

# **There Is No “I” In “Team”: Embracing the Virtual Law Firm**

**Moderator: Shayna S. Cook, Goldman, Ismail, Tomaselli, Brennan & Baum, Chicago, IL**

**Speakers: Paula Allan, Fed Ex, Moon Township, PA**

**Wendy West Feinstein, Eckert Seamans Cherin & Mellott LLC, Pittsburgh, PA**

**Lisa M. Floro, Coloplast Corp., Minneapolis, MN**

## Introduction

In the world of large-scale litigation, rarely does one law firm “have it all”: a strategic thinker who can see the big picture, a steady hand to guide the day-to-day management of the litigation, e-discovery specialists with an efficient plan to complete discovery, subject matter experts on complex scientific or technical issues, talented brief writers, and a preeminent trial team that can close the deal. Savvy in-house counsel recognize this reality and, when the situation warrants, will pull talent from each of these disciplines from multiple law firms and create a team of the best and brightest. When assembled and managed properly, Virtual Law Firms (VLFs) can create significant strategic advantages and cost savings for a client. This article addresses the predominant VLF structures in use today, the type of cases and situations in which a VLF may be of value, best practices for in-house counsel to employ to effectively assemble and manage the VLF, and best practices for outside counsel to consider when working on a VLF team.

### Back to Basics: Structuring a VLF

Although there is no single set structure for a VLF, the individual assembling the VLF can consult certain templates and guideposts to assemble a VLF that is tailored to the specific needs of a particular client and case. VLFs are most frequently used in large litigations such as mass torts, class actions, or multi-district litigations (MDL). For sure, the VLF model is not always the best option for staffing a large piece of litigation. Each litigation must be evaluated to determine whether a VLF is the best mode. Factors to consider include: amount in controversy, potential for brand damage, multi-jurisdictional reach of case, bellwether status or likelihood of being a precedential setting case, jurisdiction, likely size and trajectory of the litigation, and complex or novel nature of the litigation.

Once the decision is made to assemble a VLF, the focus should turn to how best to structure the VLF. The following are roles that may be considered for a VLF:

- **Lead Counsel**: Lead Counsel generally oversees all other roles. The ideal lead counsel is a keen strategic thinker, skilled courtroom advocate, successful negotiator, and pinch-hitter in other roles (like deposition defense, brief editing, and trial).
- **Coordination Counsel**: Coordination Counsel handles the day-to-day management of the litigation and ensures that VLF members have the resources they need to perform their roles effectively, are not unnecessarily duplicating work, and are meeting deadlines. While in many litigations Lead Counsel can also perform the coordination role, in large, widespread litigations the coordination role is a full-time job for one or more attorneys working closely with Lead Counsel.
- **Local Counsel**: The role of local counsel in a large-scale, nationwide litigation ranges from a minor role in cases that are transferred to an MDL soon after filing to a critical role in traditionally challenging venues, where local counsel with deep experience with a particular judge or venue is invaluable.
- **E-Discovery**: Experienced attorneys who have handled large-scale document preservation, collection, and production issues are imperative to saving costs and avoiding discovery disputes and potential sanctions in any major litigation.
- **Pleadings and Written Discovery**: In cases with continuing filings and extensive written discovery requests, it may be appropriate to designate specific pleading and/or written discovery counsel to focus on those often time consuming yet important responses and affirmative submissions. This role may be filled by Lead Counsel, Coordination Counsel or Briefing Counsel.
- **Defensive Discovery**: Cases involving numerous depositions of company witnesses and large document productions require VLF members who focus on development of defensive themes,

creating work product identifying key documents, and deposition defense. Typically, this team is comprised of subject-matter experts on the various issues relevant in the litigation.

- **Plaintiff Discovery**: In personal injury mass torts when many individual cases are being worked up around the country simultaneously, including Plaintiff, family members, treating physician and/or other case-specific depositions, multiple teams need to be deployed. These teams can overlap with local counsel and/or defensive discovery teams where appropriate.
- **Science and Experts**: Subject-matter specialists are important members of a VLF in a litigation requiring medical or other scientific experts.
- **Briefing**: While the brief-writing role can often be handled by other VLF members, a dedicated brief-writer makes sense where there is a significant amount of briefing and/or particularly complex dispositive legal issues. This role can also include ensuring that issues are preserved for appeal and handling any appellate briefing and argument.
- **Trial**: While ideally Lead Counsel and other VLF members have trial experience that guides the strategy at all stages of the litigation, it is often necessary and beneficial to engage one or more experienced trial counsel who are not involved in the daily management of the litigation. Multiple trial teams may be necessary if there are overlapping or closely scheduled trials.
- **Settlement**: The administration of a settlement in a mass-tort litigation is time-consuming and complex. This role can be performed by Lead and Coordination Counsel, although it is often the case that there is a designated settlement counsel.

### **Best Practices for In-House Counsel**

In-house counsel play a critical role in selecting the core VLF team and in ensuring that the team functions at maximum capacity at every stage of the litigation.

#### ***Deciding to Use a VLF***

First, in-house counsel must carefully consider whether a particular case would benefit from the VLF structure. The factors mentioned above can assist in-house counsel in making the threshold determination of whether the case is even appropriate for a VLF assignment. Second, in-house counsel must consider whether a VLF would align with the company's and legal department's culture and whether the in-house counsel has the requisite skills and time to effectively manage the VLF. If the client's culture is such that collaboration with multiple professionals outside of the organization is difficult or met with skepticism, a VLF may not be the appropriate structure. "Buy-in" from the client and a willingness to collaborate with outside professionals is an essential prerequisite. In-house counsel should thoughtfully consider whether he/she has the ability and resources to not only get the team up and running, but also to manage the VLF long term. An in-house counsel's inability to do so can impact the efficiency of the VLF's performance and undermine cost savings.

#### ***Selecting the Core Team and Formalizing the Engagement***

In-house counsel must employ a rigorous vetting process to ensure that he/she selects a high-functioning VLF team. There is a myriad of factors to consider when selecting the VLF and formalizing the engagement with each team member. The following are a few examples:

- **What is the ideal size of the VLF?** Rightsizing the team is critical. With each additional team member, the potential for internal discord increases, as does the likelihood of duplication of effort. Too few members, however, can be equally deleterious. Stretched team members may not have the time to focus as intently on their assigned area of expertise, and the intended benefits of task specialization may not materialize.

- **What areas of expertise are needed and when in the life of the case are they needed?** While most litigation follows the predictable pattern of initial pleadings, discovery, dispositive motions, and trial, certain lawsuits may demand more of a focus on one area over another. For example, if the lawsuit is expected to be motions intense, consideration should be given to whether a special, quick-response motions team should be assembled. Similarly, thoughtful consideration should be given to how early and how involved the trial team should be in the stages of the case preceding trial.
- **How does a prospective team member and/or team member's firm fit with the organization?** The most accomplished attorney in the world may not be well suited to serve on a VLF. A certain temperament and level of humility is required for an attorney to successfully integrate into the team environment of a VLF. Also, an attorney himself/herself may be a perfect fit for the VLF, but the attorney's firm may not be (*e.g.*, a firm may be rigid in its insistence that a matter be billed or staffed in a manner that is antithetical to the VLF's goals).
- **What fee structure(s) should be negotiated?** The options are virtually limitless for structuring fee arrangements with the various firms that are engaged to serve on the VLF. As with any successful fee arrangement, the key is to develop trust between the law firm and client by candidly discussing expectations and by being willing to consider re-negotiating an agreement in the middle of an engagement as the circumstances warrant.

### ***Managing the team***

The success of the VLF will rise or fall on its leadership. In-house counsel must determine how involved he/she will be in the leadership of the VLF. If in-house counsel chooses to retain the overarching leadership role, he/she should be mindful of the following best practices. It is in-house counsel's responsibility to ensure that all VLF team members have the information that they need to competently complete their defined tasks, while also being efficient and not duplicating the work of other team members.

The most critical job for in-house counsel is to clearly communicate to each team member his/her duties and set the company's expectations of those roles and responsibilities. Without a clear delineation of tasks, in-house counsel runs the risk of a team member either duplicating work that others are completing or, perhaps more problematic, of the work not being completed at all as one team member assumed that another was completing the task.

The mode of communication must be such that all team members have seamless and timely access to all necessary information. This can be accomplished through regularly scheduled team calls or meetings and a shared electronic database. Someone, whether it is in-house counsel or delegated to another, must assume the role of the taskmaster and must be able to ensure that tasks are being completed competently and on time.

As the litigation progresses, the demands of the case and strategy that is employed will undoubtedly change. It is imperative that in-house counsel understand that the VLF structure and processes must be flexible as the needs of the litigation change or as other circumstances warrant (*e.g.*, one team member not performing as expected, emergency situations that require one team member to step in with little or no notice to handle another team member's core function). Finally, in-house counsel may need to arbitrate internal disputes over territoriality or differing points of view among team members regarding the strategic direction of the case. This is to be expected and, if managed properly, can be advantageous by bringing healthy vigor to the case.

## **Best Practices for Outside Counsel**

Securing your place on a VLF is only half the battle; working successfully with others on the VLF team is also vitally important and can be challenging. The most effective VLFs work together amicably with each member seeing that his or her subject matter expertise is contributing to the overall success of the litigation.

Much of the responsibility for ensuring an effective and efficient VLF falls on Lead Counsel or Coordination Counsel, working closely with in-house counsel. The leadership of the VLF must clearly communicate the roles of each VLF member and provide resources such as work product on background and key issues in the litigation, sample deposition outlines, and templates for the creation of work product (*e.g.*, deposition summaries). They must also promptly share important developments in the litigation with VLF members and provide lines of effective communication when VLF members need guidance. Lead Counsel must determine what information is needed for VLF members to carry out their particular role. Providing too much information without clear direction can create inefficiencies and make it difficult for VLF members to discern what's most important. Providing too little information can hamper VLF members' ability to see the big picture of the litigation and function effectively.

VLF members should focus on their defined role in the litigation and not hesitate to ask questions of Lead Counsel and in-house counsel when roles are not clearly defined or work product is not readily available. Coordination Counsel is a resource to any VLF member who needs additional tools to do his or her job effectively.

## **Conclusion**

Communication, collegiality and collaboration among VLF members, regardless of the structure and size of the VLF, are expected. A major advantage to implementing a VLF structure is to gather a group of talented attorneys with individual talents to achieve the client's goals, keeping in mind that the client's goals may change over the life of the litigation. Any disagreement on strategy or a VLF team member's role or responsibility should be raised initially with Lead Counsel and Coordination Counsel. If the issue is not resolved at this level, in-house counsel must be informed and will provide direction. Working on a VLF can be an extremely rewarding experience that allows in-house and outside counsel to maximize efficiency and litigation successes while working with talented lawyers all over the country – and even world – and even forming life-long friendships.