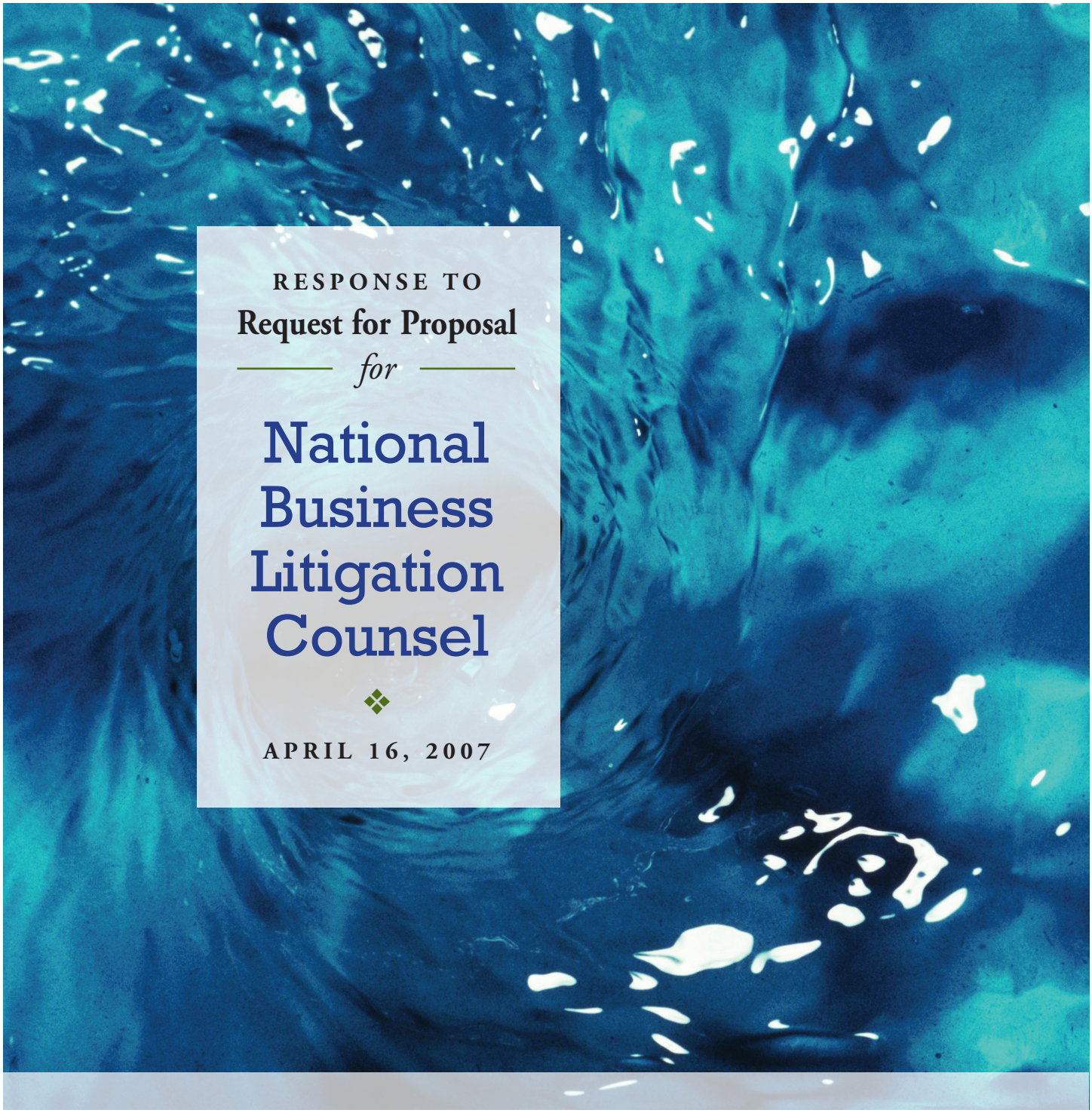


RESPONSE TO

Request for Proposal

for

National Business Litigation Counsel

❖

APRIL 16, 2007

Whirlpool

adams | nye | sinunu | bruni | becht

LLP • ATTORNEYS AT LAW

A PARTNERSHIP FOR THE 21ST CENTURY



From left: Jim Sinunu, Bruce Nye, Barbara Adams, Chris Bruni, David Becht

Executive Summary

Adams | Nye | Sinunu | Bruni | Becht LLP appreciates the opportunity to respond to Whirlpool Corporation's Request for Proposals for a National Business Litigation Counsel. We are proud of our firm's fourteen-year association with Whirlpool, and hope to make an even greater contribution to Whirlpool's success. While our proposal is set out in detail below, it ultimately is quite simple. It consists of the following elements:

Beginning July 1, 2007, we will undertake a six-month review and analysis of Whirlpool and Maytag's current and recent business litigation. We will emphasize learning as much as we can from the business units, in-house counsel and local counsel, and will work with these stakeholders to develop a strategic plan for reducing unnecessary business litigation, for minimizing the cost of this litigation, for compressing cycle time, and for helping the business units reduce their costs using information learned from the litigation process.

- Within the parameters of the Request for Proposals, we will defend all new commercial litigation matters filed against Whirlpool on or after July 1, 2007, and prosecute all new recovery matters instituted on behalf of the company from and after that date.

- We will design, implement and maintain a world-class knowledge management system, providing transparency and instant access to all information concerning (a) any pending litigation and (b) the planned strategic review with a user-friendly, secure, web-based index of all our activities and communications between our firm and Whirlpool.

- We will propose specific, tangible metrics that will allow Whirlpool to know within ten to eighteen months whether we, as National Business Litigation Counsel, are contributing to Whirlpool's success, and to what degree.

With the exception of strategic litigation, trials and trial preparation, we will provide these services for a flat fee for one year, as discussed in detail at page 18. We will separately negotiate flat fee, contingent fee or other alternative pricing for excluded activities.

We have given a great deal of thought to the role of innovation in the defense and management of litigation of this type, and have tried to devise a program focusing not on the defense of litigation, nor on the prosecution of litigation, but on the advancement of our client's success.

We believe our plan is not simply better, but also very different than what almost all other litigation firms offer. More importantly, we think our plan is a terrific fit with the innovation programs that have contributed so much to Whirlpool's success over the past eight years.

We thank the committee in advance for its consideration.



Whirlpool Corporation

Founded in Benton Harbor, Michigan in 1911, Whirlpool is the world's largest manufacturer of appliances.

- It employs 73,000 people.
- It markets products in 170 countries.
- In 2006, the company recorded revenues of $18.1 billion, with earnings of $486 million.
- In 2006, Whirlpool had 6 brands in the global Top 100.

These facts, impressive as they are, are only a small part of the story.

In 1999, Whirlpool made a major strategic shift, one that would have resonating implications for years to come. Then-CEO David Whitwam launched a formal program to emphasize innovation – to build innovation into the fabric of an enormous, conservative Fortune 500 company.

The initiative has been a resounding success. It was a remarkable achievement for a global manufacturing company competing in an environment of ever-increasing cost pressures. Success did not come quickly, easily or cheaply, and has in fact required massive, sometimes painful, change.

However, the gain has clearly been worth the pain. The company's innovation-based revenue was $1.6 billion in 2006. The majority of Whirlpool products are new. Innovation-based products are responsible for 30% of the company's sales growth. And a long, slow decline in pricing has been reversed. Beginning in 2003, average prices for Whirlpool's appliances have increased approximately 5% annually. The price war is over.

Although the most tangible innovation was in Whirlpool's products themselves – the Gladiator line of cabinets and the Duet laundry pair are two prominent examples – the innovation approach influenced many facets of Whirlpool's operations. For example, the role of knowledge management was critical. IT played an essential role in facilitating the development of a knowledge management culture and system. And the design process was overhauled and retooled. Just as in Whirlpool's core manufacturing function, embedding innovation into these non-core functions has led to impressive improvements, substantive change, and ultimately, better bottom–line results across the entire enterprise.

Whirlpool first applied innovation to the management of its litigation more than ten years ago with the National Product Counsel program for its product liability litigation. After an exhaustive evaluation process, Whirlpool entered into long-term relationships with three law firms, each assigned to a product unit. Instead of disbursing bits of product information among scores of law firms nationwide, Whirlpool assigned a small number of lawyers to the job of working on a near-daily basis with engineers and business personnel. Thus, these few lawyers became highly knowledgeable within their areas of expertise (e.g., laundry, cooking, refrigeration, dishwashers). The result of this innovation was not just an increased efficiency in the defense of product liability litigation, but a feedback loop from the litigation process to the business units.

Adams | **Nye** views this Request for Proposal as the next logical step: an invitation to develop and share a vision of how innovation can similarly be applied to Whirlpool's business litigation needs.

What Is Innovation?

Business literature contains endless definitions of "innovation." As is so often the case, the simplest is often also the best, and in this proposal, we would like to rely on two very simple definitions.

First, *business innovation is a way of doing things that fundamentally changes the rules of the game*. It is not incremental change, or even strategic realignment. It is a completely new, dramatically different way of doing business that fundamentally alters the entire competitive landscape. Well-known examples are the role of Google's algorithms in search engine technology, the impact of the container on the shipping business, or Cirque du Soleil's reinvention of the circus.

We believe, and Whirlpool has said, that the successful NBC must be committed to completely reinventing the role it plays, the relationship it has with Whirlpool, and the way success is defined. An innovative approach to the NBC position will require a commitment to completely changing the rules of the game. This does not mean change for its own sake. It does mean examining every assumption and practice based on Whirlpool's strategic and business interests, and a further willingness to apply new practices if they serve Whirlpool, and if they work.

A second definition of innovation that seems apt is this: "People implementing new ideas to create value." (Source: Innovation Network, www.thinksmart.com).

By unpacking this second definition, we can gain three insights into what an innovative approach to the Whirlpool/NBC partnership must deliver. These three concepts are the guiding principles of this proposal:

"... to create value."

The goal of the NBC is NOT simply to manage or oversee litigation. Litigation is an occasionally necessary means, not an end. *The goal is to deliver value to Whirlpool*.

Whirlpool's definitions of value are spelled out on Page 3 of the RFP. We would submit that these definitions, while necessary, are insufficient. To us, value means the creation of assets, either tangible or intangible, that deliver returns to Whirlpool over time. While professional expertise and the achievement of outstanding legal results will always be an essential requirement for Whirlpool's NBC, we believe that lasting value means something more. We believe it means, in partnership with Whirlpool, building systems, processes, metrics and knowledge that do two things:

1. Enable everyone touched by the litigation process to work as efficiently, rationally and systematically as possible.

2. Enable Whirlpool's legal team to be proactive and strategic with a view toward collaborating to reduce litigation and litigation exposure.

As an example, consider the issue of supply-chain integrity. We understand from Whirlpool that the predominant issue in this regard is the use by suppliers or contract manufacturers of substandard, counterfeit or non-spec parts. This can create enormous liabilities for Whirlpool.

Whirlpool's NBC can and should deliver value under this scenario by working with business units to develop processes and approaches that allow problem suppliers – whether domestic or overseas -- to be identified and dealt with as quickly and efficiently as possible. It means creating an ongoing process to improve contracts in a way that protects Whirlpool. And it means adhering to a process-based approach to litigation or dispute resolution that stores, disburses and reuses developed knowledge and information. The process should also improve the "information loop" to ensure that all the lessons to be learned from litigation are communicated to the units – and the people – who need to learn them.

However, value can be further delivered, and vastly enhanced, by adding a proactive, strategic dimension to the work the NBC does for Whirlpool. In the supply-chain integrity scenario, this would mean developing and drafting contract provisions that would not only deter violations, but prevent any supplier who might even contemplate a violation from approaching Whirlpool. The incentive structure these provisions create would be a significant, long-term asset that would deliver value to Whirlpool for years to come. We believe there is enormous potential for Whirlpool's NBC to create real value, both by rationalizing and systematizing legal and dispute-resolution activities, and by creating new, proactive applications of the knowledge these activities create.

"People"

Because lawyers are so rigorously schooled in analytic thinking and the marshalling of facts and argument, we often neglect or overlook the human, interpersonal side of business. We believe that particularly with the NBC position, this would be an immense mistake. Based on our years of representing Whirlpool as California Counsel for product matters, as well as local counsel for construction, asbestos and some business litigation matters in the past, we are well aware of how important the "human factor" is at Whirlpool.

First and foremost, we view this opportunity as a chance to develop a long-term partnership with Whirlpool. It is our intention, should we win this business, to work with Whirlpool for the rest of our careers. Our goal is to become partners and trusted advisors, and to deliver value and innovation in a way that will preclude Whirlpool from even contemplating using another firm.

This goal has a number of implications. First, we believe that all parties need to accept that the creation of a partnership is always a matter containing some trial and error, and necessitating persistence, flexibility, and patience. Whirlpool's own story bears this out, and is in fact what inspired our conclusion. As reported in the trade press, Whirlpool's initial innovation efforts involved a number of false steps. Whirlpool retreated, rethought, reengaged, and succeeded. We plan on being able to do the same, if necessary.

In conjunction with this philosophy, we would not presume to begin this relationship with a complete solution and approach already mapped out. This is a relationship, not a transaction, and while the ideas that follow in this proposal will sketch out our best, most focused view of what we would do for Whirlpool, none of this is cast in stone. We are interested in learning and delivering what works. We are committed to the goal, rather than the methodology.

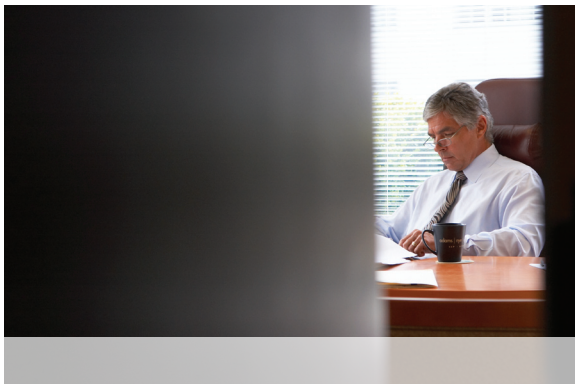
In short, we will not come to this task with a belief that we have all the answers. Instead, we bring skills in listening, experience in organizing, a great love of teamwork, the ability to admit mistakes and an eagerness to work with our client to develop a world-class, unique model of litigation management.

"Implementing new ideas"

The final concept embedded in our working definition of innovation is, of course, the implementation of new ideas. In the context of this partnership, the ideas are "new" only in that they have never been applied to legal management before. They are not new, however. They are present in abundance throughout Whirlpool. As an element of our partnership, we intend to take full advantage of Whirlpool's in-house expertise.

As described in the RFP and accompanying presentation, Whirlpool envisions a commercial litigation department that is process-driven. You seek predictability, accurate forecasting and budgeting, accountability and transparency. You want legal matters seen for the business problems they present rather than as unpredictable, uncontrollable one-off events. You want decisions made on the basis of data, not hunches, instincts or artistic judgment.

The "new" ideas here are new only in the field of litigation management: data acquisition, information processing, knowledge management, variance correction, defect avoidance, etc. We already know that Whirlpool's business units want to avoid the distraction, inefficiency and often needless cost of litigation. We believe that the litigation process can teach the business units how to do this. What we plan to learn from the business units is this: how can we work with existing processes and channels to get maximum value from the lessons offered by every lawsuit? Should we be fortunate enough to win this competition, we intend to work very closely with Whirlpool to leverage the in-house knowledge and processes it already has in these areas.



Our point is this: we envision a genuine, lasting partnership that delivers value to both parties. The absolute bedrock of any partnership, up to and including a marriage, is communication, and learning on both sides. Whirlpool has a huge internal store of knowledge and expertise that can be an extraordinarily valuable resource for us. We plan to use all of it.

Adams | Nye | Sinunu | Bruni | Becht LLP

Adams | Nye | Sinunu | Bruni | Becht is a firm of trial lawyers. We were founded in 1993. We have five partners – all of whom have been partners with the firm since its founding – and ten attorneys who are either associates, senior associates or of counsel.

In candor, we know full well that every single law firm responding to the RFP will stress its abilities, trial experience, client responsiveness, cost-effectiveness and skill. Moreover, we know that all, or nearly all of them will be telling the truth: Whirlpool presumably would not have invited responses from lawyers and law firms who were not qualified and who did not provide excellent client service.

Rather than rehash our firm's brochure, web site and other marketing materials, we will stress here those aspects of our firm, its lawyers and their experience that we think are most germane to Whirlpool's needs:

- Despite our small size, we have a very deep trial bench: nine of us are veteran trial lawyers, meaning we have tried multiple jury or bench trials to verdict or judgment. We have tried well in excess of one hundred jury cases to verdict. On the defense side, we have defended commercial, product liability and toxic tort cases involving potential exposures in the many millions of dollars. Representing plaintiffs (about 15% of our practice involves representing plaintiffs in employment matters), three of our five partners have obtained verdicts in excess of a million dollars.

- We have an outstanding record of managing litigation in California and nationwide, and of collaborating with other counsel. Although our home base is in California, we appear in other states on a *pro hac vice* basis, and are presently representing clients in major matters in Illinois and Massachusetts.

- We bring experience in managing complex litigation that is almost completely unparalleled in firms of our size. Because of our toxic tort experience, we have built highly sophisticated litigation management mechanisms. These have also served us well in large, complex statewide consumer litigation where we were appointed statewide liaison counsel by the court, such as Los Angeles's *In re Lease Documents Cases* and San Francisco's *Automobile Advertising Cases*.

- We also bring an enormous depth of experience to the alternative dispute resolution arenas of arbitration and mediation. We have successfully enforced contractual arbitration provisions under state and federal law, and arbitrated scores of cases on both the defense and plaintiff side. We have successfully mediated hundreds of cases. Bruce Nye, one of the proposed team members, has served on many occasions as an arbitrator or mediator.

- Our attorneys are active members of state, local and honorific bar associations and organizations. In addition to the California and local bar associations, we boast memberships in the American Board of Trial Advocates, Business Trial Lawyers Association, Defense Research Institute and Northern California Association of Defense Counsel.

In the final analysis, only the client knows what it is worth to settle a case. But the vast majority of cases do settle, and we think our depth of experience allows us to provide invaluable input in this area. And for cases that need to be tried, our extraordinary depth of trial experience helps ensure that we are there when the bell rings.



The Proposed Plan

As discussed in the Executive Summary, the plan comprises three elements: Strategic Planning and Communication, Knowledge Management and Case Management. These are listed in order of importance:

Strategic Planning is the most innovative of our categories, and the one with the greatest possible return. This is where we will strive to make our role proactive and strategic rather than reactive and tactical. It is also where we will internalize and leverage Whirlpool's existing knowledge base.

Knowledge Management is a set of mechanisms for effectively managing, disseminating and communicating information about both strategic planning and case management. This is the foundation of our ability to serve Whirlpool effectively. In the end, our goal is to build as much intelligence and knowledge as possible into the work we do for you.

Case Management includes the systems and processes for actually handling and managing specific disputes. This will be the most process-driven facet of our plan, and is focused on creating a transparent platform that rationalizes the dispute evaluation and resolution process.

We will establish metrics for each of these elements, which will allow everyone to determine whether Whirlpool is getting the value it expects from the NBC program.

Strategic Planning and Communicating

While this is, as mentioned, the most innovative of our categories, it is in some ways the easiest and most obvious. There are two aspects: initial implementation and long-term progress.

We hope to use the first six months of our assignment as NBC to listen, to learn, to plan, to propose and to obtain consensus from all participants. We will want to:

- Listen to Whirlpool's business personnel, its in-house counsel and its local counsel to get their read on what litigation they think has been problematic and why, what they think should be done to reduce recurrent business litigation problems, what has been tried before and failed, why they think it failed, who should be included in the information loop and how they think that inclusion can most effectively take place;

- Review pending and recent litigation with a view toward finding patterns that have some educational value (as well as looking for cases that have the potential for early disposition);

- Find out what Whirlpool thinks are its most serious business litigation problems;

- Offer an independent judgement about whether Whirlpool faces any business litigation "land mines";

- Assess how existing Whirlpool processes can be adapted to reduce or eliminate exposures;

- Use a series of "trial balloons" with all participants to begin proposing changes in communication and internal processes that might have a positive effect on litigation exposure;

- Make a full proposal to all participants, probably by the end of 2007; and

- Try to obtain consensus and begin implementation.

We will undoubtedly attempt processes that do not work; we are confident that we will also uncover many that do. From this beginning, we will develop the second aspect of our strategic planning element: a way to make processes permanent, and repeatable with other actual and potential participants in the commercial litigation process. We hope to implement a communication process that makes incremental change for the purpose of litigation reduction part of the permanent landscape at Whirlpool.

Knowledge Management

Knowledge management has two basic facets. These correspond to the two roles the NBC will play in its work for Whirlpool – the more conventional, reactive role of dealing with existing disputes, and the proactive, strategic role of delivering value by anticipating potential issues.

Knowledge management in the first role basically consists of the formal collection and subsequent dissemination of documents, information and strategies, both in the context of formal legal proceedings, and in ancillary settings such as alternate dispute resolution, arbitration and so on.

Whether a dispute is handled through arbitration, court, ADR or some other means, there will inevitably be highly structured processes at work. Similarly, issues in dispute will begin to repeat themselves. Given both of these facts, it is extraordinarily likely that, over time, the same or similar issues, used in the same or similar settings, will arise repeatedly.

Knowledge management is about creating informative systems. These systems, viewed from the most general perspective, create a feedback loop in which real-world experience is, over time, increasingly incorporated into the day-to-day processes and metrics of avoiding and managing disputes. As the informative resources available to firms handling disputes become more comprehensive, richer and better organized, the amount of time, effort and ultimately, money those disputes require will decline.

Technology will play a very important role in the smooth, effective execution of this role. Underpinning everything the NBC does must be an all-purpose platform that will fulfill a number of different roles. We anticipate using an existing web-based program that is secure, robust, stable, multi-purpose, customizable and can be used to make knowledge and information available to all stakeholders in Whirlpool's commercial litigation. This platform can and should be used to hold the following:

- All substantive pleadings from every case, indexed for ready access and as part of a brief bank, or library;
- Litigation forms;
- Documents produced by Whirlpool and other parties in litigation;
- Fully searchable deposition transcripts;
- Legal research, memoranda, summaries, etc.;
- Case docket information;
- Budgeting information;
- Most importantly: the platform will be used to exchange information, concerning what is learned from every case, as a part of the information loop allowing business units to learn from the litigation process. The information will be provided in user-friendly, non-legalistic language.

Essentially, everything in our files will be available to in-house counsel and any other stakeholder for whom it is appropriate, because this plan recognizes that the knowledge belongs to Whirlpool, not its attorneys. All information will be secure and controlled appropriately.

We realize that case management technology has become a secondary profit center for many law firms. Our goal is to use technology to make the litigation process more efficient, not more expensive. Our proposal includes implementation of the knowledge management platform for Whirlpool's use at no additional charge. Once the platform is up and running, we are happy to make it available to NPC, should they or Whirlpool feel that this has value.

Case Management

Litigation is a process, and in the "macro" sense, usually predictable. **Figures 1 and 2**, which appear on the following pages, depict the possible processes and decision paths once Whirlpool learns of a claim against it or a claim it wishes to make. **Figure 1** shows how we should expect litigation to proceed from the time Whirlpool learns of a dispute until the litigation plan is designed. **Figure 2** shows the expected course of non-strategic litigation through the discovery process, up to trial preparation and trial.

All activities and related costs in **Figure 1** shaded in blue or yellow are covered by the flat fee agreement. The box shaded in pink – the design of a custom litigation plan for strategic litigation – is the only activity shown on **Figure 1** and not included within the flat fee. (As discussed in the "Value-Based Pricing" section below, we anticipate that strategic litigation would be undertaken for a separate, negotiated, budgeted flat fee with risk-sharing and incentive components. Furthermore, the designation of a case as "strategic" will result in a corresponding reduction of the flat fee amount.) The activities shaded in yellow are collaborative activities involving some combination of NBC, Whirlpool's in-house counsel and the client/business unit. As discussed in the "Value-Based Pricing" section, arbitration, which is shaded in light green, may or may not be included in the flat fee depending on the length of the arbitration, although it usually will be included.

Key elements of case management before the litigation process begins are as follows:

- The process begins with a determination of whether the litigation or claim is or is not strategic. We expect that "strategic" litigation will be uncommon, but will be defined by:

  (a) a disinclination for early compromise on Whirlpool's part;

  (b) a business need to litigate even if the cost of litigation exceeds the immediate amounts involved.

  Strategic cases will typically require custom design, and are not amenable to the type of standard charting and planning shown in **Figure 2**. Because strategic litigation is driven by factors other than short-term financial returns, we believe it is less amenable to inclusion in the overall flat fee. It is, however, amenable to separately negotiated value-based pricing.

- Before a non-strategic case or claim goes into full litigation, NBC, the client/business unit and in-house counsel will have met on multiple occasions, in person or by conference call, to evaluate the case, define a win, establish benchmarks, evaluate the claim for possible mediation or other ADR and agree on a disposition plan with a proposed cycle time.

- After a claim/case is concluded, NBC, in-house counsel and the client/business unit must meet to (a) determine what was learned from the case; (b) analyze and agree on what measures Whirlpool could implement to prevent similar litigation in the future or reduce future exposures; and (c) determine how this information can be disseminated, and how processes can be improved. **These determinations, and this evaluation, are critical parts of the proposal.**

FIGURE 1

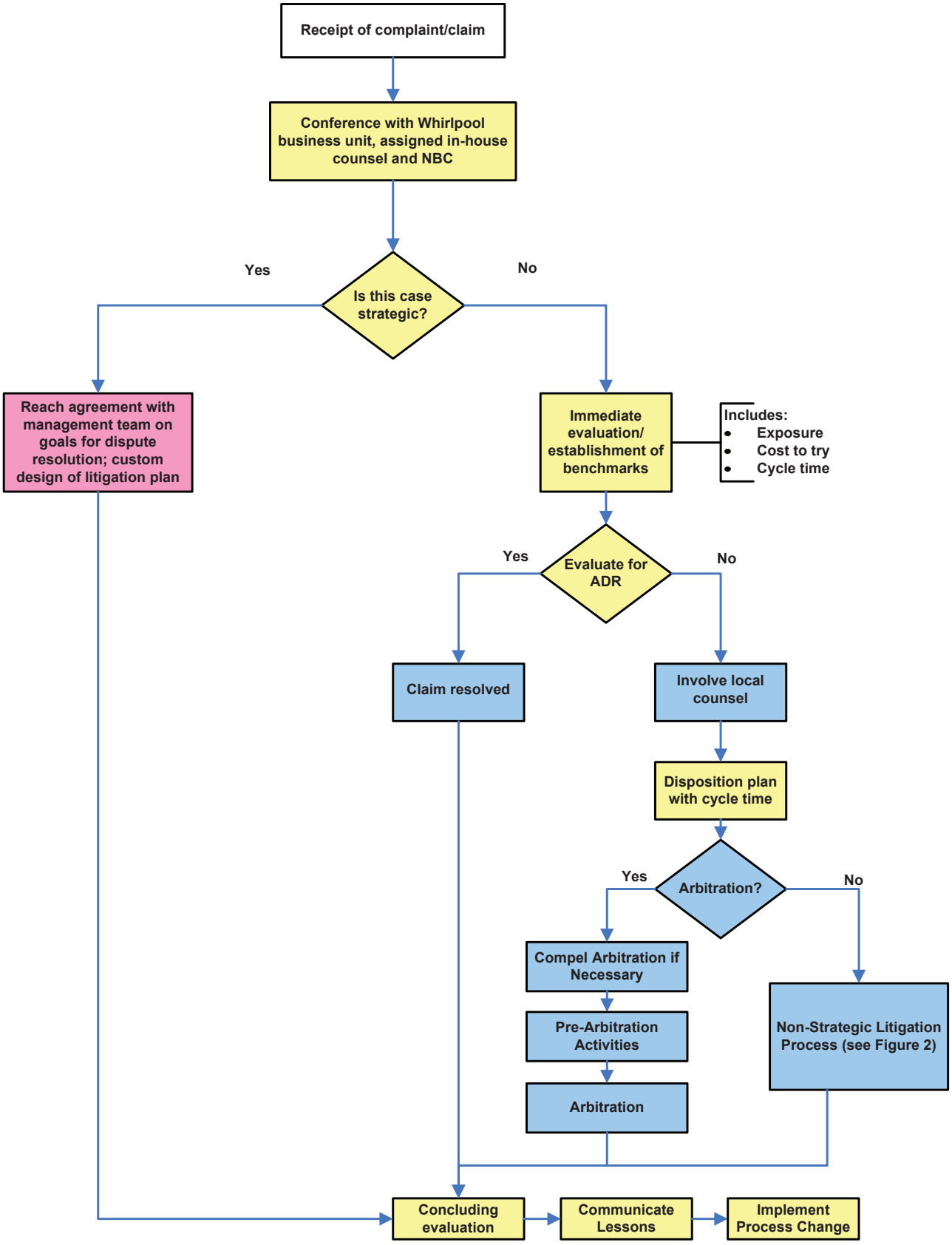
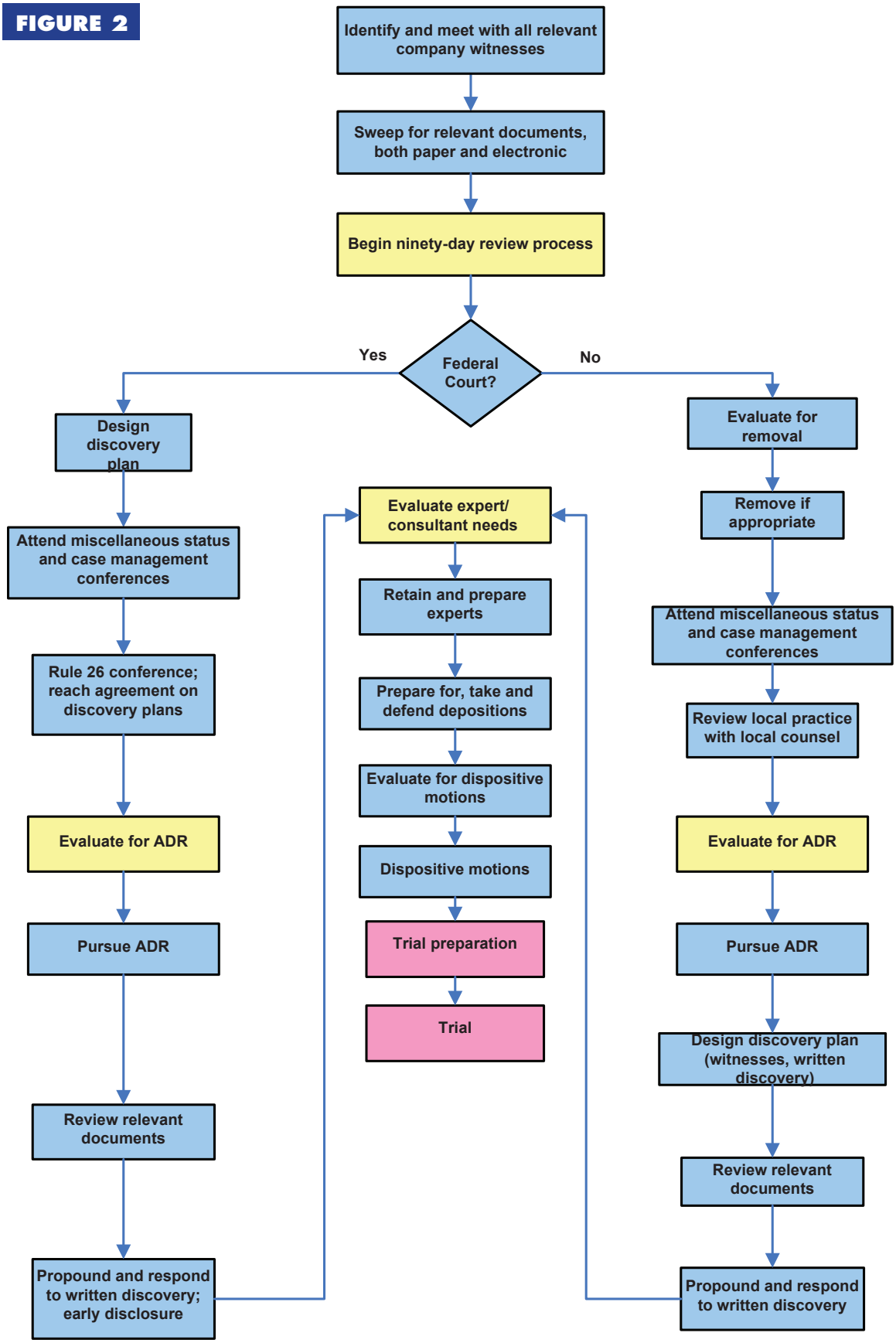

Receipt of complaint/claim
Conference with Whirlpool business unit, assigned in-house counsel and NBC
Is this case strategic?
Yes
No
Reach agreement with management team on goals for dispute resolution; custom design of litigation plan
Immediate evaluation/ establishment of benchmarks
Includes:
Exposure
Cost to try
Cycle time
Evaluate for ADR
Yes
No
Claim resolved
Involve local counsel
Disposition plan with cycle time
Arbitration?
Yes
No
Compel Arbitration if Necessary
Pre-Arbitration Activities
Arbitration
Non-Strategic Litigation Process (see Figure 2)
Concluding evaluation
Communicate Lessons
Implement Process Change

FIGURE 2


Identify and meet with all relevant company witnesses
Sweep for relevant documents, both paper and electronic
Begin ninety-day review process
Federal Court?
Yes
No
Design discovery plan
Attend miscellaneous status and case management conferences
Rule 26 conference; reach agreement on discovery plans
Evaluate for ADR
Pursue ADR
Review relevant documents
Propound and respond to written discovery; early disclosure
Evaluate expert/ consultant needs
Retain and prepare experts
Prepare for, take and defend depositions
Evaluate for dispositive motions
Dispositive motions
Trial preparation
Trial
Evaluate for removal
Remove if appropriate
Attend miscellaneous status and case management conferences
Review local practice with local counsel
Evaluate for ADR
Pursue ADR
Design discovery plan (witnesses, written discovery)
Review relevant documents
Propound and respond to written discovery

As mentioned above, **Figure 2** shows the typical progression of a non-strategic lawsuit up to the time of trial preparation. There is nothing unique or even particularly unusual about this process; indeed, we have included it to demonstrate that there is predictability about the course of most litigation.

While **Adams | Nye** executes these steps very, very well, we do not claim to have invented a new path for the defense of business litigation. The essential components are likely those that Whirlpool has traditionally seen in all of its commercial litigation (and, frankly, in most other types of litigation). Neither we nor the other respondents to this RFP are likely to reinvent the entire litigation process.

As shown on both figures, we have included early and frequent client involvement, consensus on litigation goals, ninety-day progress reviews and most importantly, a complete evaluation at the conclusion of a matter, as well as collaborative design and implementation of improvements in Whirlpool's processes.

Metrics – How Do We Know We Are Succeeding?

Success in litigation, as in engineering, manufacturing and business, should be measurable. While we admit to having no Six Sigma champions or belt-holders on staff, we believe our success can be measured as early as the first year by client satisfaction, by law practice defect elimination, by cycle time and by the extent to which counsel achieves "wins" as defined by attorneys and client at the outset. Over the longer term, our success can be measured by whether we are meeting financial targets, reducing the number of claims that go to suit, and reducing overall litigation cost.

Our plan for measuring success includes the following:

In March 2008, with Whirlpool's approval, we will field an on-line survey to all relevant business unit personnel (i.e., those managers we have worked with over the preceding nine months, as well as in-house counsel who wish to participate) designed to answer, among other things, the following questions:

- Do the respondents believe their concerns have been listened to and addressed during their involvement in the litigation process?
- Have they been satisfied with the extent of their input into setting goals and being advised of the steps taken to meet those goals?
- Have the Knowledge Management mechanisms implemented by NBC been useful to them?
- Has NBC helped them learn from the litigation process?



- Has NBC facilitated appropriate changes to processes to reduce litigation exposure?

Thereafter, and again subject to Whirlpool's approval, we will repeat the survey process every six to nine months (we anticipate surveying different participants each time thereby minimizing the "nuisance factor").

As to long-term metrics, we anticipate fielding a combined self-evaluation/Whirlpool evaluation, designed in collaboration with Whirlpool eighteen months into the process – by which time Whirlpool should be seeing some measurable financial results – and annually thereafter.

Adams | Nye Team Members



Bruce Nye is Adams | Nye's managing partner. He specializes in the management and trial of all kinds of complex civil litigation, and has successfully tried cases involving chemical exposure, product liability, machine design, civil rights, wrongful termination, sexual harassment, breach of contract, business torts, government liability and premises liability.

Mr. Nye has practiced law in the San Francisco Bay Area since 1977, and has tried cases in all nine Bay Area counties. He has tried more than twenty-five cases to verdict. Among his recent activities are the following: In 2002, he co-led a trial team which successfully won declaratory relief against the State of California under Proposition 65, California's Safe Drinking Water and Toxic Enforcement Act of 1986. In that matter, our firm's client established that the chemical DEHP posed no significant risk of cancer to humans. In 2003, he successfully tried a multi-million dollar gender discrimination and sexual harassment case. He has acted as statewide court-appointed liaison counsel in the *Automobile Advertising Cases* ("Dowhal" matters) and *In re Lease Documents Cases* (the "Trygar" case).

Mr. Nye is the publisher of, and a frequent blogger at, CalBizLit.com where he provides current information and perspectives about civil litigation in California. He conducts seminars on toxic torts, product liability and employment issues. His published articles include "Proposition 65: Defending Against the Tort With No Injury" in ***Defense Comment, Summer/Fall 2000***; "Doing What is Best for the Client: An Outsider's Perspective on the 'Realities' of Prop. 65 Defense", in ***Proposition 65 News, May 1, 2000***; "Who is 'Any Other Person' – Cost Recovery v. Contribution Under CERCLA", in ***For the Defense***, March, 1998, Vol. 40, No. 3; and "MTBE: Just When You Thought It Was Safe to Go Back In The Well Water", in ***Defense Research Institute, Toxic Torts and Environmental Law Newsletter***, Fall, 1997.

Mr. Nye received his B.A. in Political Science from the University of California, Berkeley (1973) and his J.D. from Hastings College of the Law, University of California (1977), where he was a member of the Order of the Coif and The Thurston Society.

He is admitted to practice in all California state courts, in the U.S. District Courts for the Northern, Central, Southern and Eastern Districts of California, the Ninth Circuit Court of Appeals, and the United States Supreme Court. He is a member of the Association of Business Trial Lawyers, the Association of Defense Counsel of Northern California and the Defense Research Institute.

Mr. Nye sits on the board of directors of The Read-Aloud Volunteer Program, a California non-profit devoted to providing one-on-one reading enrichment experiences to elementary school children in the inner city.



Michele M. Tuman presently specializes in commercial, product liability and toxic tort litigation. She also has experience in medical malpractice, premises liability, complex construction and business litigation, breach of contract, torts, real estate, and trust litigation as well as business and corporate transactions.

Ms. Tuman moved to the San Francisco Bay Area in 2003. She had previously practiced law in Santa Barbara, Ventura and Los Angeles Counties since 1996.

Ms. Tuman received her B.A. degree in Economics from the University of California at Santa Barbara in 1992. She received her J.D. degree from Santa Barbara College of Law in 1996, where she received an American Jurisprudence award in Corporations.



John G. Lee is a civil litigation attorney with experience in products liability, toxic tort, employment, and commercial litigation, as well as appellate work.

Mr. Lee received his J.D. from the University of California, Davis School of Law (King Hall) in 2005 where he was a member of the Moot Court Board and an extern for Justice Rodney Davis in the California Court of Appeal, Third Appellate District during his third year. Mr. Lee received his B.A. in History from the University of California, Davis in 2002. While an undergrad at Davis, he was president of the Sigma Chi Fraternity and the Interfraternity Council and voted Greek Man of the Year in 2001, as well as a UC Davis Outstanding Senior and a member of the student senate. Mr. Lee was a summer associate at Adams | Nye in 2004.

Mr. Lee is admitted to practice in all California State Courts. He is a member of the Bar Association of San Francisco and an active volunteer at Project Homeless Connect, a non-profit organization seeking to support and create lasting solutions for homeless San Franciscans.

Elizabeth Geronimo is a paralegal with the firm, concentrating in complex civil litigation and toxic torts. Ms. Geronimo received her B.A. in Sociology and English Literature from Regis University in Denver, Colorado in 1998. She received her J.D. from the University of Colorado College of Law in Boulder, Colorado in 2004 and is a member of the Colorado State Bar.

Value-Based Pricing

Adams | Nye | Sinunu | Bruni | Becht LLP proposes to act as National Business Litigation Counsel for Whirlpool Corporation from July 1, 2007 through June 30, 2008 for a flat fee of $950,000. This fee will include the following:

- Attorney and paralegal activities in defense of all included commercial litigation initiated on or after July 1, 2007, with the limitations set forth below
- Attorney and paralegal activities to initiate and prosecute recovery matters on behalf of Whirlpool
- Fees for local counsel for new matters
- Meetings, telephone conferences and other client communication as appropriate
- Comprehensive face-to-face meetings with appropriate members of Whirlpool's business units, in-house legal staff and selected local counsel for the purpose of evaluating current and historic litigation problem areas and shaping long-term strategic proposals (first round of meetings to be completed by November 30, 2007 and first draft proposals to be distributed to stakeholders by January 1, 2008)
- All other issue-specific counseling as requested by Whirlpool
- Implementation of a secure, on-line knowledge management/knowledge sharing technology to make all case information available to all appropriate Whirlpool business and legal personnel and to create a bulletin board for sharing strategic planning information
- Review of litigation pending as of July 1, 2007 (to remain with local counsel) for the purpose of identifying and making recommendations concerning opportunities for expedited disposition of non-strategic matters
- All case budgeting for matters that are excluded from the flat fee
- All travel expenses
- All pre-trial "soft costs" (e.g., telephone, photocopying, faxes, local mileage, etc.); all pre-trial "hard costs" (e.g., court reporters, service of process, etc.) up to $10,000 per matter; pre-trial expert expense up to $20,000 per matter

Adams | Nye recognizes that Whirlpool should not be double-charged for designating a case as strategic. In other words, it should not have to pay for the management of that case as part of the flat fee and again under a separate fee negotiated with **Adams | Nye**. Therefore, we contemplate a reduction of the flat fee for any matter Whirlpool designates "strategic." Any such designation of a new matter will result in a $75,000 annual reduction of the flat fee. If the new matter is designated "strategic" part way through the contract year, then the reduction of the flat fee will be proportional; i.e., if **Adams | Nye** is assigned a new matter designated strategic half way through the contract year, the reduction of the flat fee would be $37,500, and the strategic matter would then be the subject of a separate fee agreement.

Limitations and Exclusions:

This proposal recognizes that while litigation has many predictable elements, trials are usually not among them. We also recognize that while Whirlpool periodically takes a matter to trial for strategic reasons, this is relatively rare. For this reason, trial of matters for Whirlpool is not amenable to a flat fee proposal such as this one. Accordingly, as to individual matters, **Adams | Nye** has included defense or prosecution of matters in litigation through the pretrial discovery phase. Trial and preparation for trial are excluded, although preparing a budget for these activities and communicating that budget to Whirlpool are included.

As discussed above, design and prosecution or defense of "strategic litigation" is not included within the flat fee. However, we have experience with a variety of alternative billing strategies for individual cases, including contingency fee agreements, defense contingency agreements, incentives, flat fees, etc., and we would expect that some combination of these would apply to individual strategic litigation matters.

From the flat fee, we will be responsible for the retention and payment of local counsel for new matters (i.e., matters served after July 1, 2007) where needed. We assume that we would be free to select local counsel, although we would certainly look to Whirlpool for its input in this regard.

Adams | Nye will also include arbitrations expected to last no longer than two days (as well as preparation for such arbitrations) but exclude both preparation for and participation in longer arbitrations.

In response to one of our requests for clarification, Whirlpool has indicated it would not expect NBC to take over pending matters, and we therefore have excluded those. However, we do anticipate meeting with local counsel, either in person or by telephone, both as part of our learning process and to identify, if possible, candidate cases for early disposition. This is included in the flat fee.

Whirlpool has also advised us that it has established an electronic discovery "SWAT" team to design and implement means for responding to Whirlpool's e-discovery obligations under the Federal Rules and similar state codes and rules. For that reason, we are not including design or implementation of means for addressing e-discovery, and assume that those means will be in place by July 1, 2007.

We have set pre-trial inclusion amounts for hard costs and expert expense which we believe should be sufficient for most routine matters. Hard costs and expert expense beyond those limits are, by definition, excluded.

We will propose a flat fee for the second year of the program (July 1, 2008 through June 30, 2009) no later than May 1, 2008. Based on our experiences in year one, this proposed fee may vary from that for year one. Obviously, our bid for Year One is a fairly uneducated "guesstimate" based on the resources we believe we will be devoting to the program. In Year Two, we will have much more data. There are three important forces at work that should have the effect of reducing the overall cost to Whirlpool. First, going into the second and subsequent years, older matters now assigned to local counsel will diminish as they are concluded; thus, Whirlpool's litigation expense will be reduced by whatever amounts it would have been paying local counsel. Second, by the second year, Whirlpool should begin enjoying the cost-saving benefits of concentrating its commercial litigation in one firm, as NBC becomes more familiar with Whirlpool's processes. Finally, if we are successful, our proposed fee for Year Three should be lower than that for Year Two, and the fees for succeeding years should continue to decline, at least in real dollars. A primary purpose of the program is to reduce the cost of litigation; as should be obvious, this means that over the long term, Whirlpool pays us less for defending that litigation.

Diversity Initiatives

Adams | Nye | Sinunu | Bruni | Becht LLP is a twenty percent woman-owned law firm which is proud to have a staff of top-notch attorneys and staff whose backgrounds and ethnicity reflect the community in which we practice. We provide equal employment opportunity for all applicants and employees. The firm does not discriminate on the basis of race, color, sex, religion, ethnic or national origin, age, disability (including persons infected with the HIV virus or persons with AIDS), veteran status, marital status, sexual orientation, gender identity, domestic partner status, weight, height, association with people protected under this policy, or in retaliation for opposition to any practices forbidden under this policy. We actively encourage employment applications from underrepresented minorities.



Representative Client List

We are proud to presently represent,
or to have recently represented,
the following clients, among many others:

- Alfa Laval Corporation
- Amcord Corporation
- Baxter Healthcare Corporation
- Daimler-Chrysler Insurance Company
- Dorsett and Jackson Corporation
- Duro Dyne Corporation
- Equity Office Properties
- Gamma Neutron Products, Inc.
- Goodman Lumber Company
- Hansen Building Materials
- Kaiser Sand and Gravel Corporation
- Kaman Industrial Technologies, Inc.
- Natkin & Company
- Norcal Mutual Insurance Company
- Potter Electric Company
- Rosendin Electric
- Sonic Automotive Corporation
- Thorpe Insulation Company
- The Industrial Maintenance Engineering Contracting Company
- TSA Systems, Inc.
- Universal Studios
- Valley Sheet Metal
- Weir Valve Corporation
- Whirlpool Corporation

Notes

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