



About the 2015 CLM National Litigation Management Study

With nearly 30,000 members and fellows, the CLM is the industry's leading trade association for litigation and claims professionals. This Study, like all CLM activities, is designed to promote and further the highest standards of claims and litigation management.

The last CLM National Litigation Management Study was performed in 2011. It has now been updated to reflect industry changes. The Study's approximately 80 questions are designed to capture the "State of the Union" in the litigation management industry, exploring how litigation executives are deploying resources, thinking about law firm performance, using staff counsel operations (when applicable), addressing cost and quality issues, and facing new industry challenges.

The Study is being administered by CLM Advisors, the consulting arm of the CLM. All data obtained is confidential. The results of the Study will be released in a Report and also presented at the March 2015 annual CLM conference.

Importantly, the Study's questions were developed with the input of senior claim and litigation executives from a diverse group of organization. The Study's Steering Committee members include:

- Michael Reid, Director of Litigation, Subrogation and Medicare, Accident Fund Holdings
- Claudia Cinardo, Vice President, Claims Litigation, ARCH Insurance Group
- Linette Ranieri, Chief Claim Officer, Berkley Life Sciences
- Julianne Splain, Chief Claim Officer, CapSpecialty
- Wayne Marshall, Assistant Director, U.S. Litigation Management Program, Catlin Insurance
- Michael Zeoli, Vice President and Manager, Litigation Management Unit, Claims, Chubb & Son
- Dean Harring, Advisor, CLM Advisors
- Al Luther, Vice President, Claim Audit and Litigation Management, CNA Insurance Companies
- Christopher Carucci, Vice President, Litigation Management, Everest National
- Chris Shelley, Senior Vice President, Liability and Property Practice, Gallagher Basset Services
- Helen Gillcrist, Senior Vice President and Manager, Enterprise Legal Services, Liberty Mutual
- Mike Lancashire, Chief Claim Officer, Main Street America Group
- Nick Conca, Managing Director, Claims, Markel
- Larry Beemer, VP, Claims Management Litigation and Specialty Claims, QBE North America
- Greg Steele, Executive Claims Manager, Head of North America Claims, SwissRe
- David Conner, Vice President and Chief Claim Officer, United Fire
- Daniel Winkler, Leader, Claims Legal, Westfield Insurance

Requests to participate in the Study, or any questions about it, should be directed to: Taylor Smith, President, CLM Advisors at 224-212-0134 or taylor.smith@theclm.org



The State of the Union: Litigation Management in 2015

*A discussion with senior litigation executives about
current and developing Litigation Management
Practices*

A Claims and Litigation Management (CLM) Alliance Study

A Note to Study Participants about Confidentiality

Dear Study Participant:

CLM Advisors is performing a state-of-the-industry survey for the Claims and Litigation Management (CLM) Alliance. With nearly 30,000 members and fellows, the CLM is the industry's leading trade association for litigation and claims professionals. The results of this Study will be shared at the March 2015 CLM Annual Conference.

The benefits of this Study, both to you and to your industry colleagues, are directly tied to the candor with which participants share their views. As such, we want to emphasize that your **responses to this Study are completely anonymous**. While all respondent organizations will be listed alphabetically in the Study index, specific responses will not be tied to your organization, or to you, nor presented in a way that would identify the data associated with your specific organization. No quotes will be attributed to you without your explicit authorization.

Our last industry-wide Litigation Management Study, performed by Revere Advisory in 2011, garnered responses from more than 50 senior litigation and claim executives. Our objective for this Study is to increase that data set significantly. As such, your participation in this Study is very much appreciated by the CLM, and by each of your industry colleagues.

Please do not hesitate to call me directly if you have any questions about the confidentiality of your responses. Thank you again for your support.

Sincerely,

M. Taylor Smith

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Section A: ABOUT YOUR ORGANIZATION

Note to Participants: Questions about size, volume, and inventory are used for sizing categorization only.

1. Please provide a general approximation of your organization's annual outside legal fees.
(Defined to include outside legal fees only. Please do not include costs related to staff counsel operations):

Selection	In \$ MILLIONS, annually
A	< 5
B	5-20
C	20-45
D	45-75
E	75-150
F	150-300
G	300-500
H	500-750
I	750-1000
J	1 BILLION +

2. If your organization maintains a staff counsel operation for purposes of defending claims against policyholders, please estimate the amount of “legal fees” attributed to that operation. This can be defined as the overall amount charged back to files or simply a broad estimate of salaries associated with staff counsel attorneys. (Please do not include costs for coverage counsel units.)

Selection	In \$ MILLIONS, annually
A	< 5
B	5-20
C	20-45
D	45-75
E	75-150
F	150-300
G	300-500
H	500-750
I	750-1000
J	1 BILLION +
K	Don't Know
L	Not Applicable – We have no Staff Counsel Operations

3. Do you believe any one specific “line of business” constitutes more than 50 percent of your litigation portfolio (spend)? Yes / No

4. If the preceding question is “yes” please identify that line of business:

_____ (example: “workers comp”)

5. Does your organization have a specific DEPARTMENT, UNIT, or DIVISION dedicated to Litigation Management?

Yes / No (If No, skip to Question 14)

If yes, what do you call this Department or Unit? _____

6. What is the TITLE of the person who is in charge of this Litigation Management Department or Unit?

7. What is the TITLE of the person to whom the person responsible for the Litigation Management Department REPORTS?

8. How many employees are in your Litigation Management Department?

9. Is this employee count more or less than it was 3 years ago?

_____ more

_____ less

_____ same

_____ don’t know

10. Of the employee count you provided above, what percent of those positions do you estimate to be focused primarily on individual invoice review or invoice-related activities (as compared to non-invoice related activities)?

_____ %

11. Do you anticipate that you will be adding to the staff count in your Litigation Management Department in the next 12 months?

a) _____ yes

b) _____ no

12. Does your company have litigation that is managed outside of the U.S. (i.e. international litigation)? _____ yes _____ no

13. If you answered “yes” to having international litigation, do you consider your litigation management department to be responsible for your non-US spend as well? _____yes _____no _____N/A

Explain: _____

14. **Approximately**, how many “pending” (open) litigated cases do you consider to be in your current litigation inventory? _____

15. Is this inventory count more or less than it was 3 years ago in your Company?

_____more

_____less

_____same

_____don't know

16. If you reported a change to your inventory count vs. 3 years ago, what is the primary reason for this change in your view?

- a) _____ **Underwriting Changes** (i.e., we are writing more or less business and have more or less claims as a result)
- b) _____ **Environmental / Cultural Changes** (i.e., people are less or more inclined to sue in the current environment)
- c) _____ **Changes in the Law** (i.e., tort reform or other changes to people’s ability to bring suit)
- d) _____ **Claims Management Strategies** (i.e., we are resolving more or less cases prior to lawsuit)
- e) _____ **Litigation Management Changes** (i.e. we are finding it easier or more difficult to get our claims resolved during litigation)
- f) _____ **Other:** _____

Section B: ABOUT YOUR RELATIONSHIPS WITH LAW FIRMS

17) Do you maintain a “Panel” of pre-approved law firms to manage your litigation?

- a) Yes
- b) No

18) If yes, roughly how many firms are on your approved “panel list” of firms?

Selection	Number of Law Firms
A	< 20
B	20-45
C	45-75
D	75-150
E	150-300
F	300-500
G	>500

19) Is the number of firms currently on your panel more or less than it was 3 years ago?

- _____more
- _____less
- _____same
- _____don't' know

20) How many distinct (separate) firms do you estimate your Company actually assigned cases to in the last 12 months (or last calendar year)?

Selection	Number of Law Firms
A	< 20
B	20-45
C	45-75
D	75-150
E	150-300
F	300-500
G	>500

21) Approximately how many new case assignments do you estimate you make to external law firms per year? _____

22) Approximately what % of those assignments do you estimate are made to law firms on your pre-approved “panel” list?
 _____%

23) Approximately what % of your annual total legal fees you pay each year are paid to law firms on your pre-approved “panel” list (vs. “insured-select”, CUMIS, or non-panel firms generally)? _____%

24) Over the past 12 months, please estimate how many firms you removed or added to your formal list?

REMOVED -- I estimate we removed _____ many firms from our panel list in the past 12 months.

ADDED -- I estimate we added _____ firms to our panel list in the past 12 months.

25) What statement best describes your timing for adjusting your approved panel?

____ Quarterly

____ Twice a Year

____ Annually

____ Every Two Years

____ As Needed (no formalized time-frame)

____ Other (_____)

26) Compared to five years ago, how good a job are your panel firms doing in terms of “understanding your needs?”

____ Doing better ____ Doing Worse ____ Doing About the Same

27) Compared to five years ago, how are outside firms doing when it comes to “creating value” for your organization? (Defined as you wish)

____ Doing better ____ Doing Worse ____ Doing About the Same

28) Please rank your general perception of law firms’ ability to describe their value (competitively) and to distinguish their firm from other firms. (1= law firms do a poor job of describing their value / 5= law firms do an excellent job of describing their value)

1 2 3 4 5

29) When it comes to complying with your billing guidelines, compared to 3 years ago, how do you feel your law firms are doing?

_____ better _____ worse _____ about the same

30) Broadly stated, is it your Company's philosophy that you are hiring the firm or the specific attorney?

_____ firm _____ specific attorney

31) Compared to three years ago, do you feel that your organization is using "alternative fee arrangements" with your law firms more, less, or about the same?

_____ more _____ less _____ about the same

32) Thinking about the next five years, do you believe your organization's use of alternative fee arrangements will be:

_____ much greater than they are now

_____ much less than they are now

_____ about the same as they are now

33) Compared to five years ago, what is your perception of the environment that law firms are operating within? Is it:

_____ more competitive _____ less competitive _____ about the same (in terms of competitiveness)

34) Compared to five years ago, do you feel that your Company’s relationships with its law firms are stronger, weaker, or about the same?

_____ Stronger. Our partnerships with firms, on the whole, feel stronger.

_____ Weaker. It feels more difficult to establish true partnerships with firms.

_____ The Same. It feels about the same as it’s always been.

35) Name one thing that you wish your outside law firms did a better job of, that would make them stand-out in their peer group, and that would make your life easier?

36) Do you formally “measure” your law firms’ performance? _____ yes _____ no

37) Would you categorize your overall performance measurement criteria as:

_____ more objective than subjective

_____ more subjective than objective

_____ a very good combination of objective and subjective criteria

38) Would you categorize your performance criteria as weighted more heavily on cost management or loss cost results?

1 = our criteria are heavily weighted toward cost management (e.g. **average legal fees per case type**)

10= our criteria are heavily weighted toward **loss cost results / indemnity payment levels**

1 2 3 4 5 6 7 9 10

39) Please name up to 3 non-cost related metrics that you capture about your law firms:

Non-Cost Related Metric #1: _____

Non-Cost Related Metric #2: _____

Non-Cost Related Metric #3: _____

**40) On a scale of 1 to 10, how “comfortable” / “confident” are you with your process for measuring your firms’ performance?
1- (not much at all) to 10 (extremely): _____ / 10**

41) If a firm asks for the performance results you have about their performance, will you share that information with them?

____yes ____no

42) In your view, do law firms ask for enough information from you about their performance for your Company?

____yes ____no ____don’t know

43) Do you have “go-to” lawyers or firms whom you turn to when you are “really in trouble” on a case? ____ yes ____ no

44) When you turn to these “go-to” attorneys or firms, how important are their fees to you?

____ money is no object

____ within limits, money is not as important

____ they have to operate within the same guidelines as all of our firms

45) Name up to three (3) attributes that you believe make an attorney or firm a “go-to” firm:

Attribute 1: _____

Attribute 2: _____

Attribute 3: _____

46) Name up to 3 things that a new law firm that wanted your business could say to you that would get your attention and make you want to learn more about them.

Item 1: _____

Item 2: _____

Item 3: _____

Section C: ABOUT STAFF COUNSEL (Insurance Companies Only)

47) Does your Company maintain a Staff Counsel Operation?

_____ Yes _____ No

48) If yes, does the Staff Counsel Operation report ultimately to the Chief Claim Officer or to the Chief Legal Officer (General Counsel)?

_____ Chief Legal Officer (General Counsel)

_____ Chief Claims Officer

_____ Other: _____

49) We have approximately _____ attorneys in our staff counsel operation.

50) For your entire policyholder-related litigation inventory, what is the approximate ratio of cases handled by:

Staff Counsel: _____%

Outside Counsel: _____%

51) Who makes the initial decision as to whether staff or outside counsel will handle a case?

_____ Claims Handler (the claims department decides whether to assign a case to staff or outside counsel)

_____ Staff Counsel (staff counsel has the right of first refusal on whether to take a case)

_____ Other: _____

52) **In your estimation is the use of Staff Counsel growing or shrinking in your organization compared to 3 years ago?**

- growing
- shrinking
- the same (no change in the past three years)

53) **Broadly speaking, do you believe that the use of staff counsel is more efficient in terms of cost per case than the use of outside counsel?**

- yes, staff counsel is more efficient in terms of cost per case than outside counsel
- no, staff counsel is not more efficient in terms of cost per case than outside counsel

54) **Broadly speaking, do you believe that outside counsel obtains better case results (ignore costs, i.e. settlement amounts, verdicts, indemnity paid) than staff counsel?**

- yes, outside counsel obtains better outcomes
- no, outside counsel does not obtain better outcomes

55) **Over the next 5 years, do you believe that the claims industry as a whole will use more staff counsel resources or less?**

- more – we will see a growth in staff counsel utilization
- less – we will see less staff counsel utilization
- same – we will see no change in the use of staff counsel

56) **Do you maintain scorecards for the attorneys or offices in your staff counsel operations?** yes no

57) **Do you require your staff counsel to track time?** yes no

58) **Do you ask staff counsel to follow the same reporting and process requirements that are in your outside counsel litigation guidelines?**

- yes no

59) Which statement resonates the most with you:

_____ we do a better job of measuring counsel effectiveness with outside counsel than with staff counsel

_____ we do a better job of measuring counsel effectiveness with staff counsel than with outside counsel

_____ our measurement of counsel effectiveness is just as good with both outside and staff counsel

Section D: ABOUT LITIGATION VENDORS and PROGRAMS

Please indicate whether your organization has implemented any of the following “Tools or Programs.”

Vendor Program or Resource	Description	We have a Formal Program (Y/N)	Approximate Number of Approved Companies	Perception of Value or Savings To My Company (1=low / 10= high)
3rd-Party Invoice Auditing	We use 3 rd party experts to review the invoices we receive from law firms and vendors			
Court Reporting Program	We have preferred providers (or an exclusive provider) of court reporting services			
Records Review Program	We have preferred providers (or an exclusive provider) of records review services (e.g. to index and summarize records)			
E-Discovery Program	We have preferred providers of E-discovery services for our attorneys (either external, staff counsel)			
Language Services Program	We have preferred providers (or an exclusive provider) for Interpreting Services.			
Service of Process Program	We have preferred providers (or an exclusive provider) for SOP services			
Formalized Panel of Experts	We utilize a vendor-managed panel of experts in certain lawsuit types (i.e. cause & origin)			

Vendor Program or Resource	Description	We have a Formal Program (Y/N)	Approximate Number of Approved Companies	Perception of Value or Savings To My Company (1=low / 10= high)
Mediation Services	We use a vendor-administered panel of mediators or arbitrators.			
Surveillance and Investigation	We have preferred providers (or an exclusive provider) for surveillance and investigative services			
Structured Settlement Services	We have preferred providers (or an exclusive provider) for structured settlement services			
Copy Services	We have preferred providers (or an exclusive provider) for copy services			
Jury Focus Group Program	We have preferred providers (or an exclusive provider) for jury focus group services.			
Dedicated Litigation Management Unit	All litigated cases or matters are handled by professionals who ONLY handle litigated files			
Litigation Management Technical Specialists	Our litigation is managed by front-line staff with other responsibilities; however, we use technical specialists to help front-line staff with their litigated cases.			

Vendor Program or Resource	Description	We have a Formal Program (Y/N)	Approximate Number of Approved Companies	Perception of Value or Savings To My Company (1=low / 10= high)
Legal E-billing Software	We use software to review and adjust law firm invoices			
Centralized Invoice Review Unit	We use an <u>internal</u> centralized, dedicated group of professionals to review all legal invoices			
Matter Management Software	We use software to track the events, notes, and progress of our lawsuits (For insurance companies this is separate from the primary claims system).			
Collaboration Software	Our matter management software is configured to allow our law firms to communicate directly with our staff, upload documents, and provide reports <u>within</u> our software.			
Alternative Fee Arrangements	We utilize Alternative Fee Arrangements (any arrangement different than a standard hourly billable – includes blended rates, fixed fees, volume discounts, and flat fees).			
Mandated Reporting Formats	We mandate the content and format of various status reports from outside counsel to our internal staff			

Formalized Counsel Evaluation and Rankings	We formally rank or create scorecards for all firms providing legal services to our organization.			
Law Firm Networks	We utilize and specifically select attorneys from law firm networks or alliances, such as the Harmonie Group, US Law Network, AFLA International, ILN, World Services Group, Meritas, and Themis).			

62) More often than not, does your organization use a dedicated Procurement Department to assist the claims or litigation department **select the law firms** that will serve on your pre-approved firm panel?

_____ yes _____ no

63) More often than not, does your organization use a dedicated procurement department to assist in the selection of **non-law firm litigation vendors**?

_____ yes _____ no

64) **Approximately how often are non-law firm litigation vendor programs evaluated and re-visited?**

_____ annually _____ bi-annually _____ every three years _____ As Needed (_____)

65) **How often do you believe such programs and initiatives should be re-revisited and benchmarked?**

_____ annually _____ bi-annually _____ every three years _____ As Needed (_____)

66) **Broadly speaking, do think it's better to maintain litigation vendor programs with one exclusive vendor, or several preferred vendors?**

_____ exclusive _____ preferred panel _____ it makes no difference

67) **Name up to two areas of litigation vendor management that we did NOT mention above (types of vendors or programs) that are an important part of your litigation management program, (or that you feel is emerging), that will be helpful in controlling litigation-related costs.**

Item 1: _____

Item 2: _____

Section E: TECHNOLOGY, METRICS AND TRENDS

68) On a scale of 1-10, how relevant are e-discovery costs as an emerging component of your overall litigation costs?

(1=not a significant component of our costs at all | 10=this is rapidly escalating cost for us)

1 2 3 4 5 6 7 9 10

69) Have you hired internal resources to address e-discovery functions or activities? ___ yes ___ no

If yes, describe: _____

70) Which statement best describes the focus of these internal e-discovery resources?

____ (For insurance companies) They assist only on e-discovery related to actions against the Company

____ They assist on e-discovery related to actions involving policyholder claims

____ They assist on both actions against the Company AND policyholder claims litigation

____ We are not an insurance company and do not have policyholder claims litigation

71) Please comment on the difficulty in finding qualified, expert claim staff to handle litigated matters (claims) within your organization.

In your view is it harder, easier or the same as it was five years ago? ___ Harder ___ Easier ___ The Same

72) On a scale of 1 to 5, please rank the current analytics and metrics that you have access to in terms of being helpful to measuring the overall performance of your litigation management program: (1=not very helpful / 5=very helpful)

1 2 3 4 5

73) What is the single most relevant metric that that you look at in measuring the overall performance of your litigation management program?

74) What single metric do you wish you had better access to, or that you could measure or define, that you currently cannot obtain?

75) Has the “Effectiveness” of your litigation management program been discussed with your organization’s CEO in the past 12 months?

_____ yes _____ no

76) In general, do you believe that spending MORE money on the defense of a lawsuit reduces the loss costs (indemnity) in that lawsuit?

_____ yes _____ no

77) In general, do you believe that higher hourly rates structures, (higher compensation to law firms generally), usually translates to a better result?

_____ yes _____ no

78) Compared to three years ago, do you believe your average costs per litigated case have increased, decreased, or stayed the same?

_____ increased _____ decreased _____ stayed the same _____ don’t know

79) Broadly stated, do you believe that, when compared to three years ago, “litigation management effectiveness” is getting more or less attention from your organization’s senior management?

_____ more attention _____ less attention _____ about the same

80) Thinking very broadly, what is the most important or relevant change, initiative or program that you intend to put in place in the next 12 months across your litigation management program?
