



2015 CLM Annual Conference
Palm Desert

**CUSTOMER DIALOGUES: UNDERSTANDING LITIGATION MANAGEMENT
DISCUSSIONS IN 2015 AND BEYOND: FOCUSED COLLABORATION ON LEGAL
SERVICES, FIRM PERFORMANCE AND SUCCESS**

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I. Establishing the desired litigation management objective (25 minutes)

The key to any effective partnership between an insurer or TPA and the insured/corporate customer is to establish and maintain a collaborative approach in addressing the customer's litigation needs pre and post suit, monitoring and measuring firm performance and outcomes, making changes in legal providers when necessary, and sharing quantitative and qualitative results to inform decisions.

This collaborative approach, which may be characterized as "customer dialogues," starts with understanding the loss history and expected claim and litigation volume of the insured/customer. In doing so, expectations from a claims and litigation management perspective are shaped, allowing all involved to set strategies and goals for pre-suit resolution and the handling of litigated matters.

Achieving "success" or quality outcomes on litigated files begins with the initial assessment of the case, setting a defined strategy and choice of firm. As each case brings a different set of facts, which can drive legal complexity or potential exposure, numerous factors must be considered and weighed when choosing the appropriate defense counsel.

A. Venue concerns:

We are all aware that certain states (and venues within states) have reputations for being conservative, liberal, or for/against businesses, and a history of large or small jury awards. The state and county in which

a case is filed should be carefully reviewed as it may play directly into the strategy of how a case is litigated.

B. Choosing the appropriate law firms – considerations:

1. Prior use and experience: What experiences have you or others at the company had with this firm? Has the firm handled a variety of cases of differing complexity? In general, did the attorneys provide good analysis, recommendations? Did the attorneys provide timely and impact status reporting, including a budget?
2. Specialty work versus general work: Is this the type of case which requires a firm who practices in a niche area or within a specific specialty?
3. Request for proposals (RFPs): When forming a national, regional or specialty panel, detailed and formal requests and the firm's responses can help to compare and benchmark firms' strengths and weaknesses.
4. Staffing models/philosophy: How does the firm staff cases? Are there multiple partners, associates and paralegals on files? Does the firm discuss the addition of timekeepers on a file prior to the work being completed and invoiced? Do they push work down to the lowest, but most capable timekeeping level?
5. Bench strength: Does the firm have other attorneys who could step in and try the case should the handling partner leave the firm, fall ill? Are there other attorneys who have similar specialty experience who could take over the case if needed?
6. Rates/Alternative Fee Arrangements: Does the firm use partners, of counsel, associates, paralegals, law clerks? What are the rates for each level? Is the firm willing to consider or perform work under a flat fee or other alternative arrangement?
7. Appropriate venue coverage and resources: Can the firm or panel of firms cover the geographic footprint of the state? Is there a firm located directly within the potentially problematic counties of the state?
8. Audit history: What has review of the firm's invoices revealed about their billing practices? Has the insurer/TPA audited the firm on-site and what were the results?
9. Guideline compliance/billing issues: Does the firm comply with the corporate/carrier/TPA guidelines? How does the firm respond to reductions in invoices due to non-compliance?
10. Metrics analyses (WIP, Closed Case Outcomes, Trending)

II. Litigation management oversight (Objective and Subjective review) (25 minutes)

Once the desired litigation management objectives are set, and a firm chosen, there are a variety of mechanisms and tools that can be employed to ensure that strategies, handling and desired outcome are aligned and achieved.

- A. Utilizing claim reviews: Such reviews present an opportunity for Risk Managers, Claims and the handling attorney to meet and level set on the procedural posture, strategy and going forward plan.
- B. Ongoing review of actionable metrics at the insured and firm levels:
 - 1. Monitoring spend on open inventory: Analysis of firm's average spend per case, year to date, as well as monthly spend, broken out by complex and non-complex cases, allows one to track trending and, if available, compare to closed case metrics.
 - 2. High dollar claims: Identifying, both at a firm and company level, new claims with either high potential exposure or pending matters which incurred significant expense; such reports allows for proactive monitoring and heightened engagement.
 - 3. Firm fees and expenses as compared to budgets: Review of "burn rate" which indicates a firm's actual legal spend versus budgeted plan. This oversight requires firms to update budgets, leads to better claim reserve practices and company cash flow forecasting.
 - 4. Firm labor rate/staffing: Monitoring average labor rates is one means of determining that firms are moving work to the most appropriate timekeeper level.
 - 5. Resolution metrics: Ability to report on the case disposition, which can then be used for analysis of firm performance, and to monitor whether the litigation strategies and corporate philosophy have been followed.
 - 6. Benchmarking data: Essential to compare firm and corporate experience across lines of business (WC/Auto), venues and complexity.
 - 7. Task code reporting: Analyzing billing at the task and activity code levels allows one to assess staffing and activity distribution.
 - 8. Other types of possible metric reporting.
- C. Corporate/Claims feedback – surveys
- D. Guidelines compliance, Errant Rate and Best Billing Practices: Monitoring a firm's guideline compliance and errant rate, while benchmarking against firms performing the same type of work, allows one to plan appropriate

follow-up and to ensure that the Company, firm and Claims are all synchronized with expectations and best billing practices.

E. Audits

F. Reassessing Panel strength and improvements given key states and trends.

III. The importance of communication (10 minutes)

Maintaining an on-going and open dialogue, and sharing information, should enhance the collaborative litigation management process for the customer, firms and insurer/TPA. Each party should be able to identify effective practices, as well as any areas needing improvement, and freely exchange this information. These discussions can take place through informal reporting (emails/calls) or more formal meetings. Teamwork is the key to success.