



## **2014 CLM Annual Conference**

**April 9, 2014 – April 11, 2014**

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

### **Roundtable 2: Thursday, April 10, 2014 (11:30 am – 12:30 pm)**

#### **Using Metrics In Litigation Management**

#### **I. USE OF METRICS TO BUILD A STRONGER, MORE COLLABORATIVE RELATIONSHIP BETWEEN COUNSEL AND THE INSURER**

Ultimately the goal between counsel and the insurer/TPA is to provide the best, most cost-effective defense for the insured. Using metrics to manage litigation allows both the law firm and the insurer/TPA to answer the question, "How are we doing?" Are we working together to provide the best, most cost-effective defense for our client? Without some way of measuring "success" or favorable outcomes, or identifying ways of improving cost-effectiveness and outcomes, then we have no way of answering the question, "How are we doing?"

#### **II. DON'T JUST MEASURE; MEASURE FOR ACTION**

Often, insurance companies and law firms "measure" things without real thought behind what it is they're measuring, and what they're going to do with the result. One key to using metrics in litigation management is to determine what it is that needs to be measured and what action or decision needs to be made as a result of the measurement. Using metrics only because they are available wastes time and focus on more critical, impactful information. Start at the end: Determine what it is you want to find out and what questions you want to answer, then gather the data points needed to make the measurement and determine appropriate benchmarks against which to compare the data.

Some examples of the use of "internal" metrics can be used to evaluate performance of people within the insurance company/TPA or law firm. Internal metrics can also be used to evaluate underlying performance, risk analysis, law firm business performance, and can assist in budgeting and predicting outcomes in particular types of cases.

"External" metrics can be used to evaluate the performance of outside counsel by an insurance company/TPA, and from the law firm perspective, to help the insurance company/client to identify litigation trends, settlement trends, performance trends, to show good results over time and suggest ways to more efficiently dispose of litigated cases.

### III. METRICS FOR LITIGATION MANAGEMENT FROM THE INSURANCE COMPANY OR TPA PERSPECTIVE

There is a sea of data available to measure litigation performance. The metrics used by the insurance industry vary greatly from company to company. However, common metrics used by insurance companies/TPAs have some common foundations.

Some of those include:

**Time -** Time is a critical measurement because, typically, the longer a claim or litigated case is open, the more expensive it will be. Time can be measured both from the law firm perspective as well as the claims perspective. The insurance company may look at the average number of days a claim is open (looking at both open matters, closed matters, and both); the number of days a case is open with outside counsel; the number of days to establish ultimate reserves; the timeliness of critical reporting requirements and acknowledgment of the case.

**Financial – Cost/Expense** metrics can be used to evaluate control of litigation expenses, both on the part of the law firm as well as the claim professional. Metrics comparing expenses in a particular case benchmarked against average expenses in similar types of cases can be useful.

**Claim Volume and Work Flow –** Metrics around the average claim volume can be benchmarked against averages for a line of business or type of claim. Closing ratios and average claims assigned to counsel (within some time parameters) can be useful.

**Results -** Metrics reflecting methods of disposition of matters, whether by trial, ADR, disposition by dispositive motion, or voluntary dismissal can help provide insight into law firm and claim handler performance and whether claim dollars are spent in line with the ultimate disposition. “Results” metrics can also help measure “good” or “successful” outcomes.

**Business Implications-** Litigation management metrics can also provide insight into underwriting, pricing, and budgeting for particular types of claims and lines of business.

All of these metrics can be “sliced” numerous ways in order to target data. Some “sliced” might include analysis by line of business/product line, claim professional, law firm/timekeeper, time periods, and/or jurisdiction.

### IV. METRICS FOR LITIGATION MANAGEMENT FROM THE LAW FIRM PERSPECTIVE

The law firm may also use internal metrics to measure performance of its professionals and also identify litigation trends in particular lines of business, types of cases, or jurisdictional issues that would be valuable to the insurance company/TPA as well as to improve its own efficiency, profitability, results, and client satisfaction.

Law firms are always looking for a way to improve profitability and well as service. Increasing profitability in an insurance defense context is not just a matter of increasing hours billed or bringing in a greater number of insurer clients. In an ever increasing environment of competition, law firms need to be continually evaluating whether or not they are meeting the insurer and insured needs, while doing so at a competitive rate. When firms are constantly evaluating, monitoring and tracking internally their own performance, they can ensure they provide the best product for a competitive rate.

Some of those measurements might include the following: total legal expenses billed per type of case, average billing per file filtered by handling associate, average billing per file by office location, average billings by associate measured against budgets provided: (i.e. are we properly budgeting), measurement of length of time case open by associate, type of claim or office, and average file load per associate are just a few of the measurements available for law firms to evaluate their ongoing performance both internally and as compared to the industry as a whole.

These and other measurements simply provide data in order to ensure appropriate action. So law firms can use the results of internal metrics to answer questions such as: 1) are our associates billing reasonable hours or is one associate or office consistently higher than another office or other associates? 2) are we properly staffing offices and cases? 3) are we providing meaningful budgets and do the associates have a good understanding of how to properly budget? 4) is a given attorney sufficiently profitable or do we have better options? 5) is a particular program profitable i.e. flat fee program among others.

## V. USING TOOLS TO GATHER DATA AND PRESENT INFORMATION

After determining the benchmarks and metrics your organization wants to use, it is important to be sure that the data upon which decisions are made is actually being captured and easily accessible. Whether your insurance company, TPA, or law firm is using an outside vendor to capture information and provide metrics, or whether you are using in-house capabilities, it is important to have discussions about the information that needs to be captured, inputted, and stored in order for the information to be useful.

There are countless variables that can be applied to metrics in order to analyze data stored and tools that report metrics should be easily adaptable within your environment, whether an insurance company or law firm. Every organization is different, both technologically and the way each uses data. Different organizations place different importance on data. Thus tools should be a good "fit" for your organization so that information that is needed is easily available.

In addition, tools should be easy to use, intuitive, and allow access to any information within one to three clicks of a mouse.

It is important that metrics tools be able to filter data to narrow down those pieces of information that answer key questions. Multi-factor filtering allows users to clear out irrelevant data and focus on those pieces of information that are actionable for you.

We all absorb information differently. It is useful to have tools that present metrics in both graphic and statistical form formats that are easily exported and shared in various forms. Some people are more comfortable looking at data on a table of statistics, while others prefer a more graphic display of data. Having tools that accommodate both analytical capabilities allows everyone in your organization to get and absorb the information effectively. Seeing statistics translated into a graphic display can tell a compelling story.