

## Innovative Managing Partner: Crowell's Kent Gardiner

By Leigh Kamping-Carder

*Law360, New York (June 16, 2010)* -- Just about every law firm trumpets its client services, but Crowell & Moring LLP's Kent A. Gardiner has recouped hundreds of millions of dollars for clients through plaintiff's recovery litigation, pioneered alternative fees and encouraged his lawyers to treat in-house counsel like business partners, landing him a spot on Law360's list of Most Innovative Managing Partners.



When Gardiner started as Crowell & Moring's chairman in 2005, he wanted to abolish the conventional wisdom that law firms wait for their clients to show up with problems, and bill them by the hour for furnishing the appropriate legal response.

"We recognized even back then that the law profession for years had been rewarded for inefficiency and that there was an important opportunity to change that," Gardiner said.

"If we really invested our time in getting to know our client's business, identified risks that were still over the horizon for them ... and looked hard for ways to expand their bottom line, then we really would distinguish ourselves from other law firms," he added.

Now in its third straight year of double-digit revenue growth, Crowell & Moring has taken the lead on alternative fee arrangements — using proprietary software to do so — implemented a novel secondment program, and launched a plaintiff's recovery practice that has turned legal departments into revenue generators for some of the country's biggest corporations.

Back in the mid-1990s, DuPont Co. became one of the first companies to demand a different way to handle its legal bills, partly to ensure costs were predictable and partly to spur firms to act more efficiently, while rewarding them for outstanding results, explained Thomas L. Sager, senior vice president and general counsel of DuPont.

"It really takes two to tango," Sager said of alternative billing. "Crowell & Moring did that a decade before most people even considered it."

To start, Crowell & Moring embraced the idea that the firm would have to take on more risk — even if it meant not getting paid, Gardiner said.

“Showing the client that we're willing to invest our time and our money and share the risk with them, that was the key,” said Randy Smith, co-chair of the firm's antitrust group, who recruited Gardiner, then a trial attorney in the U.S. Department of Justice's Antitrust Division, in the mid-1980s.

The firm uses a range of alternative fee arrangements — or “AFAs” as the Crowell partners call them — including flat fees, contingency fees and success premiums.

Clients can also arrange to “hold back” a portion of the fees until after a progress report is completed, using Crowell & Moring's performance as a guide to determine payment.

The strategy has proven successful, and companies such as The ACE Group, AT&T Inc., Georgia-Pacific, Lubrizol Corp., Marriott International Inc. and UnitedHealth Group Inc. have taken advantage of the arrangements.

The firm said it generated roughly 30 percent of its revenues from AFAs in 2009, and Gardiner hopes that soon only a minority of its business will come from standard hourly billing.

The chairman attributes part of the success to software the firm developed to tailor AFAs to clients' needs — arrangements that reward speed, others that determine blended rates and so on — which was the brainchild of Robert A. Lipstein, head of Crowell & Moring's finance committee.

“He realized that you had to become sophisticated about how [AFAs] worked, how they performed, or it would not be a sustainable model for the firm or the client,” Gardiner said.

That Gardiner encouraged Lipstein to run with the idea is indicative of his management style, and of Crowell & Moring's entrepreneurial culture.

“He'd be the first to say that it's not all about him,” Smith said of Gardiner. “His leadership style is a very inclusive one. It's based really very soundly and solidly on communication and collaboration.”

Gardiner, who by all accounts is a superb listener, set up town hall meetings for attorneys and staff to generate ideas that would make the firm more effective. Crowell & Moring bestows an annual award on employees who best demonstrate innovation.

“It takes a visionary and a leader and one who is willing to invest in a relationship — and not everything you invest in will bring billable hours to the firm,” said Sager, who himself has been hailed as a trailblazer for his work promoting diversity at law firms.

DuPont initially hired Crowell & Moring for work related to mass tort and antitrust litigation, but the firm now handles mergers and acquisitions, white collar investigations, international trade and other matters for the company.

Both parties are interested in forging long-term ties, where the firm's partners routinely share their experiences from working with other clients, Sager said.

“It's very much a partnership in which they're interested in serving DuPont at the highest level,” he said.

No doubt Gardiner would say that's true of all the firm's clients. He has visited 10 of them in the last year alone, and Smith said partners are often criss-crossing the country to hear from general counsels and company executives about what keeps them up at night.

"On our nickel we send lawyers to clients, we meet with clients, we learn their business, we go to their business seminars, we do substantial research on what's new to them in their business," Gardiner said.

Crowell & Moring is currently lending out one partner, two counsel, one associate and a legal assistant to important clients as part of its secondment program, which the firm subsidizes itself, Gardiner said.

Although it's common for law firms to second their lawyers on an "episodic" or ad hoc basis, Gardiner actively places his attorneys with clients and hopes to have more than five lawyers seconded on a regular basis.

Crowell & Moring also routinely invites in-house counsel to work at the firm, often helping offset the costs of their salaries, Gardiner said.

"I think it's extremely uncommon for it to work back the other way," he said, citing one young lawyer who had recently joined a small legal department at a big company and spent six months at the firm, gaining experience in areas she never would have, faced with the day-to-day pressures of her job.

But the close attention to clients' businesses is not just a bid for customer loyalty or a ploy for frequent flier miles — although the firm likely generates both.

Gardiner heads up Crowell & Moring's plaintiff's recovery practice, which represents companies that are the victims of price-fixing conspiracies, patent infringement, unfair trade duties and other matters that might prompt legal action.

But many companies are not used to going on the offensive. They don't want to be thought of as plaintiffs, or jeopardize relationships with key suppliers, business partners or government officials, Gardiner said. But they also have a duty to shareholders.

Finding the right balance requires knowing the ins and outs of a client's business, Gardiner said. Unlike plaintiff's firms, Crowell & Moring's approach to recovery is that recouping the highest dollar figure — or even proceeding with litigation — is not necessarily the best solution, he said.

In some cases, a client may reach an agreement that calls for a supplier to discount its products: an outcome that avoids the courtroom, solidifies a business relationship and still provides compensation, Gardiner explained.

An antitrust litigator by training, Gardiner approached Sager in 2003 and began looking at instances where DuPont may have been the victim of price-fixing conspiracies. He identified one case where a cartel of ocean carriers was fixing prices on shipping and allegedly harming DuPont, a major chemical exporter, as well as a slew of other companies.

Litigation related to the cartel is still ongoing — the case was also the subject of a DOJ criminal investigation — but Sager said Crowell & Moring brought in millions of dollars for the company, and did it in a very short period of time.

The formation of the plaintiff's recovery practice necessitated Crowell & Moring's first forays into alternative billing, and much of the recovery work is done through success fees, contingency fees and fixed fees, according to the firm.

Since DuPont began its recovery efforts five years ago, the company has brought in \$1.6 billion, including \$368 million in 2009 alone, Sager said. Although not all of that is the result of Crowell & Moring's efforts, Sager said that "Kent's been a visionary and leader in this regard."

"We're prepared, frankly, to take less money as a result if it secures the right kind of victory for the client," Gardiner said.

According to Smith, part of Gardiner's leadership strategy is to ensure the firm "never rests on its laurels," to realize that innovation is an evolving and continuous process, with any number of new challenges on tomorrow's agenda.

"We don't want to think outside the box," Smith said. "We don't even want to know there's a box to begin with."

