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“Defining Success Between Law Firms and Insurance Carriers”

I. Introduction

The relationship between insurance carriers and law firms has changed over time. With emerging technology and increased pressure to reduce costs, carriers’ expectations of law firms and the methodologies for law firms to service carriers effectively have also undergone significant change. This paper provides an inside look into how carriers measure their own performance and the practical ways that a law firm can contribute to the success of the carrier in a way that results in a productive and beneficial relationship.

II. Carriers’ Goals and Measurements of Their Own Success

Profitability and Financial Metrics

As one would expect, one of the main goals and measurements of a carrier’s success is profitability. Carriers generally set their own benchmarks and metrics to measure profitability or the financial success of the company. As to the claims operation, a key metric is the combined expense ratio which is defined by the cost to administer the claim versus the collected amount of premium. The cost to administer the claim includes vendor costs and indemnity along with operating expenses. The total ROI (return on investment) is another metric consisting of underwriting profit, defined as the earned premium remaining after losses and expenses are deducted plus the amount of investment income earned. There are other metrics that measure aspects of the carrier’s financials other than profitability. These metrics include percentage recovery amounts made versus incurred in the subrogation setting and the fees incurred versus total final incurred and fees incurred versus highest total incurred in the defense setting.

Accurate Assessment and Reduction of Exposure

Carriers need to be able to assess their exposure in the case very early in the process so they can set aside their reserves and make internal decisions. Some carriers need a realistic assessment within 120 days. Carriers may have an internal metric that requires them to stay within a certain percentage of that initial assessment. This will be tracked on an individual file basis and as an average across the board for all of their claims. Carriers do not like to be surprised by finding out something about the claim or the

defense which they should have known prior and which changes the valuation of the claim. Common metrics utilized by carriers include reserve accuracy (first reserve versus incurred at closure) and first fee reserve versus actual fee at settlement.

Although carriers are concerned about costs, they recognize that many times it is worthwhile to spend money up front in early claim investigation and defense as this will translate to better settlements and outcomes when the case is closed.

Customer Service

Carriers are always focused on customer service. Carriers want to service the insured in a way that translates to the insured being a repeat customer. Carriers will generally seek feedback from the insured risk manager on service quality. Defense counsel can impact if the insured comes away from the claim with a favorable impression as to the Carrier.

Other Internal Metrics

Carriers utilize a number of additional metrics to measure their internal processes. These metrics include static claim volume and value, number of days from first advice to first reserve/final settlement/first indemnity payment/final closure, number of days from final indemnity settlement to closure, response times, queries, incomplete transactions, open lead claims per adjuster and movements per adjuster.

III. Carriers and Panel Defense Firms' Communications on Performance

Carriers are spending more time now than ever before on vendor management. Many carriers have vendor management teams reviewing portfolios of defense firms. In the 2015 CLM Litigation Management Study General Report, many executives (45%) reported using a combination of subjective and objective criteria to measure their law firms' performance. In addition, when executives were asked to identify on a scale of 1 – 10 whether their performance criteria was closer to cost management (expenses only) or loss cost results (expenses plus indemnity), the average score (6.21) indicated criteria more akin to loss cost results.

In trying to impact the carrier's success, it is important that the firm connect to the specific individual or team within the company that manages that specific firm. This is an opportunity for firms to determine the specific goals and metrics of the carrier and for the firm to adjust its services accordingly. The CLM study indicated that approximately 87% of industry executives are willing to share data regarding the firm's performance; therefore, this is an opportunity for firms to engage in a meaningful dialogue with the carrier regarding the quality of work product and services delivered and the carrier's overall satisfaction with the firm.

Although respondents to the CLM study indicated that they would be willing to share performance results with firms that request that information, currently there is a lack of broader industry data against which firms can benchmark their performance metrics.

Industry action to make this data available would provide a basis for measuring firms on a broader basis and lead to improved performance.

While some carriers will initiate regular communication regarding performance with their top firms, this is not the norm. It would benefit firms and the industry for firms to make it a practice to report on their performance, both as to the matters specific to the carrier and more generically as to the firm's overall performance, on a regular basis. This reporting would address the key metrics set out in this discussion and can be done at the time of file closure and on a composite basis at year end or key points during the year.

IV. Methods for Panel Defense Firms to Impact Carriers' Success

A basic measure of a law firm's contribution is the cost-benefit analysis which compares the total spending on a claim versus the improvement to the ultimate outcome. The cost-benefit analysis can be difficult to measure depending on the uniqueness of the case. In the 2015 CLM Litigation Management Study General Report, executives were asked to name "one thing that you wish your outside firms did a better job of, that would make them stand out in their peer group, and that would make your life easier." Their responses included following carrier guidelines and protocols, providing their own performance metrics, improving communication, deeper understanding of the carrier's businesses, performing their own quality control, embracing technology and eliminating paper, publishing jury trials and wins/losses, being more proactive/creative, focusing more on resolution, treating the relationship with the carrier as a partnership, utilizing non-discovery and non-traditional methods to price a file, keeping cases with partners and experienced members of the firm, improving budgeting and improving prediction of outcome. While these responses are wide and varied, a number of categories emerge based on this study and the experiences of other professionals in the claims and litigation management industries.

Consistency

One of the ways that firms can demonstrate consistency is through the development and adoption of internal workflow and decision tree processes. Carriers like the ideas of workflow and decision tree because it is more analytical, process-oriented and objective, rather than subjective human decision-making and narration. The risk for firms that utilize the work flow and decision tree model is that firms may be faulted by the carrier for not strictly adhering to their own workflow and decision tree design. Realistically, due the uniqueness of claims, variations will often need to be followed in the implementation of workflow and decision trees.

Eighty-seven percent of respondents to the CLM survey took the position that they viewed their relationship as one with the attorney over the law firm. One of the reasons for this response may be the lack of consistency within firms. The use of work flow and decision trees, particularly when engrained in the claim handling of the firm with the use of technology, is a significant step in providing the consistency which enables carriers to select firms with confidence, regardless of the individual attorney handling the case.

Communication

Firms can add value to the carrier through constant communication. At a minimum the level of communication meets the standards set out by the carriers claim handling guidelines. Benefit can be gained from the law firm instituting more robust communication requirements across the firm. Of utmost importance is prompt communication regarding any event or finding that may change the valuation of the claim. In addition, it is important for firms to communicate the strengths, weaknesses, and other pitfalls in the case as early as possible. Firms can benefit from using technology to assure that all reporting deadlines are met. An internal auditing program that also provides transparency to the carrier on the law firm's compliance can be an effective communication tool.

Transparency

One of the ways that firms can demonstrate transparency is through the use and presentation of metrics. The 2015 CLM study indicated that claims professionals desire that firms prepare, present, and use metrics about themselves. These metrics include ROI (dollars spent in relation to improved outcome), average loss cost by type of loss, final disposition amount vs. counsel's initial evaluation, budgeted to actual expenses, relationship between cost and indemnity, average hours by timekeeper and success rate of motions. Additional metrics include information regarding jury trials conducted in the last year, the ratio of associate versus partner work, the top areas of legal expertise and the percentage of billable hours in each of those areas, average hours/fees billed on closed files, and average pending suit life.

A related method of transparency is through scorecards sent to the carrier with metrics for all cases assigned by the carrier to the firm. These statistics include rates, hours, top billers (most to least), and cases/lines of business with top spending per quarter, top litigation activities, and outcomes. When firms readily provide this information, it keeps the carrier from having to request it and helps the carrier determine if it is meeting its own internal goals/metrics. The firm's self-reported data also gives the carrier information against which to measure the accuracy of its own data. Finally, some firms prepare Claim Manager Reports for top management at the company which highlight the most important issues in the cases assigned by the carrier. This information can be useful from an underwriting and risk management point of view.

Cost Efficiency

Firms can demonstrate cost efficiency in many ways, namely, through technology. Most carriers desire electronic billing. In addition, more and more firms are becoming truly paperless in their operations. The efficiencies that can be obtained through use of technology are constantly expanding and improving. Carriers expect that law firms will have an internal process of continual improvement that embraces technology. This requires that the law firms invest in a work force that is technologically savvy and willing

to undergo constant change, characteristics that have not existed traditionally in many firms.

Quality Work

It is easy for firms to focus on the mechanics of handling a claim and forget or diminish the importance of quality work product. Quality work product is the price of admission. It is a given, but without constant attention and internal processes, it can slip away. Carriers recognize and value quality work product, particularly when it results in favorable outcomes. An example of quality work product is efficient and thorough investigation of a claim from the outset. This effort up front translates to seizing the initiative, better reserving, and better settlements and end results.

Innovation

Carriers are looking for firms to demonstrate their own innovation and document how the firm is unique. As noted above, the CLM study reported that by and large, executives still adhere to the philosophy of hiring “the attorney” vs. “the Firm.” However, executives are also looking for new ways for firms to describe their value and performance as a whole. One area where firms may demonstrate innovation in case handling is through development, implementation and automation of work flow and decision tree analysis.

Continuing Education Courses

By offering continuing education courses to the carrier’s claims professionals, the firm can provide valuable knowledge to claims professionals regarding recent trends and the legal ramifications of claims handling. In this way, the firm is helping the carrier steer clear of potential pitfalls in their claims. This interaction also allows for another form of communication between the carrier and the law firm, enhancing the relationship thereby providing the opportunity for enhanced results.

V. Conclusion

The factors that contribute to a carrier’s success are wide and varied; however, many of the factors are influenced by the law firm’s handling of claims. Implementing internal processes for consistency in claim handling, producing metrics of their own performance and engaging in meaningful conversations with the carrier are just a few of the ways that a law firm can have a substantial impact on the carrier’s success and enjoy a relationship with the carrier that is mutually beneficial.