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IMPROVING OUTCOMES THROUGH RELATIONSHIPS**

Keeping firm name on short list for outside counsel

Strategies for addressing shrinking counsel lists

As carriers continue to evaluate options concerning efforts to better align panel counsel lists with current needs and fit both by practice area and geography, counsel should also consider a strategic plan to retain or grow their practice. Some practice areas have seen dips in claim volume and carriers continue to evaluate whether they will write business in particular venues and if particular business lines fit within their strategic plans. Accordingly, claims departments follow and will periodically evaluate panel needs.

As competition increases, so does the importance of effective client communication. There are various effective strategies to communicate with clients ranging from individual efforts to large scale communications. Regardless of scale, relevant communication is paramount. Periodic beneficial communication about practice updates or claim/venue trends can be very effective in keeping firm names in front of carriers. Relevant changes in the law or lessons learned from a recent trial can provide practical insights to claims professionals that are often appreciated. Conversely, inundating people with the unusable or irrelevant information can be detrimental to communication efforts. At best such ineffective communication can become spam.

Recently, a large carrier decided to create an in-house coverage team to streamline coverage question issues. Such decisions impact the need to engage outside counsel on

coverage matters for routine issues. However, even when such work is brought in-house, opportunities still exist. When services are no longer essential, questions of value and how services are differentiated should be asked by both carrier and firm.

Carriers expanding captive counsel programs

Some carriers have moved further towards the captive counsel model. Carriers will continually evaluate whether such strategy is a good fit based upon claim volume and overhead decisions. Such decisions often impact the need for outside counsel.

Carriers writing more excess policies

There has been a trend of some carriers to write fewer policies from dollar one and focus on instead writing excess policies. Coinciding with those decisions have been a continuing risk transfer to larger commercial clients. Now it is common for large commercial enterprises to have some initial layer of risk. As some carriers have modified their approach to moving to higher coverage layers in excess of either other insurers or above high deductibles, many large commercial enterprises are managing their own first layer of risk either in-house or with a third-party administrator.

Differentiating your firm and value-added services

CE/Education Programs

One great and mutually beneficial way firms can differentiate themselves and provide value-added services is through educational programming. Claims professionals, and lawyers, require continuing education credits to maintain active licenses. Many states have mandatory annual continuing education licensing requirements. Such states include New York, Florida, and Texas among others.

Education provided can be topical on practice area or could include a geographical focus. Assisting clients in ensuring their licenses are up to date and meet the various state requirements is an excellent way to show knowledge and provide a valuable service to the client.

Free coverage advice example

One large carrier works with a firm that provides a predetermined amount of time on a particular day every month where coverage questions can be asked by claims professionals and the carrier will not be billed for the discussion. While no one is advocating for a free-service model for providers of legal advice, there are clear benefits to both the carrier and the firm.

From the carrier side it allows routine questions to be addressed or to learn the issue may warrant further attention. Occasionally, but not always, the question will progress into a new assignment to the firm. However, often the discussion resolves the issue for the carrier. The carrier sees that the firm: a.) is dedicated to going above and beyond, b.) is a creative partner and problem solver, and c.) builds good-will for the firm.

For the firm there is also benefit beyond any good-will. The firm learns more about common issues the client is experiencing which may also be common issues faced by other clients or other potential clients. This permits the firm to identify better CE education opportunities. Additionally, the firm develops better rapport with claims professionals they may otherwise not have relationships with.

Rate increases and broadening partnership

Conversations over rate adjustments or increases are often much easier when there are concrete examples of how the firm's services are not cookie-cutter. Including an explanation of how additional value has been provided with any rate increase request goes a long way. Moreover, having examples of where additional value has been added to the carrier which helps justify any requested increase makes such conversations easier to manage.

Managing panel counsel to maintain quality and improve outcome

Panel Meetings/Conferences

One effective way to communicate expectation and improve outcomes is through panel counsel meetings. Many organizations, such as CLM, permit or even encourage carriers to hold panel counsel meetings in conjunction with their conferences. Taking advantage of those opportunities to meet in person with panel counsel can be invaluable and mutually beneficial. Other options include organizing and planning panel counsel meeting.

From the perspective of panel counsel, panel meetings are informative and provide guidance from the carrier that can be invaluable to better aligning firm practices with carrier preferences. Some carriers have even moved to including CLE credits as part of their panel meetings which adds tremendous value to panel counsel who attends the meetings. Additionally, the meeting provide an opportunity for firm members to interact with claims professionals which positively impacts the working relationships between claims professional and counsel.

Mutual Sharing of Metrics between Firm and Carrier

Another way to improve quality is through sharing of metrics. All carriers and many firms are attempting to improve results through tracking metrics. Metrics have become a tool for litigation managers, general counsel, claims professionals, and others who regularly purchase legal services. As the process has evolved, metrics have played an important role in controlling litigation management. Metrics provide an unbiased basis for evaluating quality and value and also provide the ability to compare results. In many ways, metrics created a new language for assessing performance. The goal has been to eliminate, to the extent possible, making decisions based upon “feelings” or even “best guesses.”

Of course, some metrics are subjective and others objective. Further, different purchasers of legal services monitor different metrics or even value different metrics differently. Similarly, law firms also collect different data, value data differently, and often track information differently from clients.

As the topic has evolved, the impact of metrics has been significant in the world of litigation management. Metrics have caused carriers to evaluate counsel differently. Metrics have caused outside counsel to evaluate their own delivery of services differently and have changed the relationship between client and carrier.

The three top metrics observed by insurers, according to a LexisNexis survey, include (1) average total cost per case, (2) legal expense per case, and (3) cycle times (days to resolution). The impact of metrics on claims management has allowed for better budgeting for the total legal spend, has increased the speed in claims resolution by providing more clarity in the beginning of claims on what the insurer can expect to pay, and has improved the standards for self-evaluation of claims.

Metrics have also impacted law firm management. Significantly, more firms are conducting their own internal evaluation of data collected. The ease of pulling the data today is far simpler than in the past. A benefit from digital recordkeeping has permitted firms of all sizes to more easily retain and evaluate critical data. Analyzing data now impacts how legal services are billed, and how counsel are compensated.

Openly sharing that information is invaluable to the relationship between carrier and firm. Some firms may not be tracking data in as a sophisticated manner as some carriers do. Having an open relationship and being transparent about trends being observed will be appreciated by the firm and provide a guide for improvement.

Avoiding invoice reduction/decoding invoice review process

While always a hot-button issue, it is important to remember that carriers are not interested in unnecessarily cutting bills. When properly prepared, bills are paid in full for

the services provided. However, if not properly prepared, legal bills are increasingly coming under scrutiny.

Telltale signs of properly prepared bills are when they can be reviewed, and the bills tell the story of the case. When bills can be examined by an outsider and the story of the case is clear and some legal strategy can be identified through a reading of the bills it is clear that the bills have been properly prepared.

Often bills come under scrutiny for inadequate explanations or work that appears to be unnecessary and redundant. Some problems can be traced back to firm staffing models. When more than one partner and one associate work on a particular case, often billing problems can develop. While some cases require additional staffing, routine cases that are being juggled between multiple partners and associates frequently come under scrutiny. Often the issue is rooted in multiple lawyers spending extra-time familiarizing themselves with routine issues.

Modifying development approach

Frequently during client development, counsel interfaces with various individuals from parts of the carrier's organization. Knowing your audience is important. Legal Operations may be less interested in firm experience handling a particular type of claim. Where a claims professional who has been inundated with a particular type of claim may be very interested in understanding experience and strategy defending the claims. Equally important is knowing the carrier's business lines. Researching various business lines and researching whether the carrier operates in your geographical market is relevant information to develop.