



2014 CLM Annual Conference

April 9, 2014 – April 11, 2014

**Boca Raton Resort
501 E. Camino Real
Boca Raton, FL 33432**

Roundtable 1: Thursday, April 10, 2014 (10:10 am – 11:10 am)

How Law Firms can Track and Use their Own Metrics to Improve Litigation Management Skills, Invoicing and Market Their Results to Those who are Now Making Claims Assignment Decisions.

1. The Root of the Problem: The law firm gets a call from home office that lets a senior partner know other firms are getting excellent case results (like yours) but at less cost and with more demonstrable compliance with litigation guidelines.
 - a. Understanding the Nature of the Problem from 35,000 feet.

“Nothing wilts faster than a laurel rested upon.” This is a quote from American Women Managers & Administrators by Judith A. Leavitt quoting Mary K. Ash in Nation’s Business (1978). This quote is a modernization of a quote from an old English poem but remains true to this day. You may have been the most compliant litigation management counsel in the past but that will not hold you in good stead for the present or the future. All of us as law firm panel counsel and all insurance companies are now looking at performance in an entirely different way than the personal relationship driven performance summaries of the past. Performance is being measured now at an ever increasingly rapid rate. Law firm performance is being measured by objective data that can be analyzed and translated to performance criteria in order to measure compliance with litigation management and metric driven expected outcomes. Law firm performance is being analyzed from afar looking at variables such as shelf life, average indemnity cost, average expense cost, clean billing invoices, “deficiency percentage” in overbilling, failure to follow guidelines or misuse of insurance company codes. A local claims manager can receive a call from home office saying that the law firm you have been using in your jurisdiction as primary panel counsel is handling files at twice the cost of the conflict law firm that you are using in the same jurisdiction. This conversation with the local claims manager can shift business from one law firm to another without any discussion.
 - b. Developing a law firm and client partnership “culture” to respond.

A call from a longstanding client that contains discussions of excessive costs and failure to comply with litigation management guidelines generally is not the result of one lawyer or one group of lawyers handling claims for a client. The general problem as it relates to losing business in the insurance defense arena is the lack of a “partnership culture” between the law firm and the client. The basis of this culture is communication and agreement in claims handling. The American Bar Association Model Rules (see comment 10 to model rule 1.7) generally discuss the fact that a lawyer’s own interest should not be permitted to have an adverse effect on representation of a client. This is the oft cited comment for opposition to fixed fee agreements and cost containment measures for litigation. Conversely, Model Rule 1.5 provides that lawyers shall not make agreements for or charge unreasonable fees or expenses for their services. Therefore, the culture of the firm must be to independently and effectively advocate for the client while communicating with the claims professional how to effect such representation in an efficient and cost effective manner.

- c. Why the “problem” is also the “solution”.

The hallmark of a lack of partnership between law firm and client can be translated to “lack of communication”. So, when we say that the solution is also the problem, what we mean is the solution is the other side of the coin. If the problem is lack of communication, the solution is meaningful and mutual communication on expectations and abilities. Within the guidelines of a lawyers’ duty to zealously and ethically represent his or her client, meaningful communication and agreement on issues to be addressed and then the timely and effective execution of that agreement creates a culture of partnership and “short stops” almost all individual problems associated with claims handling.

2. How “Clean” law firm invoicing plays a pivotal role in serving clients and keeping business

- a. The definition of a “clean” law firm invoice

A clean invoice or “clean bill” is getting it right the first time. See Litigation Management Magazine Fall 2013 “Common Ground: How a Clean Law Firm Invoice Can Drive Cash Flow”, by George Woolverton and Jim Martin at page 34. Woolverton and Martin explain that clients (insurance companies) measure invoicing effectiveness based on a “deficiency percentage”. This deficiency percentage is the amount of the firm’s invoice written down due to a number of different issues. The issues include overbilling, failure to follow guidelines, misuse of appropriate codes, i.e. UTBMS or failure to follow litigation guidelines. Woolverton and Martin also explain how a clean invoice helps increase cash flow to the law firm through reduction of resources used for bill review and appeals.

- b. The needs and benefits of “clean” invoicing

We like two quotes – one; an old quote in the computer industry: “garbage in and garbage out” and two; a relatively newer quote: PICNIC (Problem In Chair Not In Computer). Clean invoicing and the benefits derived from clean invoicing start with the individual inputting information into a bill at its first instance. We do not mean to imply that bills do not need to be reviewed before they are released to a client for consideration for payment but we also do not wish to imply that errors in submissions of billing can be corrected by the second step of review. Clean invoicing starts with a firm culture of only billing what is appropriate under the proper billing guidelines and with proper billing codes at the first instance. Billing review should catch and review only the

occasional input error. Billing is a necessary element of work as Woolverton and Martin point out – law firms sell and clients buy – time, *supra* at page 33. This “time” needs to be billed in a manner that communicates effectively to the client what they are purchasing and shows the value that is added to the file through the billing and shows compliance with guidelines. The benefits of this clean invoicing to the law firm are extremely important as the “deficiency percentage” of the write down of a law firm’s invoice is directly comparable to other firms practicing with the same client within the same jurisdiction. It is an “apples to apples” comparison. Clients (insurance companies) are expending great resources on billing and auditing within the company and to the extent that a law firm’s “deficiency percentage” is minimal, the additional time and expense allocated to that law firm in billing and auditing budgets is likewise minimal. This expense for review, appeal, resubmission and correction benefits and impacts both the insurance carrier and the law firm itself.

c. How “clean “ invoicing assists in client retention and marketing

In “Common Ground” *supra* Woolverton and Martin identify the root of any exceptional litigation management program as one that promotes “team work” @ pg. 34. They describe the cooperate setting between the client and the law firm and the insurance setting where the law firm, the client (insured) and the carrier all work together to promote the interest of the policy holder. In the insurance setting “team work” which includes the insured, the carrier and the law firm and communication which includes the insurance carrier, the insured and the law firm allow for a better working relationship and develop an increased confidence between all parties and members of the tripartite relationship. It shouldn’t be forgotten that the more cost effective a law firm is able to resolve a matter for an insured the less that insured’s loss ratio is impacted when it comes time for underwriting to issue a renewal. Cost effective and effective representation of the insured assists the carrier and the underwriting department in retaining good insureds, helps minimize the cost of any insurance renewal for the insureds themselves and demonstrates to the carrier that the law firm is focused on providing service, quality and a partnership that is guideline compliant for all involved. See “Common Ground” @ pg. 34

3. How self-critical analysis, self-audits; knowledge of firm metrics in conjunction with clean invoicing “partners” the expectations of the client with the performance of the law firm.

a. Keeping your own metrics – why you should understand the “shelf-life” of your law firm’s case files.

There is a concept in the law called the privilege of self-critical analysis *Bredice v. Doctor's Hospital, Inc., 50 F.R.D. 249 (D.C. 1970)*, which essentially says that if you have made a mistake and you look internally to correct that mistake public policy seeks to allow you to make an improvement over one of your processes without being penalized for the mistake. It seems almost axiomatic to say that all of us need to know what we are doing within the handling within our own law firm litigation claim files. The truth of the matter is there is a great anxiety among many law firms when an audit team comes into an office to review files. There is also great anxiety created within a law firm when a letter comes in from remote audits from file material reviewed and available online. This anxiety stems from a lack of knowledge as to how the law firm has done in hoped for compliance with litigation guidelines. Keeping metrics on your own attorney performance is a sound business decision. Understanding what is important to those that send you business and being able to communicate your own record shows both a willingness to embrace insurance carrier metrics as an appropriate measuring tool for law firm performance, as well as, an openness to share your own self audit results. The truth of the matter is it is not too difficult to maintain a form for any individual case for its own self audit as it relates to many of the metrics

carriers feel important including shelf life, litigation guideline compliance, cost of indemnity, expenses and attorney's fees.

- b. Outside audit; remote audits and self-audits – How audits improve your law firm efficiency and client relations.

There is an old saying that says “that which is measured gets done”. This saying is attributed to an American business writer, Tom Peters. Outside audits, remote audits and self-audits all measure what has been done. This measurement of what has been done can create a template for what gets done in the future. This template can improve law firm efficiencies and relationships through a proactive agreement to partner with the carrier and the insured. Nothing is cookie cutter and much of the practice of law is an art, not a measurable science, but with that having been acknowledged there are many aspects of litigation management that help the outside lawyer and law firm focus on efficiencies that create a benefit both for the insured and the carrier. For instance, the shelf life of a file is one such looked upon statistic. The axiom is that the longer the shelf life the greater the cost. Although this is not necessarily true and there are many reasons for a file to take on an extended life it is generally fair to say the law firm's best idea is to seek a quicker rather than longer solution to a client's problem as this will generally lead to a more favorable outcome through indemnity and/or expense.

- c. Proactive self-audits; how learning what your clients know about your firm and sharing it first becomes the tie that binds your business relationships.

Proactive self-audits seek to have a law firm measure and communicate their effectiveness of their case handling with their insurance company client without the necessity of the client themselves demanding an audit on site or reviewing claim file information remotely through what is available online. Although the insurance industry does not have one single template for judging effectiveness in any particular line of business (the measurements aren't consistent across all lines of business) it is fair to say that your average cost per file for a premises case or auto case or product case is something that ought to be understood by the firm. Those who look at “the numbers” from 35,000 feet will look at these numbers routinely. Cost includes expenses and expenses include retention of experts, travel, discovery issues, etc. Indemnity is also another issue where the law firm should take a hard look. Most corporate executives, including insurance company corporate executives believe that throwing more money at a file does not necessarily reduce the amount of indemnity that is paid on that file. (See 2011 National Litigation Management Study performed by Revere Advisory, under the leadership of its principals, Jeff Scarpitti and Taylor Smith.) As a result, a lower cost per file does not necessarily impact the amount of indemnity paid on a file. The law firm should also be able to explain “outliers”, i.e. those instances where something has gone especially poorly but does not reflect other data within the file handling of the law firm. Many insurance carriers have the claims professional fill out a performance evaluation of the attorney at the end of each case file. Understanding what that evaluation is and working toward being measured appropriately at the end of the claim file through your own self-audit and through your ability to address what you have done within the claim file to that claims professional likewise assists in the communication process and marketing process.

4. The marketing aspect of “clean billing” and “self-audits”

- a. Increased and improved positive communication between law firm and client;

In “Common Ground” *supra*, Woolverton and Martin make the very positive point that guideline compliant invoicing and litigation compliance in claim handling allow the client, the law firm and the carrier to have a conversation in the file about service, quality and partnership and allows firms and clients to stop talking about billing and auditing. @ page 36. This increased and improved positive conversation between the law firm and the client goes a very long way toward making each individual communication with the client positive. There is an axiom in sales that says every negative communication or event in sales requires eleven (11) positives to overcome. Eliminating the negative and accentuating the positive is a good marketing mantra.

- b. A demonstrable increase in measured efficiencies of law firm numbers;

The view from 35,000 feet on claim assignments is increasingly trending toward measuring efficiencies in law firms and measuring the “apples to apples” indicators that internal metrics can produce. Increased knowledge of those metrics that are being kept on each individual law firm (increasing the ability to share what is important from the carrier’s perspective with the law firm and the law firm increasing its ability to voluntarily disclose its own internal audits) allows for early correction of metrics that are going astray and allows for an emphasis in marketing of those metrics that are meeting or exceeding carrier expectations.

- c. A useful discussion point for new business and solidifying current relationships.

Clean invoicing and guideline compliant litigation claims management while effectively and zealously representing an insured is the best method to solidify current business relationships with carriers. Clean billing and guideline compliant litigation handling demonstrates to that client carrier through your own self-audit that your claim handling either meets or exceeds their expectations. Talking openly about invoicing and requesting more work as a result of a successful execution of a “best invoicing” plan is the recommendation of Woolverton and Martin in “Common Ground” @ page 34. In addition, the development of the law firm’s individual metrics can be communicated to others can be an important opening discussion with any new client. There are outside professionals that can help any law firm meet the goal of creating a clean bill the first time (see “Common Ground” @ pg. 34). The decision, however, for litigation management and superior billing processes must be one that becomes part of the firm culture and is bought into by all billers and firm management.