



The 2015 CLM  
Litigation Management Study

General Report

March 2015

Performed By CLM Advisors

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## **Introduction**

### **Thank You to Our Participants**

We wish to thank each of the claim and litigation executives who participated in this Study and who served on the Study's Steering Committee. Without your participation this Study could not have been completed.

Almost 80 chief claim and chief litigation officers provided their time to this important initiative, both to define the topics to be covered in the Study's questions, and to take the time to answer approximately 100 questions about their own organizations.

The dedication of those involved is a reflection of their commitment to the industry to their interest in promoting and furthering the highest standards of claims and litigation management. Thank you very much.

### **About the 2015 CLM National Litigation Management Study**

The last CLM National Litigation Management Study was performed in 2011. In 2015 our Study's questions were updated to reflect industry changes and to focus on emerging trends and litigation practices. The Study's approximately 100 questions were 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, addressing cost and quality issues, and facing new industry challenges.

In some cases, we have drawn comparisons to our 2011 findings. However, we view the Study as a point-in-time view of the industry and, given the relatively confined data set, we caution against drawing too many conclusions about then-to-now trends.

We encourage readers to use the Study for the primary purpose for which it was intended — as a framework and foundation on which all members of the litigation management industry — including claims organizations, legal departments, litigation vendors, and law firms — can collaborate and exchange ideas about how to promote the highest standards and best practices in our industry.

### **The Study's Steering Committee**

The Study was designed to reflect questions for the industry by the industry, and as such the participation of the Steering Committee was of critical importance. Members of the Steering Committee included:

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

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### Study Methodology

This Study was administered by CLM Advisors, the consulting arm of the Claims and Litigation Management (CLM) Alliance. Participants were given three options for how to provide answers to approximately 100 questions. Responding executives could: 1) complete an online survey; 2) manually complete and return a written questionnaire; or 3) provide verbal responses to each of the questions. Responses were given using all three methods.

All information gathered was then aggregated and de-identified. Particular care has been taken to ensure that no specific responses or data elements can be attributed back to any specific organization or participant.

### The Study's Underwriter

The costs of assembling the Study's questions, gathering raw survey data, analyzing participant responses, and preparing the Study's Report, were underwritten by ELM Solutions. No identifying or proprietary Study information was provided to ELM as part of their sponsorship of the Study.

We are exceptionally grateful to ELM for their sponsorship and support of this Study. ELM Solutions was formed through the merger of CT TyMetrix and Datacert, Inc. ELM has been a long-standing supporter of the CLM and the industry collaboration and educational resources that the CLM makes possible. ELM Solutions is a Wolters Kluwer business, providing transformational, technology-based solutions for the legal industry ecosystem.

### Study Participants

Almost 80 organizations participated in the Study. These included:

AAA Auto Club Group	Acadia Insurance	Accident Fund
Acuity Insurance	ALPS Corporation	American Alliance Casualty
American Integrity Insurance	American Resources Insurance	American Southern
American Trucking and Transportation Insurance	Amerisure	Arch Insurance
Argo Group	ARI Insurance Companies	Arrowpoint Capital
Badger Mutual Insurance	Berkley Agribusiness	Berkley Life Sciences
Berkley Mid-Atlantic Group	Berkley Professional Liability	Berkley Program Specialists

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Berkley Public Entity Managers	Berkley Regional Specialty Company	Berkley Southeast Insurance Group
CNA Insurance	CapSpecialty	Celina Insurance
Christian Brothers Services	Chubb Group of Insurance Companies	CityCounty Insurance Services
Claims Professionals Insurance	Colony Specialty	Continental Western Group
EMC Insurance	Employers	Everest Re
Farm Bureau Insurance Michigan	Farm Family Insurance Companies	Federated Insurance
Federated Rural Insurance Exchange	Fireman's Fund Insurance Company	Frontline Insurance
Gallagher Bassett Services, Inc.	Global Indemnity Insurance Company	Global Liberty Insurance Company
Grange Insurance	Grinnell Mutual	Hamlin & Burton Liability Management
Hanover Insurance Group	Housing Authorities Risk Retention Pool (HARRPP)	IAT Insurance Companies
IFG Companies	Infinity Auto Insurance	Jewelers Mutual Insurance Company
Kinsale Insurance	Lancer Insurance	Liberty Mutual
Main Street America Group	MAPFRE USA	Mennonite Mutual
Merced Property and Casualty Company	Merchants Insurance Group	Motorists Mutual Insurance Company
Nationwide Insurance	Navigators Insurance	North American Risk Services
PMA Companies	Republic Group	Riverport Insurance Company
RLI Insurance	Starr Companies	State Auto Insurance Companies

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Swiss Re	Texas Assn of School Boards	The Riverstone Group
UFG Insurance	United States Liability Insurance Group	Westfield Insurance

### Questions About the Study

This Report was authored by Taylor Smith of CLM Advisors. Questions can be directed to:

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## Key Findings

Key findings from the 2015 CLM Litigation Management Study:

- **Litigation management remains highly visible and critically important.** 77% reported that their organization's CEO has discussed program effectiveness in the last 12 months. 75% believe that their program effectiveness is getting more attention when compared to three years ago. 52% report that their departments are larger than they were three years ago.
- **Almost half (49%) report that litigation inventories have increased.** The primary reason for inventory changes is related to underwriting more (or less) exposures; however, other reasons for inventory changes are reported as well – including a heightened emphasis on early case resolution.
- **Those executives who maintain staff counsel operations in their organization think highly of their effectiveness.** 90% believe that staff counsel are more effective than outside counsel and only 16% believe that outside counsel obtain better results than staff counsel. 52% of this same executive pool believes that the industry as a whole will use staff counsel more than it does currently over the next five years.
- **Pre-approved outside firm panels continue to consolidate and shrink.** Most executives reported that their panels are smaller than three years ago, and more firms were reported as being removed from panels, rather than added, over the past 12 months.
- **Use of Alternative Fee Arrangements appears to be relatively flat.** 71% reported their use as “about the same” compared to three years ago, and 67% predict no change in their use over the next five years.
- **The relationship between outside firms and senior claim and litigation officers appears to be stronger.** 71% said that relationships are stronger than five years ago. 70% feel that firms are doing better in terms of guideline compliance; 70% feel that firms are “understanding their needs” better; and 58% feel that firms are “creating value” better than five years ago.
- **Despite these stronger relationships, the business landscape for law firms is perhaps more competitive than ever before.** 84% of executives believe that the environment is more competitive than five years ago. 84% do not believe that spending more on the defense of a lawsuit improves the income. 92% do not believe that using high-priced law firms translates to better results on a case.

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- **More executives believe that their average litigation costs per file have increased compared to three years ago.**
- **More executives than ever before are “formally measuring law firm performance.”** 64% of participants said that they formally measure firm performance. However, even as executives look to firms for improved metrics and quantification of firm performance, 84% of them say that they adhere to a philosophy of hiring the attorney and not the firm.
- **Attorneys are doing a very poor job of describing their value and distinguishing their firm from other firms.** Executives ranked firms’ ability to do this effectively as a 2.85 on a scale of 1 to 10. Further, firms don’t appear to be asking about their own performance. 80% of executives feel that firms are not asking enough for information about their performance.
- **There are a number of opportunities for firms that wish to describe their value more effectively.** One critical suggestion to firms that was repeated frequently by Study executives was that firms present their own metrics. This opportunity surfaced on numerous topics and questions throughout the Study. 99% of executives said that they have “go-to” firms they turn to on difficult cases. 67% of them said that the fees are “not as important,” to them when using a “go-to” firm.
- **This Study revealed a high penetration of litigation vendor programs across participant organizations.** This was true across more than a dozen service types, from court reporting to records retrieval services. This finding is particularly relevant because many of the participating organizations for this Study reported smaller spend levels overall. Payer organizations appear to have identified the benefits of taking a more active role in the selection of litigation support providers in order to manage cost and quality.
- **In terms of internal litigation management programs and initiatives, centralized invoice review and legal e-billing software ranked as two of the top three most valuable initiatives for these participating organizations.**
- **The next 12 months will see a continued focus on law firm effectiveness and performance.** Almost 90% of the executives identified as their “most important initiative” in the next 12 months a focus on tools or resources to help them measure law firm performance, scrutinize invoices, or otherwise manage legal costs.
- **Of the range of metrics identified as “the most important” in measuring litigation management success, the majority relate to average cost per case, average case cycle time, and the ratio of costs to indemnity outcomes.**

## Participant Demographics

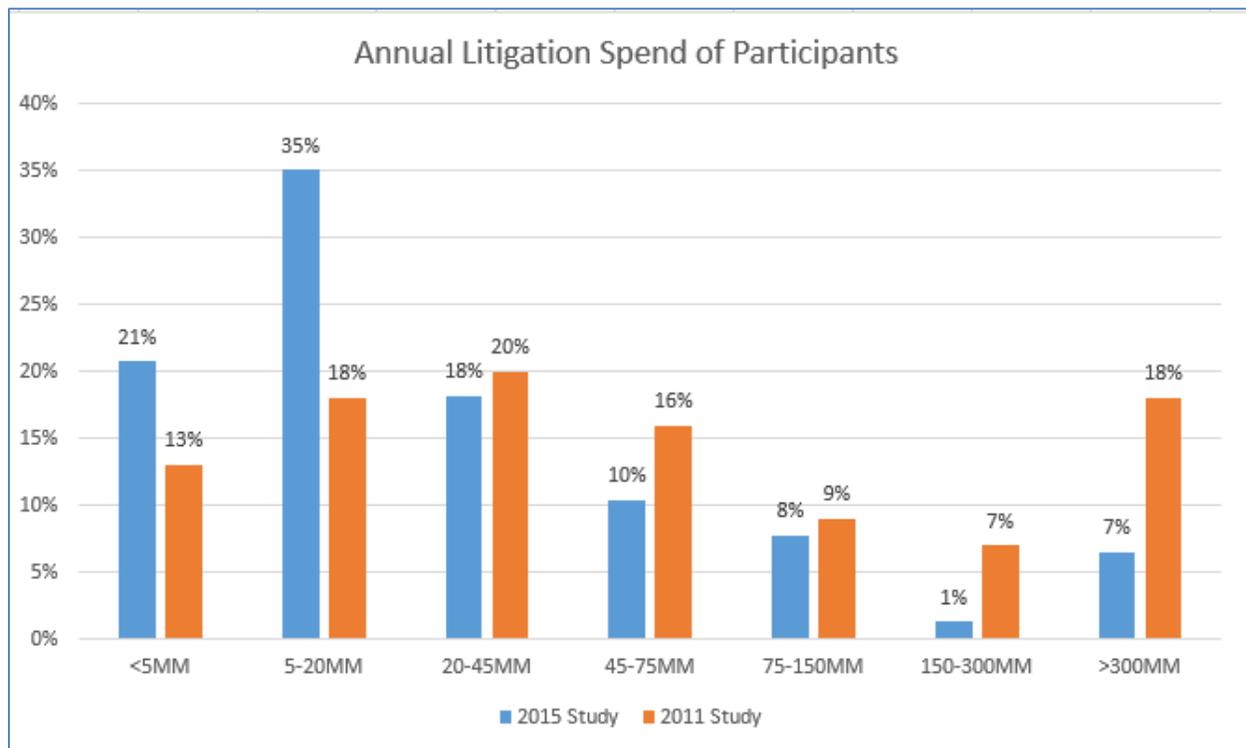
A primary purpose of this Study is to provide information that facilitates improved communication and working relationships between those charged with the management of litigation (claim organizations, legal departments) and the defense firms with whom they partner. We have found that it is not uncommon for attorneys, especially newer or younger attorneys, to feel that they would benefit from additional knowledge about the carriers, claim organizations, and businesses they work with.

How litigation executives organize their litigation resources, how they define their litigation objectives, and what they want most from counsel, are several examples of data elements that are critically important to aligning needs and expectations between counsel and their principals.

### Fees Paid to Outside Counsel

Estimates of total legal expenditures across the property and casualty litigation segment vary widely. Several sources put this amount at roughly \$25 to 30 billion annually. Claim organizations with legal expenditures of under \$45MM annually comprise a significant component of this overall spend. As such, particular attention was taken in this current Study to include more organizations in these categories.

This is an important point to take note of, since our 2011 Litigation Study had a larger number of organizations with higher legal expenditures. The inclusion of smaller claim organizations has an impact on many of the variables we look at in this current Study, such as the use of Staff Counsel, size of outside



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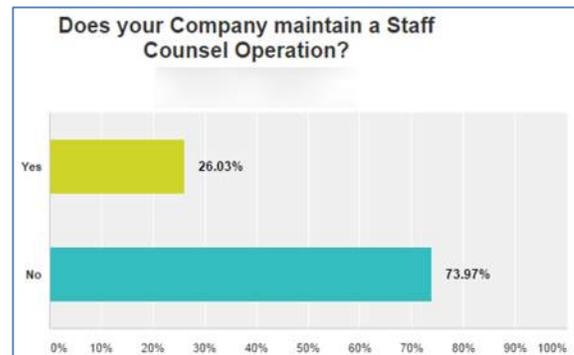
counsel panels and other factors. As such, we have been careful to not suggest “trends” when comparing data from 2011 to 2015.

Nonetheless, we do want to highlight the following major changes in participant profile from our prior Study:

	2011 Study	2015 Study
# of Participating Organizations	~50	~80
Annual Spend <\$45MM	51%	75%
Annual Spend > \$75MM	34%	16%

### Use of Staff Counsel

**Approximately one quarter (26%) of the organizations surveyed use staff counsel to participate in the defense of policyholder claims.** These organizations ranged in staff counsel size from one or two attorneys to as many as 800. The average staff counsel size was 87; the median size was 12.5. More information about the participants’ use of staff counsel can be found in the Staff Counsel selection of this report.



### Use of “Litigation Departments”

As expected, the inclusion of smaller organizations in the Study was reflected by the higher percentage (56%) of organizations that do not have a specific department, unit, or division dedicated to litigation management. This is not to say that litigation management is not important to these organizations; in fact for the majority of organizations without dedicated departments, the litigation function resides within the office of the

most senior claim officer.

For the roughly **44%** of companies with dedicated litigation departments, these organizational units are known by many different terms. These include: Claim Litigation, Claims Counsel, Claims Legal, Enterprise Legal, Global Claims Strategies, Legal Analytics, and (most commonly) Litigation Management or Litigation Unit.

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**Generally speaking these departments have high visibility within their organizations.** More specifically, the executives who run these departments report to the most senior executives in their company. Almost half (**47%**) report directly to the head of claims or chief claim officer. Another **16%** report to a corporate claims executive just below the chief claims officer. Almost **10%** report to the General Counsel.

**CEO Visibility** -- **Litigation effectiveness remains highly visible and critically important.** Almost eight of 10 participants (**77%**) reported that the effectiveness of their litigation management program has been discussed with their organization's CEO in the past 12 months. (This can be contrasted with our 2011 Study, in which **67%** reported this to be the case.)

More broadly stated, **three quarters of the respondents (75%) believe that their litigation management program effectiveness is getting more attention from their company's senior management than when compared to three years ago.** While some (**25%**) believe that the attention is unchanged, not a single respondent suggested it is getting less attention. In short, litigation management remains an important, highly visible and important function.



next 12 months.

### Department Size

**Litigation departments are growing.** More litigation departments are growing than shrinking. **52%** reported that their departments are larger than three years ago. **42%** have not changed in size in three years; only **6%** report that they are smaller in staff count.

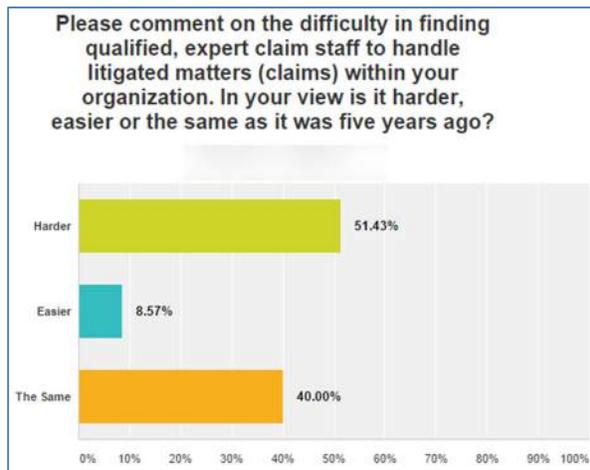
In terms of short-term departmental growth, about four out of 10 (**42%**) executives anticipate adding to departmental staff in the

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**Departmental focus has expanded beyond invoice review.** Historically, much of a litigation department's focus was on the review and adjustment of invoices from outside counsel. This has changed. On average, these participants reported that **20%** of the department's time is spent on addressing invoicing issues; the median ranking was even lower, at **10%**. Other areas of focus for these departments includes, depending upon the organization:

- Identification, selection, and management of panel counsel
- Measurement of program and counsel performance
- Identification, selection and management of litigation support vendors
- Other activities

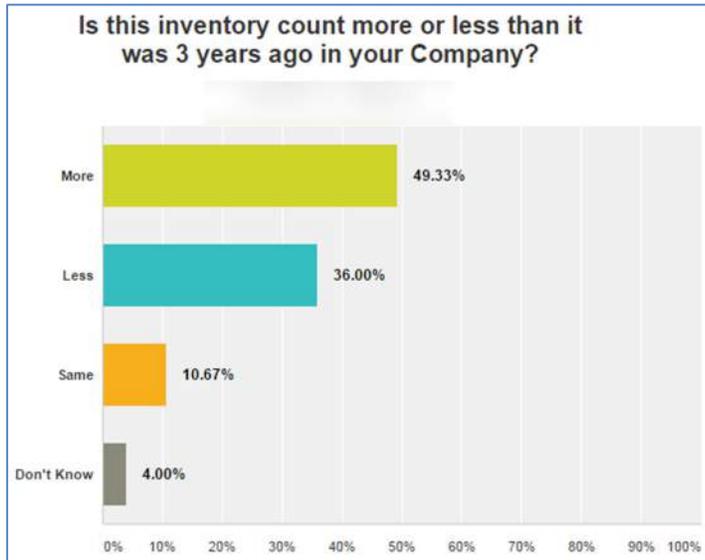


**Litigation Management Expertise** – One factor that may be relevant to the growth or decline of litigation departments is the perception of how difficult it is to find qualified, expert claims staff to handle litigated matters. When asked whether they believe it is harder or easier to find such staff when compared to five years ago, most said they find it harder.

### Litigation Inventory Size

Given the varied size of Study participant organizations, pending, open, litigation inventory counts varied as well. The average litigation inventory for this participant pool was 6,000 open litigated files; the median count was 980.

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**Litigation inventories have increased. Almost half (49%) reported higher litigation inventory than three years ago.** This may be, of course, great news to the industry's defense firms.

**36%** of participants said their counts have decreased; for **11%**, litigation counts are essentially flat. **4%** of the participants did not know.

The **85%** of participants who reported an increase or decrease in litigation counts provided different reasons for this change. The most common reason cited (**62%**) was simply that their company is writing more or less business and that their litigation has increased or decreased accordingly. Another **16%**, however, said their change was a result of an increased difficulty or ease in resolving claims in litigation or prior to litigation.

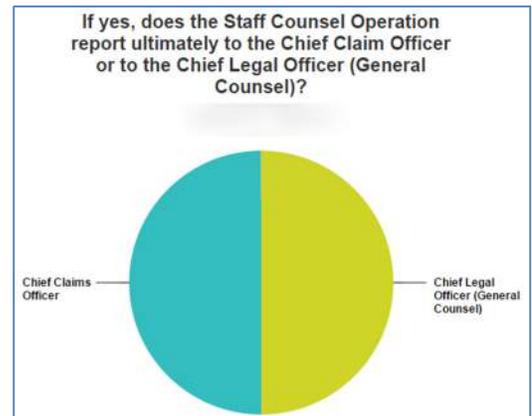
▼ Underwriting Changes (i.e., we are writing more or less business and have more or less claims as a result)	61.90%
▼ Environmental / Cultural Changes (i.e., people are less or more inclined to sue in the current environment)	4.76%
▼ Changes in the Law (i.e., tort reform or other changes to people's ability to bring suit)	4.76%
▼ Claims Management Strategies (i.e., we are resolving more or less cases prior to lawsuit)	6.35%
▼ Litigation Management Changes (i.e. we are finding it easier or more difficult to get our claims resolved during litigation)	9.52%
▼ Other (please specify) <span style="float: right; color: #0070C0;">Responses</span>	12.70%

## Use of Staff Counsel

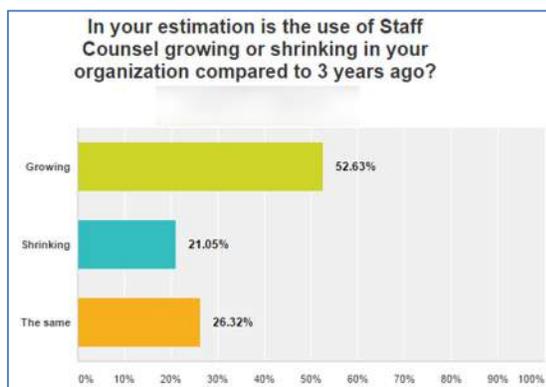
Approximately one quarter (**26%**) of the Study's participant pool maintains staff counsel operations. Given that a larger number of organizations were smaller than in our prior Study, with fewer cases under litigation and lesser legal expenditures, we found this number to be larger than expected.

**The following questions were asked only of executives whose organizations currently have a staff counsel operation.**

**Reporting Relationships – Organizations were equally split in staff counsel control, between claims and legal.** Exactly half of these organizations have staff counsel operations reporting to the General Counsel; the remaining half have staff counsel reporting to the Chief Claim officer.



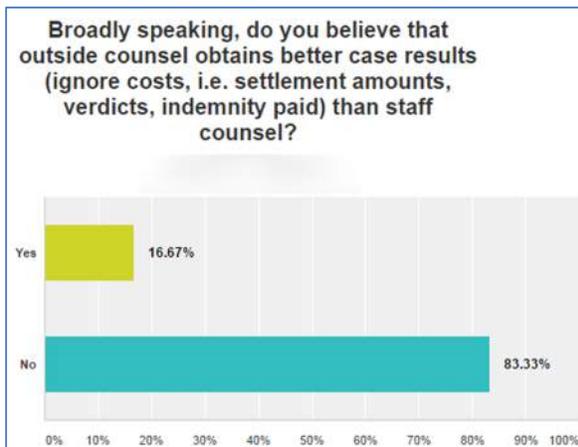
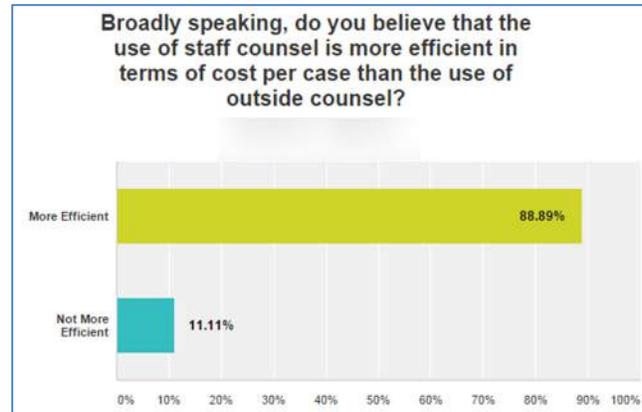
**Staff Counsel Size –** These staff counsel operations ranged from very small (just several attorneys) to very large (more than 500). **The average number of attorneys in this particular group of staff counsel operations was 87. The median count for these operations was 12.5.**



**Staff Counsel Growth – Staff counsel utilization (in those organizations that have staff counsel) is up over three years ago. 53% reported growth; 26% reported no change, and 21% said they use staff counsel less than they did three years ago.**

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**Efficiency** – Is staff counsel more efficient? **90% of those executives with staff counsel believe so.** They said that the use of staff counsel is more efficient in terms of costs per case than the use of outside counsel.



**Outcomes** – Do outside counsel get better outcomes than staff counsel? Those with staff counsel don't think so. Only **16%** of those executives with staff counsel operations believe that outside counsel obtain better case results than staff counsel.

**New Assignments Ratio**– In organizations where staff counsel is used, **the split between cases assigned to staff vs. outside counsel was reported to be, on average, 40:60.** That is, **40%** of cases are assigned to staff counsel and the remainder to outside firms. These answers differed widely, based on organizational size and other factors. In some larger organizations, staff counsel may receive as many as **85%** of all new case assignments.

**Right of First Refusal** – **Approximately 45% of organizations using staff counsel reported that the claims department makes the choice of whether a new file is assigned to staff counsel.** **40%** reported that the staff counsel organization has the right of first refusal for new cases. However, **15%** reported variances in how this is handled (i.e., different by line of business or size of exposure).

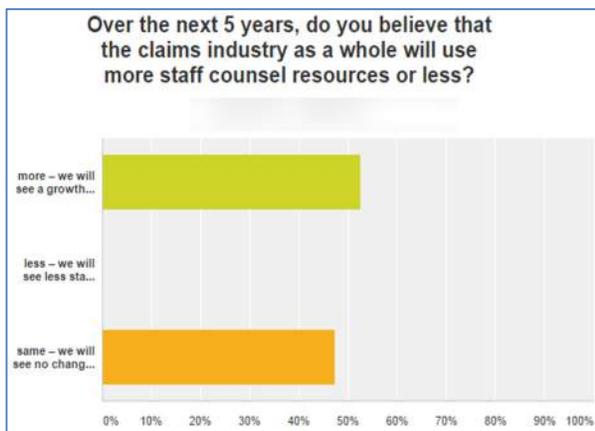
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**Measuring Staff Counsel Effectiveness** – More than half (56%) of executives with staff counsel operations believe their organizations do an equally effective job measuring the performance of both staff and outside counsel. However, 39% felt they do a better job of measuring outside counsel than staff counsel. Only 5% believe they do a better job of measuring staff counsel.

▼ We do a better job of measuring counsel effectiveness with outside counsel than with staff counsel.	38.89%
▼ We do a better job of measuring counsel effectiveness with staff counsel than with outside counsel.	5.56%
▼ Our measurement of counsel effectiveness is just as good with both outside and staff counsel.	55.56%

**Other Staff Counsel Program Attributes:**

- **Scorecards**  
56% maintain performance scorecards for the attorneys or offices in their staff counsel operation.
- **Tracking Time**  
42% require staff counsel to track their time.
- **Same Litigation Guidelines as Outside Counsel**  
79% require their staff counsel to follow the same litigation requirements in their outside counsel litigation guidelines.



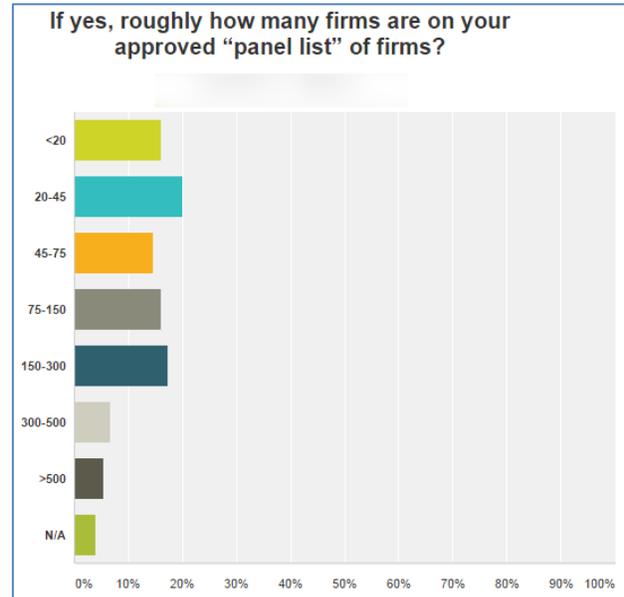
**Growth of Staff Counsel** – From the perspective of the executives currently using staff counsel, the use of staff counsel resources is expected to increase. When asked, “Over the next five years, do you believe the claims industry as a whole will use more staff counsel resources or less.” 53% felt that utilization of staff counsel would be greater; the remainder (47%) felt staff counsel would be used about the same amount. **None suggested that utilization would be less.**

## Use of Outside Counsel

**Use of Panels** –Almost all (**96%**) of executives participating in the Study said that their organizations use a “panel” of pre-approved law firms to defend their litigation. The size of these panels vary widely, as can be seen in the Figure to the right.

Possibly as a reflection of the smaller organizations participating in this year’s Study, the most commonly cited panel size (**20%**) was 20-45 firms, followed by 150-300 firms (**17%**).

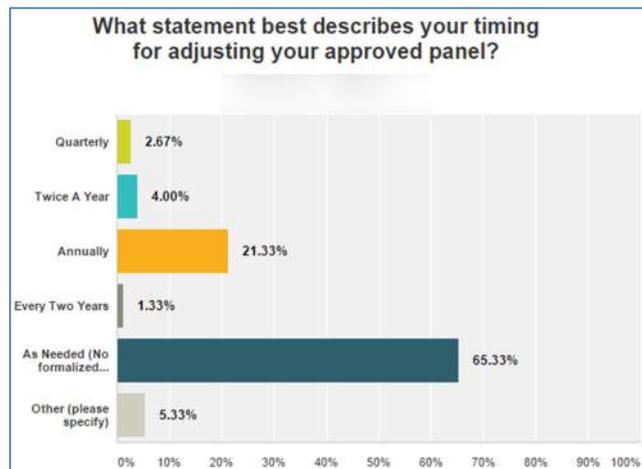
**Panels Are Shrinking** – More organizations reported that the size of their panel counsel list is smaller, rather than larger, when compared to three years ago. **36%** said their panel has fewer firms than three years ago; **29%** said it has more; and **25%** reported it to be the same in size.



Answer Choices	Average Number	Total Number
Added: Responses	14	901
Removed: Responses	22	1,572

As validation that panels are not currently getting any larger, Study participants reported that in the past 12 months, they have removed an average of 22 firms each from their panels, while adding an average of 14 each.

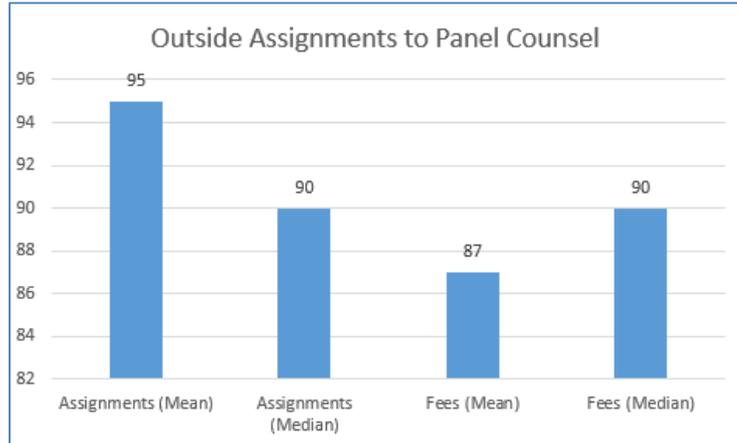
**Timing of Panel Changes** – It may encourage many firms to know that, in most cases, the participating organizations did not report a routine time for adding (or removing) counsel from panel lists. **While one in five (21%) do this annually, 65% do this on an “as needed” basis.**



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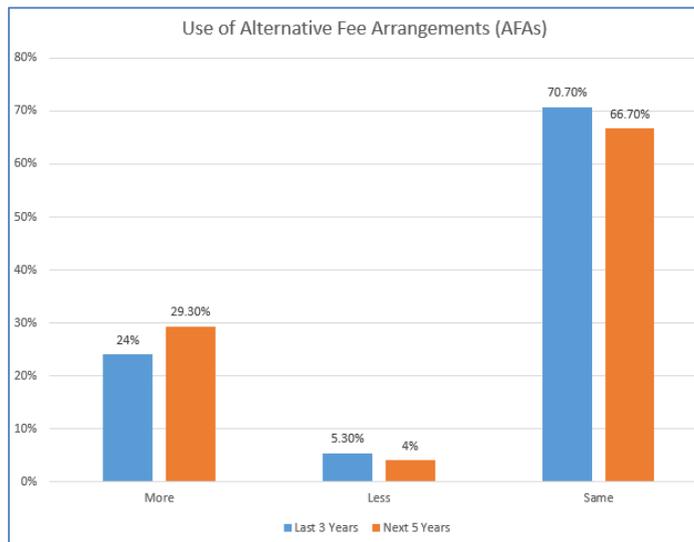
**New Assignments** – Study participants reported that they assign an average of almost 1,800 new litigated files to outside counsel per year (median = 400).

An average of **95%** of these files actually get to panel counsel (median of **90%**), with an average of **87%** of fees making it to panel firms. The remainder are assigned to insured-select, “Cumis,” “Peppers,” general conflict and other non-panel firms.



However, to be “on the panel,” as many firms are well aware, is not necessarily to receive cases. **40%** of respondents said that they actually assign new cases

to much smaller subset of panel firms – and in some cases a significantly smaller subset of “core” firms. In other words, from a panel of 75-150 firms it is not uncommon for an organization to use a core set of 20-45 firms.



**Use of Alternative Fee Arrangements (AFAs)** – We found

that the majority of executives feel that there has been little change in the use of AFAs in the past three years, and that most executives do not anticipate much change over the next five years.

Specifically, **71%** of respondents said that their organization’s use of AFAs is “about the same” when compared to three years ago. **24%** said that their use of AFAs has increased.

Projecting over the next five years, **67%** of executives anticipate no change in their use; **30%** believe they will be used more.

## Outside Counsel Performance

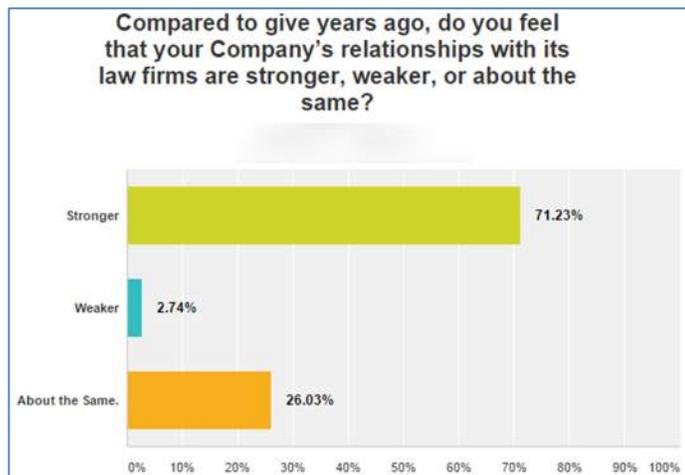
The chief claim and litigation officers who participated in the Study were asked to comment on a variety of general “sentiments” about their outside firms, their philosophical orientation toward defense counsel generally, and the perceived “performance” of their defense partners. Each of these topics is exceptionally informative for defense firms who wish to understand better their principals in the tri-partite relationship, and the orientation of these executives.

### Some Great News for Law Firms

For law firms that service this market segment, a number of positive perceptions emerged from the Study.

**Relationships Overall – Relationships with outside counsel are perceived to be stronger.**

**Roughly three out of four executives (71%) suggested that their relationships with outside law firms are stronger than they were five years ago.** About one quarter feel that these relationships are “about the same.” Less than three percent reported weaker relationships.



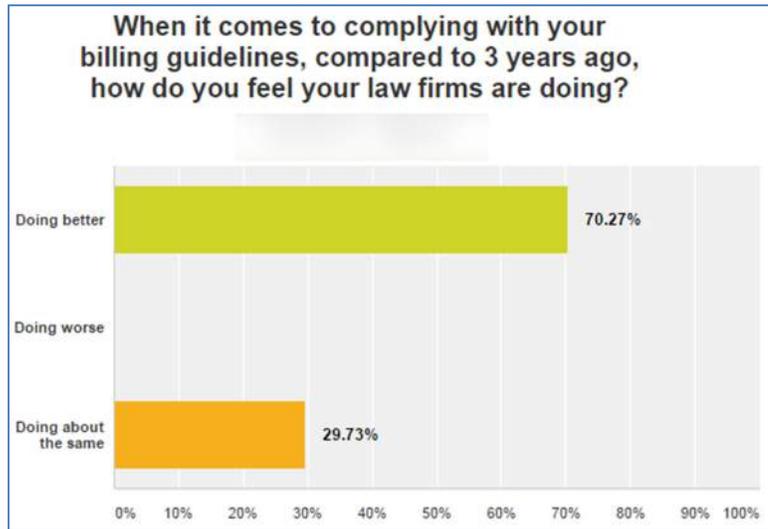
**Understanding Client Needs – Executives perceive that outside firms are doing a better job of understanding their needs.” Roughly 70% of these executives feel that is the case, when compared to five years ago. 28% feel that firms are doing “about the same;” Less than 2% feel that firms are doing worse.**

**Creating Value – 58% felt that firms are doing a better job of “creating value” (defined as the executives chose) than five years ago. 39% felt that firms are doing “about the same;’ roughly 3% felt that firms are doing a worse job in this respect.**

### Improved Guideline Compliance

– 70 % of executives also feel that firms are “doing better” when it comes to compliance with outside billing guidelines.

As we know from other survey work that we have done, billing compliance and the ongoing dialogue related to invoice accuracy and adjustments remains a frustrating area of focus for most law firms. As such, while their payers may feel better about guideline compliance, firms may feel differently.

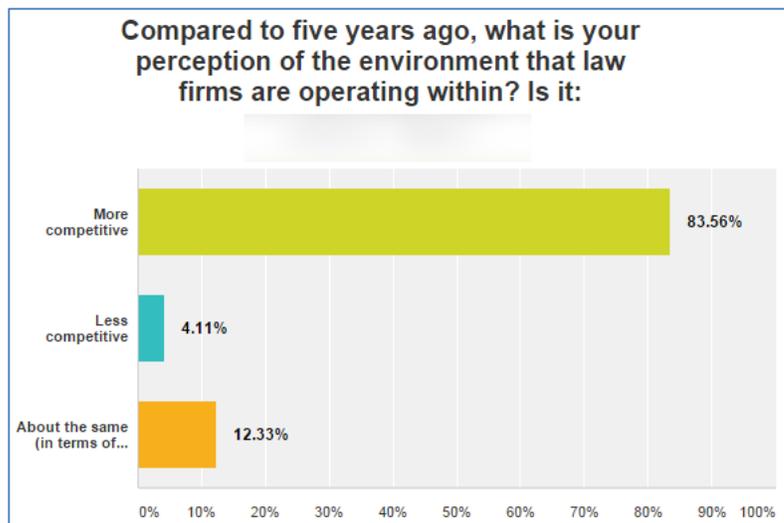


### Some Challenges for Law Firms

Most law firms will acknowledge that the world feels more competitive to them in today’s environment. Challenges to the status quo, and certainly changes to “the way things have been”, have come in many forms. It may be of some comfort to firms to know that their payers in this property and casualty insurance defense segment also feel that the environment firms operate within is significantly more competitive.

**Law Firm Competition – The landscape for law firms is perceived to be more competitive for law firms than five years ago.**

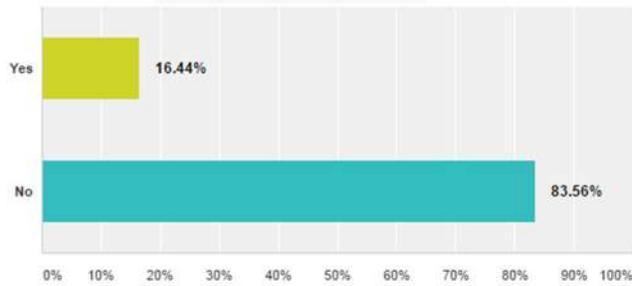
Claim and litigation executives have a clear appreciation for how competitive the landscape is for law firms in today’s environment. An overwhelming **84%** believe the environment is more competitive.



Understanding how firms can be more effective in a more competitive environment was an important part this Study. Part of that effectiveness requires a core understanding of the biases and philosophical orientations that industry executives bring to the table. Here are several of them.

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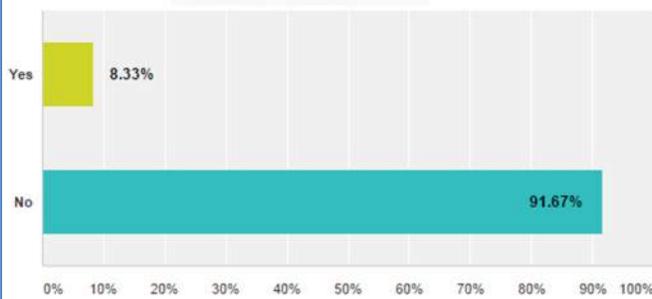
In general, do you believe that spending MORE money on the defense of a lawsuit reduces the loss costs (indemnity) in that lawsuit?



**Spending More on Defense** – Executives overwhelmingly do not believe that spending more money on the defense of a lawsuit reduces the indemnity costs of that litigation. 84% said they felt this way. Fewer than one out of six (16%) feel that spending more on defense translates to better loss cost results.

It might be ideal for firms generally if these executives equated additional legal work on a file to an improved outcome, but this does not appear to be the case.

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



**Higher Legal Rates** – Executives also do not equate higher compensation for law firms to getting better results on a case. 92% of these executives do not draw a direct correlation between higher hourly rates and getting better results.

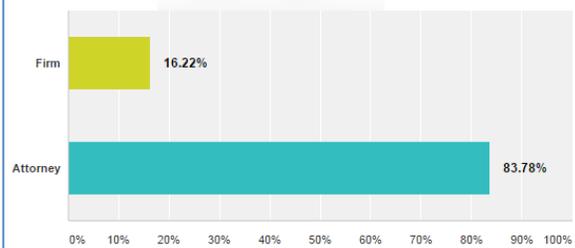
This may be problematic for firms who believe that their ability to get better results should equate to higher compensation structures.

**Firm vs. Attorney** – Executives still adhere to a philosophy of hiring “the attorney” vs. “the Firm.”

Though this is not really bad news for firms, it is important that attorneys understand this philosophical orientation.

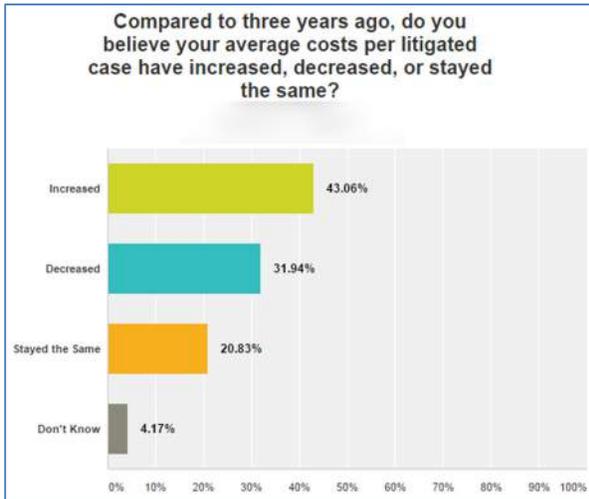
Notwithstanding this perspective, executives are also looking for new ways for firms to describe their collective “value” and “performance” more effectively (see below).

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



Some other general perceptions may create a challenge for firms. Among these is the perception that overall litigation expenses, as a function of average costs per file, are rising.

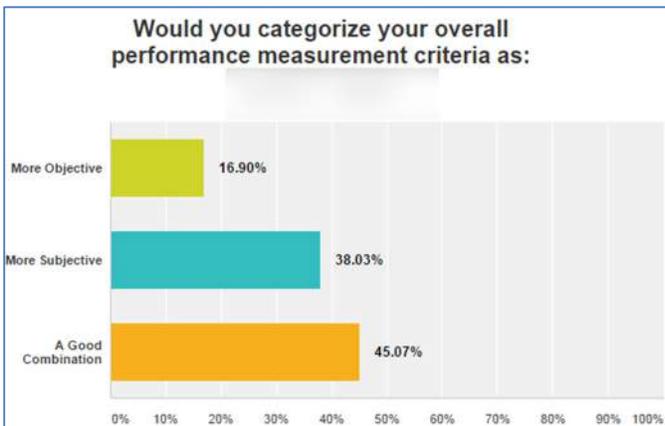
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**Costs Per Litigated Case** — More executives feel that costs per litigated file have increased than decreased. **44%** believe that, when compared to three years ago, average costs per litigated case have increased.

**32%** believe they've decreased, and **20%** believe they are the same. The remaining **4%** did not know.

Perhaps as a result of the new resources and technology available to them, or as a result of increasing litigation costs or continued focus on the importance of litigation management, more executives than ever are working to formally measure their firms' performance.



**Performance Measurement** – **64%** of participants said they “formally measure” their law firms’ performance. When asked to define whether their measurement is more subjective or objective, most (**45%**) felt their processes are a very good combination of subjective and objective criteria.

Respondents were also asked to identify whether their performance criteria is more weighted toward cost management or “loss cost results.” On a scale of 1-10, with 1 being expense management, Study participants rated their own criteria is being closer to loss cost results. The average score was a 6.21 (median = 6).

It is important to note that, on the whole respondents score their own comfort level with their performance measurement processes as a 5.69 (median=6) out of 10.

**Law Firm Improvement** – Each executive was 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.”

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Participants provided almost 80 suggestions, many of which overlapped in content, but which might be summarized as follows:

<b>What Executives Wish Firms Did a Better Job Of</b>		
<i>Follow our guidelines / protocols / show us that you're following our guidelines</i>	<i>Provide their own metrics about their performance / Provide year-end self-evaluations using metrics / Provide metrics that mirror how companies view performance</i>	<i>Improved communication / more timely reporting / better reports / better involvement of policyholders</i>
<i>Deeper understanding of our businesses</i>	<i>Perform their own quality control</i>	<i>Embrace technology more / Eliminate paper / Call or email instead of letters</i>
<i>Publish jury trials they've had / Publish wins and losses and reasons for each</i>	<i>Be More Proactive / More creativity / Think outside the box / Work files for resolution, not trial / More resolution focus</i>	<i>Treat our relationship as a partnership / Add value / Identify emerging issues</i>
<i>Use non-discovery, non-traditional methods to price a file</i>	<i>The ones that stand out do so b/c they make us feel valued and make our work easier</i>	<i>Keep cases with partners / keep cases with most experienced firm members</i>
<i>Only bill us when we're successful</i>	<i>Tell us what we need to hear, not what we want to hear / Outline better our risk/reward options</i>	<i>Better budgeting / better prediction of outcome</i>

Several items that stood out in the answers to this question included a frequent mention, really for the first time, of a desire for firms to prepare, present and use metrics about themselves. A second very common response related to timely reporting, and an overall desire note to have firms conduct “rote” discovery, but to tailor activities to the situations in each assigned case.

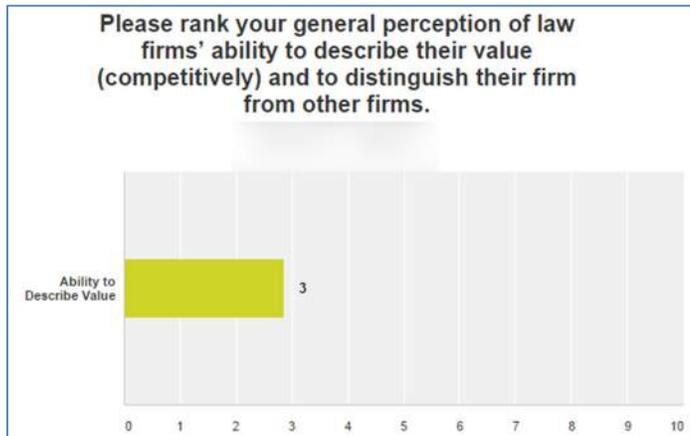
We discuss firm metrics, as well as metrics that payers use, below.

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It would be logical, in an environment characterized by increased performance measurement, buyer perceptions that more defense work and higher defense fees don't translate to better outcomes, and a general sense of increasing costs, that it would be more important than ever for firms to be able to articulate their value and effectiveness more clearly than ever before. Yet firms continue to struggle with this, at least in the eyes of their audience.

**Firms' Ability to Describe Their Value — Law firms are doing a very poor job of describing their value and distinguishing their firm from other firms.**

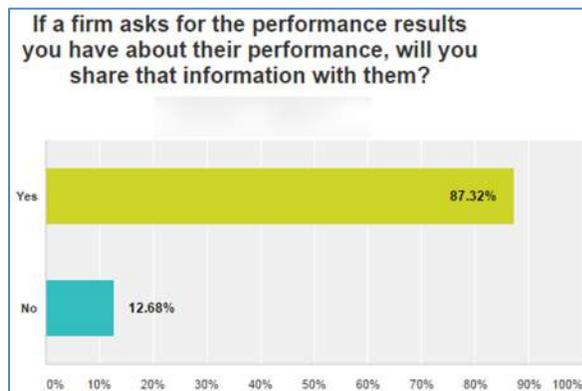
Executives ranked firms' ability to describe their value effectively (particularly in a way that distinguishes them from other firms) with an average score of 3 out of 10 (median=2.85)



This is an important ranking for firms to ponder, think about, and address. Put another way, executives find it difficult to distinguish one firm from another, at least based on how most firms describe their "performance" and "value."

**The Opportunity for Law Firms**

Firms have a number of avenues they can pursue in this increasingly competitive environment. Achieving whichever path is most attractive to them, however, requires a deeper understanding of their buyers' attitudes and buying points. At a minimum, firms must work to understand what their clients, principals, and payers think of their work.



When asked whether they would be willing to share performance results, almost nine out of 10 (87%) executives said that they would. In our view, that is a stark invitation for law firms to engage in that dialogue.

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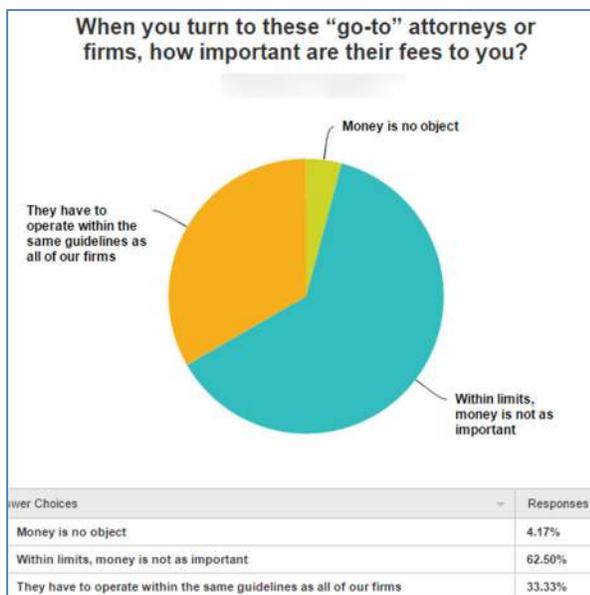
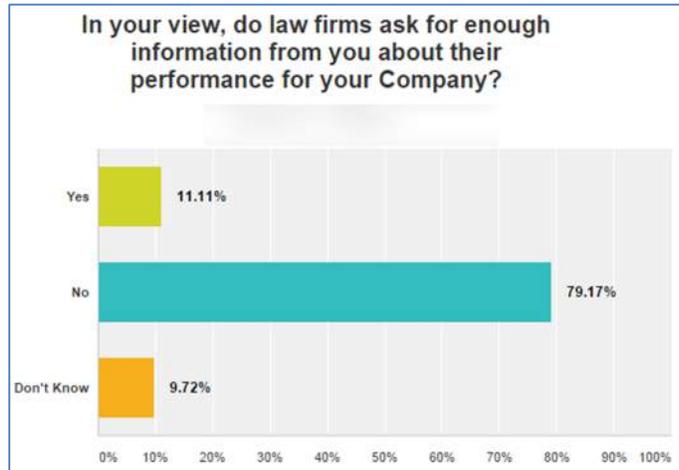
However, when asked whether they believe firms ask for enough information about their performance, almost **80%** of the executives said “no.”

These results affirm those of another Study we conducted in 2012, where only two of approximately 50 insurance defense firm managing partners said that they had recently asked their clients to share the performance metrics being maintained about their law firm.

As one managing partner said at the time, very candidly, “I’m not sure I would want to know.” And yet, this is information too important not to know. And the most important entity to know it, the payer, already does.

Even more importantly to firms, in this decision of whether or how to conduct this dialogue, is the sentiment expressed to us privately by many litigation executives — namely that a firm’s failure to ask for this information implies a lack of interest or a more concerning belief that the firm takes the business for granted. Even when the failure to ask is really a function more of anxiety about the results, the message it can convey can be more damaging to the firm’s image.

**“Go-To” Firms** – One path for firms is to work hard to become a client’s “Go-To” firm.



**Almost all executives reported that they have “go-to” lawyers or firms that they turn to when they are in “trouble” on a case. 99%** said that this is the case for them.

There are some benefits to being on the “go-to” list. For one thing, attitudes about fees are described differently, at least for many executives. **67%** of executives say that fees are thought of differently in these situations. Either “within limits, money is not as important” or “money is no object” in these situations.

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Executives were asked to name up to three attributes that would position a firm to be “go-to.” Examples of those responses are as follows:

ATTRIBUTES OF GO-TO FIRMS / ATTORNEYS		
<i>Proven record (<u>with us</u>) / Experience</i>	<i>Understands our business segment / subject matter expertise</i>	<i>Proactive / Aggressive</i>
<i>Open to risk sharing arrangements</i>	<i>Candid with us / honest, objective evaluations</i>	<i>Rapid, responsive communication / Availability</i>
<i>Trial Expertise / Willingness to Try a Case</i>	<i>Resolution Focus – identify and execute on a PLAN</i>	<i>Reputation / Influence with courts / Respected in Venue</i>
<i>Ability to make our case a priority</i>	<i>Creativity</i>	<i>Understands our risk profile and business objectives</i>

**Gaining Executive Interest** – Whether it is for purposes of being a “go-to firm” or simply to be placed on panel, it is important to describe the Firm’s value in terms that make sense to the buyer.

**So, what can attorneys say to a prospective client to get their attention?** We posed that precise question to participating executives, framed as follows: “Name up to three 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.”

Getting the Attention of Senior Claim and Litigation Executives		
<i>Demonstrate their understanding of how a claims department runs</i>	<i>That they’ve researched and understand our Company</i>	<i>Show knowledge of our organization and mission</i>
<i>Self-tracking performance metrics; Case Disposition Stats: # of cases resolved, timing, trials, results, dispositive motions, total loss costs</i>	<i>A new tactic or strategy; a unique approach to litigation and cost management; Examples of creative approaches to resolve litigation more quickly</i>	<i>That they work for our competitors; Expertise with our lines of business</i>

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<i>That they understand what it takes to serve our policyholders; an understanding of the tri-partite relationship</i>	<i>That we would their biggest client / Indicate where we would fit into their client base</i>	<i>Demonstrate their ability to drive down our average case life / We do it faster</i>
<i>Client references / Referral and recommendations from others</i>	<i>Demonstrated willingness to try the right cases, difficult cases, any case; A willingness to talk about cases they've lost</i>	<i>That the Firm is redesigning their base compensation model on something other than billable hour / Willingness to work with AFAs</i>
<i>Use of technology as a tool to obtain successful results</i>	<i>Hyper-efficiency (tell me how); How they Staff Cases</i>	<i>Expense to settlement ratios</i>

One way for firms to align with this list of topics that would generate executive interest, is to include in the Firm's value an overview of the critical metrics that many of their buyers look at as well. Meetings with current and prospective clients might include a presentation of the following metrics:

Average Age of Open Files	Average Age of Closed Files	Average Legal Expenses Per Case by Type of Case
Number of timekeepers per matter	Ratio of partners to associates to paralegals on cases	Caseloads by attorney
Invoice Counts	% of time in each phase of case	Average invoice adjustment rates

**Metrics That Executives Wish They Had** – We have believed for some time that law firms vastly underestimate their opportunity to participate in, and in fact to help lead, the conversation about performance and metrics. Provided that firms are speaking about performance indicators that matter to a claims or litigation program, we believe firms have an opportunity to contribute heavily in this area.

A quick review of the metrics that participants wish they had access to, which they wish they could measure, and currently cannot obtain, reinforces this belief:

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<b>Metrics That Executives Wish They Had Access To, That They Currently Cannot Obtain</b>		
<i>Average days open / cycle time (multiple)</i>	<i>Average loss cost by type of loss</i>	<i>ROI (i.e., dollars spent in relation to improved outcome) (multiple)</i>
<i>Detailed resolution data</i>	<i>Averages paid by line of business by attorney</i>	<i>Actual division of labor by the law firm</i>
<i>Type of injury</i>	<i>Disposition by life cycle points</i>	<i>Spend to indemnity on a more granular level (firm, state, LOB)</i>
<i>Comparative costs between firms for like-activities</i>	<i>Final disposition amount vs. counsel's initial evaluation</i>	<i>Budgeted to actual expenses</i>
<i>Success rate of motions per firm</i>	<i>Success rate of specific matters</i>	<i>Too many to name (multiple)</i>
<i>Analysis of % of ABA activity and task codes billed by firm</i>	<i>ROI for experts at given indemnity segments</i>	<i>Average hours by timekeepers on matters</i>
<i>Impact on Indemnity</i>	<i>Relationship between cost and indemnity</i>	<i>Cost to Indemnity</i>

## Litigation-Related Service Providers and Internal Initiatives

During this Study we made an effort to better understand how chief claim and litigation executives are using direct relationships with litigation support vendors to achieve both strategic and financial cost management objectives. More specifically, we found that smaller and smaller companies are now identifying these opportunities for improved cost and quality control.

We found, as we expected, that more companies have taken over the identification, vetting, and overall procurement of service providers that support outside and staff counsel in the management of specific litigated claims. Companies are now taking a direct role in the selection of services and vendors in areas that were previously left up to staff and defense counsel to select for use on individual cases.

Vendor Program	Participant Penetration Rate
Surveillance / Investigation	72%
Structured Settlement	72%
Court Reporting	57%
3rd-Party Invoice Auditing	50%
Language Services	47%
Records Retrieval	38%
Formalized Panel of Experts	35%
Jury Focus Group Program	32%
Records Review	29%
Mediation Services	23%
Service of Process	20%
E-Discovery	19%
Copy Services	15%

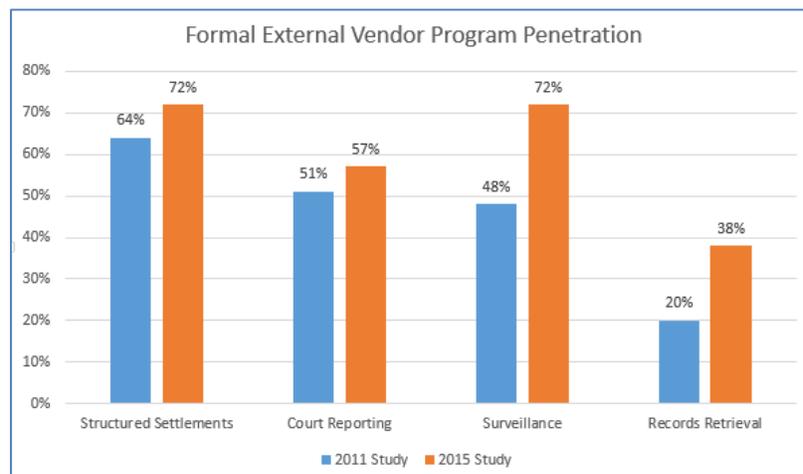
were language services (**47%**) and records retrieval (**38%**).

These results affirm that companies are taking more active roles in areas of expense and quality management that they have previously.

**External Vendor Programs** — We asked question about 13 different types of external vendor programs, ranging from surveillance and investigation to copy services.

More than 7 of 10 (**72%**) executives said that they have formal surveillance and structured settlement programs, followed by court reporting services (**57%**) and third-party invoice auditing (**50%**). (Please note that this category includes both third-party legal invoice auditors as well as third-party medical bill review services).

Also of note in terms of high penetration levels



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Vendor Program	Average # of Vendors Used
Surveillance / Investigation	1.28
Structured Settlement Services	1.28
Court Reporting	1.43
3rd-Party Invoice Auditing (both legal and non-legal)	1.50
Language Services	1.53
Formalized Panel of Experts	1.65
Jury Focus Group Program	1.68
Records Retrieval	1.69
Records Review	1.71
Mediation Services	1.77
Service of Process	1.80
E-Discovery	1.81
Copy Services	1.85

**Average number of vendors on the program panel**

– Participants who currently maintain such programs were asked to quantify how many vendors they work within the specific vendor types.

These answers revealed that most organizations use one or two approved vendors (in some cases more). The average number of vendors being used (both exclusive and preferred) were then averaged and can be seen in the chart to the left.

Lastly, each executive was asked to rank the relative “value” they perceive that each program provides, again by service type. The standard deviation factor with these rankings is high and there was significant variability across the participant responses.

What is valuable to one executive or organization may be less so to another. Therefore, these data should be viewed for reference only. In other words, readers should not draw any relevance or distinction from a 6.1 vs. 6.2 value rating.

Vendor Program	Relative Value Ranking
3rd-Party Invoice Auditing	6.92
Formalized Panel of Experts	6.67
Structured Settlement	6.56
Court Reporting	6.56
Surveillance / Investigation	6.53
E-Discovery	6.53
Jury Focus Group Program	6.22
Records Review	6.10
Records Retrieval	5.81
Mediation Services	5.74
Copy Services	5.31
Language Services	5.25
Service of Process	5.08

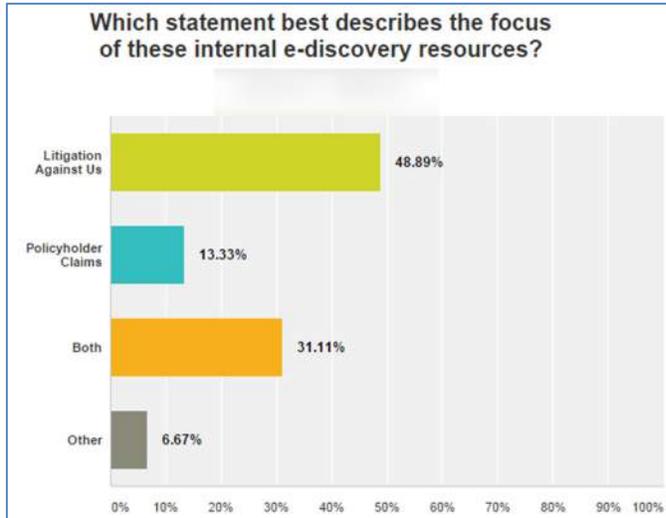
**Thoughts about E-Discovery** — The high-cost of e-discovery has become a significant issue in the litigation arena generally. As these data show, approximately one in five (**19%**) of respondents reported that they have created specific e-discovery programs, or pre-selected e-discovery providers as part of their overall litigation management initiatives. As we predict this area of spend management will become increasingly relevant for claims organizations of all sizes, we asked several additional questions on this topic.

When asked to rank, on a scale of 1 to 10, the relevance of e-discovery costs as an emerging component of overall litigation costs, participants provided an average response of 3.7. This would suggest to us

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that the increase in e-discovery costs is not being felt yet by executives in certain lines of insurance litigation.



However, about a fifth (**17%**) of Study participants reported that their organizations have hired internal resources to address e-discovery functions and activities (and assumedly to address costs as well).

The purpose of such resources, as the data reveal, are mostly to assist in actions made directly against the enterprise itself, as opposed to policyholder claims. That said, almost half (**44%**) of these resources are used in some way on policyholder claims, as can be seen by the attached Figure.

We predict that, over time, e-discovery will become a more relevant component of policy-holder based litigation management programs generally.

### Observations about Vendor Programs Generally

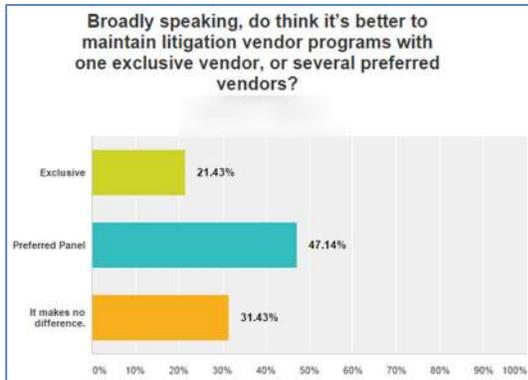
As these data suggest, the formalization of external vendor programs is wide-spread. The opportunity to centralize the selection and deployment of litigation support services is simply too great an opportunity for claims organizations to ignore. Such programs not only enable organizations to leverage their true buying power, but also to gain some transparency into the actual costs of their litigation. Payers continue to struggle with identifying what they are actually paying for services when they are disbursed through law firm invoices.

At the same time, centralizing such programs separates the end user (most commonly law firms attorneys) from the vendor. Previously the end-user served as the buyer but not the payer, which created significant cost-control issues. Now, while the payer and the buyer are now becoming one and the same entity, it is the experience of the end-user that is at greatest risk (and which will matter a great deal).

When a buyer selects a vendor that delivers a poor end user experience, it can be difficult to achieve the larger litigation management objectives in play. As such, smart vendors and smart buyers will increasingly look for ways to measure and evaluate jointly end-user satisfaction levels. This will (and should) ultimately be as important as the cost savings in play, and buyers will be smart to look for vendors with a track record of measuring and reporting about the end-user experience.

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We predict that procurement professionals will increasingly play a role in such buying decisions. Only **7%** of the Study’s participants reported that formal procurement resources are currently being used when it comes to selecting law firms – specifically those that will serve on litigation panels. However, almost double that number (**13%**) use procurement when it comes to litigation management vendors. We predict that both numbers will continue to increase. This will require vendors and law firms to adopt new strategies, and in some cases new skills, as procurement plays a greater role.



Buyers continue to be split on the choice of whether to maintain exclusive relationships with one vendor, or to maintain panel relationships with multiple, preferred vendors.

In this Study, almost half (**47%**) of the executives expressed a preference for preferred panels, while **21%** preferred exclusive relationships. In the future, it is the **31%** who currently have no strong preference on this issue that may shape this discussion.

### Adoption of Certain Internal Programs

We also examined a number of other programs and initiative that organizations have deployed. We refer to these as “internal programs.”

We asked questions about 10 such internal initiatives, which might be broadly classified simply as ways of structuring internal litigation resources (staff), best practices, or tools (technology). To provide a clear sense of this data, the following are definitions of each topic we asked about:

Program or Initiative	Explanation
<b>Dedicated Litigation Unit</b>	All litigated cases or matters are handled by professionals who <b>ONLY</b> handle litigated files.
<b>Litigation Management Technical Specialists</b>	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.
<b>Legal E-Billing Software</b>	We use software to review and adjust law firm invoices.

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<b>Centralized Invoice Review Unit</b>	We use an internal, centralized, dedicated group of professionals to review all legal invoices
<b>Matter Management Software</b>	We use software to track the events, notes, and progress of our lawsuits (separate from a primary claims system).
<b>Collaboration Software</b>	Our matter management software is configured to allow our law firms to communicate directly with our staff, upload documents, and provide reports within our software.
<b>Alternative Fee Arrangements</b>	We use Alternative Fee Arrangements (any arrangement different than a standard hourly billable – includes blended rates, fixed fees, volume discounts, and flat fees).
<b>Mandated Reporting Formats</b>	We mandate the content and format of various status reports from outside counsel to our internal staff.
<b>Formalized Counsel Evaluation and Rankings</b>	We formally rank or create scorecards for all firms providing legal services to our organization.
<b>Law Firm Networks</b>	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.

Just as with the external vendor programs, we asked each executive to identify whether their organization has such an internal program or initiative in place, and also to rank the relative value they perceive it brings to their organization.

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Program or Initiative	Utilization Rate
Mandated Reporting Formats	76%
Legal E-Billing Software	63%
Alternative Fee Arrangements	57%
Litigation Management Technical Specialists	52%
Centralized Invoice Review Unit	35%
Dedicated Litigation Unit	29%
Formalized Counsel Evaluation and Rankings	27%
Matter Management Software	25%
Law Firm Networks	19%
Collaboration Software	14%

Mandated reporting formats for counsel was the most commonly used practice in this data set, followed by e-billing software (**63%**) and the use of Alternative Fee Arrangements (**57%**).

Also of note is the **35%** of executives who reported that their organization uses a centralized invoice review unit to review and process legal and other invoices.

In terms of perceived program value, executives provided the following mean responses. Values are on a scale of 1 to 10, with 10 being the “most valuable.”

Having litigation technical specialists ranked the highest, followed by centralized invoice review units and the use of legal e-billing software.

Again, the standard deviation factor with these rankings is high and there was significant variability across the participant responses. What is valuable to one executive or organization may be less so to another. Therefore, these data should be viewed with that caveat in mind.

Program or Initiative	Relative Value Ranking
Litigation Management Technical	7.19
Centralized Invoice Review Unit	7.15
Legal E-Billing Software	6.90
Dedicated Litigation Unit	6.86
Mandated Reporting Formats	6.67
Alternative Fee Arrangements	5.66
Formalized Counsel Evaluation and Rankings	5.65
Matter Management Software	5.45
Collaboration Software	5.36
Law Firm Networks	4.53

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**Most Important Initiative in the Next 12 Months** — Responding executives identified a variety of changes, initiatives, and programs that they intend to put in place in the next 12 months and that they would categorize as their “most important.” A primary take-away from these strategic initiatives – a significant focus on law firm effectiveness and performance. This includes primarily: more metrics, more panel reductions, and more tools to scrutinize legal invoices.

On a positive note, several mentions were made of a goal to increase efforts in relationship building with outside firms, either through the use of more specialized claims professionals, or by working directly with firms.

<b>Most Important Litigation Initiative In the Next 12 Months</b>		
<i>Requirement that firms will prepare an annual report on cases closed prior year</i>	<i>A score card for firms. (multiple)</i>	<i>New E-billing System (multiple)</i>
<i>We are brainstorming ideas to bring additional value to the enterprise in 2015</i>	<i>Formal Project Management Discipline</i>	<i>Attorney scorecards and analytics (multiple)</i>
<i>Getting younger panel attorneys on board</i>	<i>Revamped budgeting and reporting structure for panel counsel</i>	<i>The ability to “rate” our outside attorneys</i>
<i>More specialization and culling the herd in panel</i>	<i>Consolidation of Panel (multiple)</i>	<i>Improved auditing process (multiple)</i>
<i>Seeking dedicated vendors for e-discovery and other specialties</i>	<i>Metrics Dashboard</i>	<i>Add new staff to Litigation Department (multiple)</i>
<i>Improved measurement of effectiveness of our internal litigation specialist and the defense counsel we assign to</i>	<i>More specialization to handle complex litigated cases</i>	<i>Earlier diagnosis of potential claim exposures</i>
<i>Dedicated litigation claims handlers</i>	<i>Increased effort in relationship building (several)</i>	<i>Decrease outside coverage and bad faith attorney fees</i>

## Defining Litigation Management Success

**Most Relevant Metric Defining Success** — Perhaps the most fitting way to draw together the data outlined in this Report is to look at how senior claim officers and litigation executives define litigation management success. Of course, there is no one way to define this, and Study participants differed in their responses. We would also note that our Study question on this topic asked for a single, forced-response metric, which does not do justice to the nuanced and balanced perspective that these very accomplished executives might provide if given more latitude in their answers.

However, what can be said with certainty is that it is imperative that all the stakeholders in the litigation management industry – law firms, litigation support vendors, and payers – each understand the definitions of success used by the other. To that end, these single-metric responses provide keen insight for both law firms and vendors about what their payers are trying to accomplish and how those accomplishments are measured.

Here is a sampling of answers to the question: “What is the single most relevant metric that you look at in measuring the overall performance of your litigation management program?”

Single Most Relevant Metric to Measuring Overall Litigation Management Program Performance		
<i>Average legal paid per claim per product line / line of business (multiple)</i>	<i>Loss cost / reputational cost</i>	<i>Average case cost (total legal spend divided by total cases) (multiple)</i>
<i>Cost per claim/ Total costs (expenses + indemnity)</i>	<i>ALAE to individual ratio</i>	<i>Cycle time (multiple)</i>
<i>Policyholder acquisition and retention and total cost per case</i>	<i>Total Averages Paid</i>	<i>Open to close ratio for each claims examiner / firms (multiple)</i>
<i>Cost Containment</i>	<i>Cost per claim and settlement vs. reserve (multiple)</i>	<i>Average Paid loss trends</i>
<i>Insured satisfaction</i>	<i>Expense to loss payment ratio (multiple)</i>	<i>Not just one metric – totality of data picture</i>
<i>Average settlement severity</i>	<i>Litigation spend in relation to my perception of outcomes</i>	<i>File quality</i>

## **In Conclusion**

We have enjoyed conducting this Study. We trust that participants and others find the information outlined in this Report to be helpful, and conducive to facilitating conversations which all members of the litigation management industry – including claims organizations, legal departments, litigation vendors, and law firms — use to collaborate and exchange ideas about how to promote the highest standards and best practices in our industry.

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