



2016 CLM Annual Conference  
April 6-8, 2016

## Claims Inroads in Managing Litigation Spend

### I. Introduction

In an age of data transparency, carriers and panel counsel have an opportunity to make an inroad in how they both assimilate and use claims data to improve efficiency in resolving matters and mitigating legal spend. The ultimate goal is to make the data easy to use and understand, using tools that draw attention to problem areas that will assist in moving toward faster resolution of matters.

There are baseline metrics that are widely used and other measures that are not regularly collected. We are underutilizing simple tools that will assist in understanding data from a claims severity perspective and facilitate taking ownership of metrics. In referring a law suit, carriers should always classify suits by line of insurance in the suit referral process in order for panel counsel to aggregate and report data according to the carriers' insurance lines. There is no room for ambiguity in data and simple corrections to processes will ensure data integrity in reporting.

### II. Widely Used Baseline Metrics

Performance data collected and how often it's required varies with each carrier. Although reporting can range from monthly, quarterly and bi-annually, reporting quarterly may be preferred and reasonable for carrier and panel firms alike. The most widely captured metrics that provide baselines on performance include legal spend, indemnity paid, matter age for open, cycle time for closed and ratio of expense to indemnity. Reporting can be as simple as delineating insurance lines or matter type by legal spend, average legal spend, percentiles and testing for outliers. However, there are additional metrics that will help flag problems regarding costs or whether further timekeeper training is required.

### III. Less Commonly Tracked Key Performance Metrics

There are a number of critical metrics less commonly tracked that allow firms to create a repository of useful data overtime on matters.

**Budget Reconciliation** will assist carrier and panel counsel in gauging how realistic budgets are. The differential will show whether the budget underestimates or overestimates the legal spend, and will illustrate any significant differences based on types of matters or timekeepers and pinpoint areas where further training may be needed or further data is required for setting appropriate budgets. Understanding what certain matters cost by task code or phase of the lawsuit along with benchmarks assists panel counsel in setting realistic and more accurate budgets for various lines of litigation.

**Firm Assessment of Exposure versus Indemnity Paid** will pinpoint concerns for panel firm and timekeepers in assessing factors involving nature of case, jurisdiction, case evaluation and determining case value.

**Result Obtained.** Collecting and reporting results of each matter including acceptance of proposals for settlement, summary judgments, defense verdicts, dismissals and settlements will assist firms in understanding how effective strategies are and the likelihood of outcomes by matter type. For panel counsel, reporting the results obtained by litigation or insurance line conveys your value and will red flag problem areas by practice area and timekeeper.

**Results by the Phase of a Case** is collected less often as case management systems may not be set up to capture and automate information by stage. Reporting performance data by phase of case allows defense panel and carriers to gauge legal spend by milestone and use alternative fee arrangements effectively. Baseline metrics by each phase, pleadings, discovery, dispositive motions, pretrial after close of discovery, trial and post trial phases helps in determining matters budget and setting alternative fees that are profitable for both insurer and panel counsel.

**Reconciliation of Settlement Cycle Time and Case Closure** assesses how long it takes on average for the case to close after it's settled. Knowing this red flags problem areas for efficiency in closing matters or timekeeper concerns.

**Timekeeper Ratio** on matters enables you to assess who is doing the work, leverage associates and paralegals for commodity work and calculate net effective rates for offering profitable alternative fee arrangements.

**Litigated versus Non-Litigated Matters.** Most case management systems may not be set up to delineate between litigated versus non-litigated matters in reporting baseline data. This data is invaluable in illustrating trends for case types and hours billed on non-litigated matters.

#### **IV. Tools for Easy Assimilation of Data**

Oftentimes carriers require panel firms to provide separate data files for open and closed matters. This is inefficient and may keep panel firms from understanding an entire portfolio of assigned matters and the resolution. With unique identifiers such as claim number or matter number, it's more useful to aggregate in one data file both open and closed matters assigned in a given year.

There are simple tools for easy assimilation of data. Excel Pivot Tables will take an entire portfolio of assigned open and closed matters and allow users to see resolution and pending by key summary metrics. Pivot tables may be used to have timekeeper input explanations for hindrances to resolving matters and suggest strategies for resolution. Using applied conditional formatting in spreadsheets will help draw attention to matters that meet specific severity criteria that require an explanation and action from the panel firm. Conditional formatting reads the data in the file and simply changes the appearance of rows and cells calling out attention to problem areas.

#### **V. Data Integrity – Don't Skip These Steps**

- a. **Define Clearly The Parameters Of The Data Required.** Provide specific instructions about the data collected. For example, let users know to provide settlement and/or loss information only with respect to the insured for whom you provided representation. Let them know **not to** provide settlement or loss information which includes contributions by other parties. Advise of any changes to the data file that might corrupt the spreadsheet. Clear instructions with no room for ambiguity means better data.

- b. **Classify Cases By Insurance Line in Referral Process.** If you want performance data correctly reported by insurance lines, make sure handling adjusters or claims examiners classify matters by insurance line on the suit referral form or process. Otherwise, panel counsel may classify claims according to how they define the case type. It impacts your data integrity when analyzing metrics by a line of business. Leave no room for ambiguity in your data, synchronize your terms.
- c. **Build a Quarterly or Annual Review Into the Relationship.** Require both parties to present and represent their data much like a thesis and build this review into the engagement. Carriers should be prepared to share their own benchmark data back in the aggregate across lines of insurance. Let panel firms know how others panel firms compare with baseline metrics. If you want your panel firm to own and understand its data, they must defend it like a thesis in a review meeting.

## **VI. Disseminating Data and Getting Timekeepers to Own and Understand it**

It's easy to be inundated with data. Getting timekeepers to understand their metrics and yield improvements involves putting in place new processes and protocols. For Luks and Santaniello adding an Attorney Compliance Officer, establishing a quantitative administrative team and having Relationship Partners lead client team meetings has provided timekeepers with resources for greater consistency and efficiency in moving matters toward resolution.

Monthly client team meetings serve as a forum to review client protocols, client philosophy, discuss and assimilate case metrics, review budget reconciliation and pinpoint areas where additional attention is required. Senior timekeepers share and exchange a repository of information with new timekeepers on how clients want their matters handled regarding discovery, reporting and closing files. Administration mines data and assists timekeepers in evaluating performance to metrics. The Attorney Compliance Officer monitors reporting, billing, matter budgets, trains timekeepers and discusses recurrent areas of non-compliance in meetings.

Finally, United States Liability Insurance Group (USLI) utilizes litigation management email blasts to communicate new programs and share and exchange its philosophy with panel counsel. The message is reinforced by USLI at every coaching opportunity with panel counsel.

## **VII. Data Intelligent – Claims Inroads with Performance Data**

Here are several initiatives in using data and establishing protocols that led to claims inroads for carriers and panel counsel.

**Protocols for Filing MSJs.** Research on the average cost to bring a Motion for Summary Judgment (MSJ) led USLI to establish goals and protocols for filing MSJs on the right cases and for the right reasons. The protocols require assessing chances of success and providing a cost benefit analysis of filing the MSJ. Panel Counsel have to show prior success with filing a similar MSJ in the past and substantiate case exposure. The budget prior to the MSJ being filed has to be agreed upon with the claims examiner.

**Early Resolution and Mediation.** Approximately ninety-seven percent of claims settle or are dismissed, only three percent proceed to trial. USLI implemented a campaign focusing on early resolution and mediation of its matters and established new protocols and revised reporting forms to assist defense panel in posturing cases for early resolution/mediation. The objective is to promote informal discovery exchanges and fact gathering, strategize with the claims examiner and move matters

to resolution quickly. The new tools including a mediation check list and forms that assist in proactively preparing a case by gathering substantive information within 30 days of assignment to formulate a case strategy for early resolution. Supplemental forms are used at 90 days thereafter.

**Expense Authority Management.** Expense authority management is necessary for proper reserving and is an excellent tool for the examiner and counsel to discuss the next steps in the defense of the insured. USLI instituted protocols for Expense Authority Management intended to improve efficiency and accuracy in setting case reserves. Panel counsel is responsible for contacting the claims examiner to advise when billing has reached the prior authorization amount or is likely to exceed the prior authorized amount before any additional billable expense will be reimbursed.

**Flagging Cases with Matter Age 18 Months.** Luks and Santaniello has automated its case management systems to report performance data on matters in the aggregate. Reporting cases with matter age 18 months and older assists in flagging cases and having timekeepers explain factors delaying resolution and suggest strategies for resolving matters.

**Settlement Cycle Time Reconciliation.** Monitoring and reconciling the time between when the case settles to closing helps improve efficiency by identifying problems, issues with timekeepers or lines of litigation.

**Compliance Repository and Timekeeper Remuneration.** Adding an Attorney Compliance Officer has assisted Luks, Santaniello in monitoring and tracking any recurrent non-compliance for status reporting, protocols and billing. This assists in pinpointing any needed supplemental training. We are moving toward a performance review system tied to matter efficiency and associating metrics and compliance in evaluating and rewarding performance.

## **VIII. Conclusion**

Getting timekeepers to understand their data, assume ownership of and expedite resolution of matters is crucial in mitigating legal spend. Data should be simple and transparent to timekeepers. Disseminating data and using tools that draw attention to matters meeting severity criteria and requiring an explanation and action from timekeepers will assist them in understanding their matters, taking ownership of metrics and moving matters beyond hurdles to resolution. Timekeeper meetings should serve as a forum to discuss and assimilate metrics, review client protocols, client philosophy and recurrent areas of non-compliance that require additional attention. Current technologies may be used in meetings to assist timekeepers in reviewing and understanding data. Senior timekeepers may share and exchange a repository of information with new timekeepers on how clients want their matters handled. Collecting and sharing strategies and suggested improvement for programs enables both parties to realize efficiency.

As part of the relationship between carriers and panel firms, both parties should provide mutual evaluation of effectiveness in an annual review process where panel firms present and explain their performance and carriers share benchmark data in the aggregate across lines of insurance.