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Suit Offers a Peek at the Practice of Inflating a Legal Bill

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They were lawyers at the world's largest law firm, trading casual e-mails about a client's case. One made a sarcastic joke about how the bill was running way over budget. Another described a colleague's approach to the assignment as "churn that bill, baby!"

The e-mails, which emerged in a court filing late last week, provide a window into the thorny issue of law firm billing. The documents are likely to reinforce a perception held by many corporate clients — and the public — that law firms inflate bills by performing superfluous tasks and overstaffing assignments.

The internal correspondence of the law firm, DLA Piper, was disclosed in a fee dispute between the law firm and Adam H. Victor, an energy industry executive. After DLA Piper sued Mr. Victor for \$675,000 in unpaid legal bills, Mr. Victor filed a counterclaim, accusing the law firm of a "sweeping practice of overbilling."

Mr. Victor's feud with DLA Piper began after he retained the firm in April 2010 to prepare a bankruptcy filing for one of his companies. A month after the filing, a lawyer at the firm warned colleagues that the businessman's bill was mounting.

"I hear we are already 200k over our estimate — that's Team DLA Piper!" wrote Erich P. Eisenegger, a lawyer at the firm.

Another DLA Piper lawyer, Christopher Thomson, replied, noting that a third colleague, Vincent J. Roldan, had been enlisted to work on the matter.

"Now Vince has random people working full time on random research projects in standard 'churn that bill, baby!' mode," Mr. Thomson wrote. "That bill shall know no limits."

A DLA Piper spokesman said the firm did not comment on pending litigation.

Legal ethics scholars said that it was highly unusual to find documentary evidence of possible churning — the creation of unnecessary work to drive up a client's bill.

Stephen Gillers, who teaches professional responsibility at New York University Law School, called the e-mails a troubling example of lawyers' flip attitudes toward a client's

escalating fees. And he noted that they had come to light at a time when corporations are increasingly rejecting the billable hour standard and becoming vigilant about controlling skyrocketing legal expenses.

William G. Ross, a law professor at Samford University's Cumberland School of Law who specializes in billing ethics, said that the DLA Piper e-mails appeared to support what several of his studies had shown: that churning, while not endemic, is an insidious problem in the legal profession.

In a survey of about 250 lawyers that Professor Ross conducted in 2007, more than half acknowledged that the prospect of billing extra time influenced their decision to perform pointless assignments, such as doing excessive legal research or extraneous document review. There is also the issue of "featherbedding," he said, or throwing armies of bodies at every problem.

"Lawyers sometimes conflate their own financial interests with the interests of the client who pays the bills," Professor Ross said. "Of course, most lawyers are ethical, but the billable hour creates perverse incentives."

The three DLA Piper lawyers who wrote the e-mails have since left the firm. Mr. Eisenegger and Mr. Roldan, who now work for other law firms, did not respond to requests for comment. Mr. Thomson, now a government lawyer, declined to comment. Their departures had nothing to do with the Victor case, according to people briefed on the matter.

The fee dispute centers on DLA Piper's representation of Mr. Victor in a Chapter 11 filing for one of his holdings, Project Orange Associates, the operator of a power plant in Syracuse that provided steam to Syracuse University. Mr. Victor, the chief executive of TransGas Development Systems, which is based in New York, said that his fight over the Project Orange bill was the culmination of a relationship that had deteriorated over the last decade as DLA Piper undertook a breathtaking expansion.

He said that when he first started working with DLA Piper in the late 1990s, the firm was a modest size and went by the name Piper Rudnick. Mr. Victor had a point person at the firm, Nicolai J. Sarad, a partner in the energy industry practice.

But as DLA Piper grew, Mr. Sarad began spending less time on his assignments, Mr. Victor said. Mr. Sarad did not respond to a request for comment.

Through acquisitions, joint ventures and the aggressive hiring of partners from other firms, DLA Piper has grown into a global monolith of 4,200 lawyers in more than 30 countries, making it the world's largest firm by lawyer count. Last year, it posted revenue of \$2.25 billion, according to The American Lawyer magazine.

"As the firm got bigger, there were all of these lawyers who I didn't know suddenly showing up on my bills," Mr. Victor said.

He said he was particularly irked by the routine practice of DLA Piper partners farming out assignments to the firm's junior lawyers. He complained that this resulted in higher bills and often subpar work.

Internal DLA Piper e-mails from the Project Orange bankruptcy appear to corroborate that criticism. Lawyers on the case openly discussed the inefficient use of junior lawyers, who are known as associates. Mr. Thomson, a DLA Piper lawyer, wrote that although the firm had reduced the amount of a bill for Mr. Victor, he expected his fees to escalate.

"DLA seems to love to lowball the bills and with the number of bodies being thrown at this thing it's going to stay stupidly high and with the absurd litigation P.O.A. has been in for years it does have lots of wrinkles," Mr. Thomson wrote.

Later, Mr. Thomson complained that DLA Piper associates were taking too long to complete assignments. "It took all of them four days to write those motions while I did cash collateral and talked to the client and learned the facts," Mr. Thomson wrote. "Perhaps if we paid more money we'd have skilled associates."

The e-mails were included in the 250,000 pages of documents that were turned over to Mr. Victor by DLA Piper as part of pretrial discovery in the case. Mr. Victor said that the e-mails confirmed his worst suspicions.

His lawyer, Larry Hutcher at Davidoff Hutcher & Citron, amended the countersuit last week to include a fraud claim and a request for \$22.5 million in punitive damages, a number representing 1 percent of DLA Piper's reported revenue last year.

"For the past decade, I have fought with DLA to reduce their legal bills," Mr. Victor said. "And now I'm going to keep on fighting."