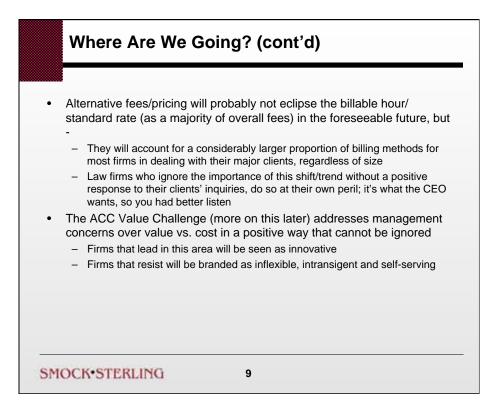


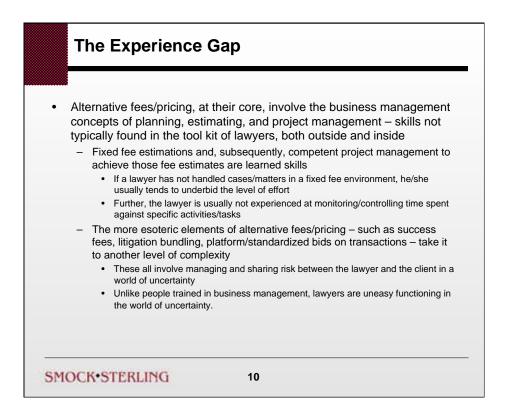


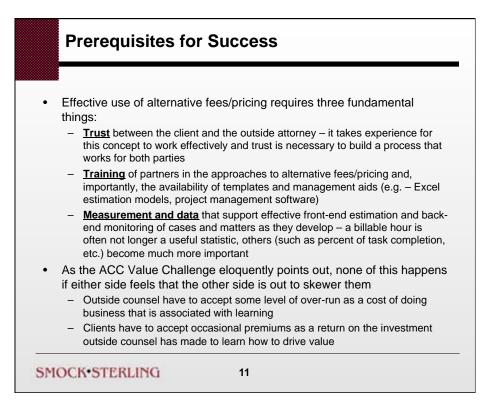


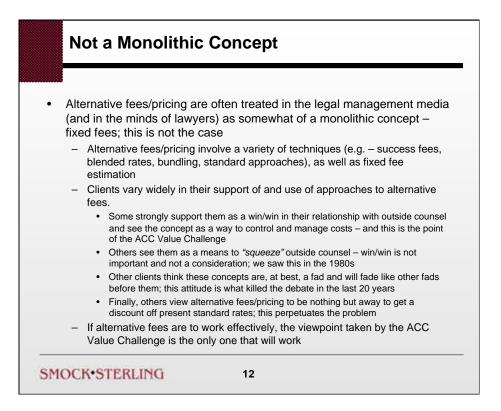












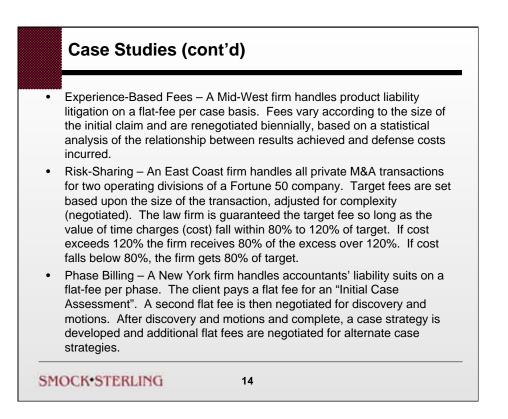
### **Case Studies**

 Goal Alignment - A mid-west defense law firm agreed to handle all medmal claims from the East Coast to the Mississippi River for an annual retainer to be re-negotiated annually. The retainer was adjusted based on:

- Number of files opened vs. number of files closed
- Number of files closed without payment
- Ratio of settlements to initial claims
- Loss adjustment expense
- Task Billing An Albany NY patent firm handles applications for several technology companies for a flat fee per application, plus, if required, a second flat fee for completing responses to office actions related to the application
- Risk/reward A New England firm performs a full range of legal services needed by several early-stage companies in exchange for a monthly retainer, with a few carve-outs. Performance premiums kick in as various stages of financing are completed. There is an equity kicker if the client goes public.

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#### The ACC Value Challenge – An Overview

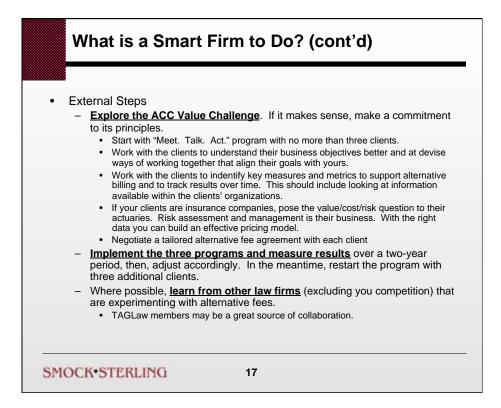
- See <u>www.acc.com/valuechallenge</u>
- Initiated in 2009, this program is an attempt to restructure the value-forfee relationship between clients and outside counsel. It incudes:
  - An overview of how a law firm should approach the challenge "Meet. Talk. Act."
  - A draft "Covenant with Counsel" that spells out rights and responsibilities of both parties
  - Guidelines and checklists for client/lawyer issue discussion and resolution
  - Spreadsheets and templates to support matter budgeting, alternative staffing analyses and general modeling of fee proposals
  - Agreement forms, templates and samples
  - Resources for training and support in the area of project management

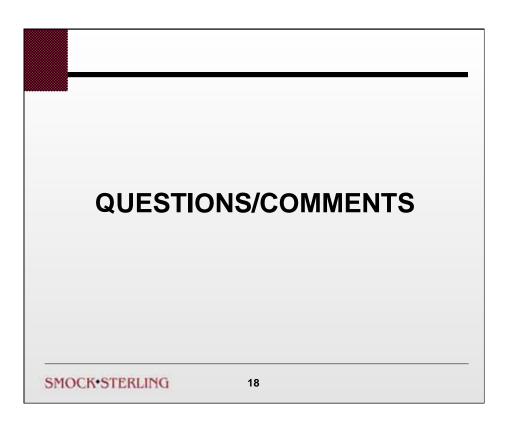
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- Suggested metrics to maintain, including the ACC Value Index that allows clients to rate he value provided by individual lawyers, practice groups and firms
- With the right leadership on both sides, this might just catch on

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What is a Smart Firm to Do? Internal Steps First, decide on an alternative fees/pricing strategy. Is this something the firm will do to accommodate all or just a few clients? Or, does it plan to take its alternative fee approach to market (as Bartlit Beck has)? Invest in training and support - training in the concepts and tools to be used and support (usually from management and/or financial personnel) in utilizing the tools and concepts. - It is important to focus on a few important clients and proactively develop approaches that meet their needs. If a firm works well in with a few key clients, it can transfer those skills/experience it learns to others. Finally, develop information systems and experience and use the information and experience to better understand and meet client needs and, importantly, produce a more predictable and acceptable bottom line from using these concepts. Align your reward systems to measure and reward long-term value, not just hours and fees. Work with marketing people to develop an effective way to roll out your message, initially, and promote your successes. SMOCK•STERLING 16





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Smock•Sterling is a strategic management boutique that helps clients "successfully develop and implement strategy."

Clients choose Smock•Sterling because of these distinguishing features:

- They are a firm of senior, process based strategy consultants.
- They are remarkably good at what they do.
- They provide affordable, solid value.

The firm serves a broad commercial clientele, as well as a diverse array of professional service firms, with a particular focus on the legal profession. Commercial clients vary from respected Global 100 corporations to growing middle market companies, while law firm clients vary from large multijurisdictional and international law firms to single office, mid-size law firms.

The "first string" (Smock, Sterling, and Giuliani) brings a collective 94 years of experience to the practice.

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