CLM Claims & Litigation Management Alliance™
ADVANCING ETHICS, COOPERATION AND EDUCATION

2014 CLM Annual Conference

April 9, 2014 – April 11, 2014

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

Roundtable 4: Friday, April 11, 2014 (10:25 am – 11:25 am)

Health Check: Is Your Metrics Program in Cardiac Arrest?

I. What does a successful metrics program for litigation management look like and how do you establish one?

Overview of critical metrics for a robust formal metrics program

A robust set of metrics is an imperative for any claims operation – to understand what's happening, to forecast business trends and staffing needs, to measure performance, and more. The core metrics associated with a successful metrics program fall into three key categories:

Summary/executive metrics

These are generally the core metrics that measure overall business performance, both operational and financial, at a summary level. These metrics are designed to provide an "at a glance" overview of performance and are each generally supported by additional, more detailed, operational and financial metrics. Some examples include:

- Number of Open Litigated Claims
  - By Type
  - By Office / Region
  - By Line of Business
- Total /Average Paid
  - By Type
  - By Office/Region
  - By Line of Business
  - Over Time

Operational metrics

These are generally metrics that answer inventory/volume-related questions to help drive decisions related to staffing and resource usage, assess staff performance, and identify risk-related trends related to claim frequency. Some examples include:

- Number of Open Matters per Attorney
- Average Cycle Time (Days Open)

    - By Type
    - By Office / Region
    - By Line of Business

Financial metrics
These are generally metrics that measure financial performance and effectiveness of cost containment strategies across areas such as loss costs, reserves, legal expense, and performance to budget. Some examples include:

- Average Paid / Litigated Claim
    - By Type
    - By Office / Region
    - By Line of Business
    - Over Time
- Total Reserves
    - By Type
    - By Office / Region
    - By Line of Business
    - Over Time

How to get started if you don't have a formal metrics program
Below we describe one methodology that's been successfully employed to jump start formal metrics programs. Please also reference the provided "Metrics Definition Worksheet" for a template that can be used to help team members/stakeholders organize their thoughts in preparation for a metrics definition working session, as well as to capture and organize the output of this type of working session.

A strategy for identifying a robust set of metrics
Step 1 – The first step in the process is to develop a comprehensive list of the key business questions you'd like to be able to answer with data – the critical point here is that you're looking to define questions, <u>not</u> specific data points. Questions like, "how many new claims arose?," "What is the average paid?," or "How many claims does an adjuster have?," are all good examples. Ideally your questions will be very specific, so you may need to define a series of related questions to fully address each area you want to be able to measure. Note that at this step in the process, your focus should not be on trying to define all of the required permutations of each business question (*e.g.*, by LOB, by region, by claim handler, etc.) – just focus on the core questions that you'd like to answer using data. See the tab entitled "Questions" in the provided "Metrics Definition Worksheet" Excel template.

Identifying attributes for "slicing and dicing" or aggregating your data
Step 2 – Once you define your primary business questions, it's time to brainstorm regarding the variety of ways in which data will need to either be broken down or rolled up. The goal here is to identify groups of attributes by which you anticipate needing to "slice and dice" or aggregate your business questions. Typical attributes that should be considered will include: time, organizational hierarchy, jurisdiction, venue, line of business, type of litigation, claim complexity, and cost. See the tab entitled "Aggregations and Slices" in the provided "Metrics Definition Worksheet" Excel template.

Step 3 – Finally, revisit the list of primary business questions defined in Step 1 and assign one or more of the groups of attributes defined in Step 2 to each question. See column B of the tab entitled "Questions" in the provided Metrics Definition Worksheet Excel template. The resulting completed worksheet effectively represents the specifications for your reporting requirements and is a very clear, concise starting point for initiating report building with your technical resources/report writers.

Lessons learned and best practices for establishing successful metrics programs

Start with the questions you need to answer, not a definition of the data you *think* you need

All too often, organizations start reporting and metrics definition processes with a laundry list of data points. As suggested by the methodology outlined above, it's critical to step back and start with a list of the key business questions that you're trying to answer – those that will ultimately help the business more successfully influence results and drive behavior. The data points needed will naturally flow out of the identification of these questions (and the groups of attributes identified for slicing and dicing), and you'll avoid the common pitfall of collecting data that you ultimately won't really need or use.

Don't collect data for the sake of collecting data

As noted above, this pitfall can often be an offshoot of starting with the data you *think* you need, versus the questions you're trying to answer. Let the questions you're trying to answer define the data you need to collect, and subsequently, the data fields that staff members are required to complete. Ultimately, the quality of your reporting will be driven by the quality of your data – which is *heavily* influenced by user adoption of systems and processes. If you make data capture requirements too cumbersome, users will start to take shortcuts in entering the data, including choosing the same selections repeatedly, and the quality of data and reports suffer accordingly. So make certain there's a clear purpose for each piece of data you collect.

Data and process consistency are key

You've heard the phrase "garbage in, garbage out." This refers to the fact that data and process consistency are absolutely critical to quality reporting and metrics. In particular, where the capture of data is incumbent upon staff members, training and internal communications must be used to ensure that people are well-informed regarding the processes and standards associated with how and when information is captured in a system. System design also plays a key role – look for ways to make data capture more efficient (*e.g.*, use of wizards and workflow, auto-population) and consistent (*e.g.*, have users select from pre-defined options versus entering free-form data).

Leverage technology to drive efficient KPI tracking and communication

Business intelligence platforms offer a myriad of tools that make it easier and more efficient to track and communicate KPIs. As KPIs are identified they can be built into scorecard or dashboard reports that summarize metrics that address different themes (*e.g.*, cost containment or firm performance metrics) or the needs of different management roles. In addition, companies can leverage tools like scheduled or event-driven reporting (*i.e.*, where reports are generated and distributed to a predefined group of recipients either on a regular schedule, or when predefined events occur/thresholds are reached) to automate the distribution of metrics to key stakeholders.

Focus on some "quick hits" to build momentum and enable demonstration of value as you go
Some metrics will be easier to track and report than others (*e.g.*, due to challenges capturing the data, pulling data from multiple sources, having enough historical data, etc.). Identify those primary business questions that can be answered via readily available data sources and build those reports out first. Delivering some "quick hit" reporting will allow the team to demonstrate value in the near-term and build momentum behind the initiative. Launching an effective formal metrics program will most certainly be an iterative process.

II. How do you successfully put metrics to work within the claims organization?

Primary business questions for claims organizations

Summary/Executive Metrics
Key litigation management metrics for claims executives include trend analysis around legal spend – at a high level and at more finite levels (by LOB, geography, etc.) – relative to case results and underwriting results, as well as trends in claim count versus litigation.

Operational Metrics
These types of metrics relate to internal operations and are designed to answer critical questions around staffing, claim handler performance, workflow control, and claim frequency – by case type, by geography, etc. In particular, monitoring trends over time can serve to provide early warning signs when certain types of cases in certain areas are increasing in frequency, enabling proactive mitigation.

Financial Metrics
These metrics are about digging into your legal spend at macro and micro levels and evaluating how spend in one area compares to another across similar types of firms, cases, etc. One goal being to identify those firms and cases that are being managed most efficiently and effectively and to apply the same principles, tools, and tactics used to manage these claims elsewhere. It's also important to note that legal expense metrics can't be looked at in a vacuum, meaning you must evaluate spend versus indemnity to get a true picture of the value received for the dollars spent.

Firm Performance Evaluation ("Scorecard") Metrics
Whether evaluating firms or individual attorneys, first and foremost you must ensure an "apples to apples" comparison, particularly when using tools like pool comparison reports – *i.e.*, are you making your comparison based on the same type of case, in similar geographies, etc. Suggested metrics for firm performance evaluation can include: 1) cycle time, 2) spend – both at a high level and down to finite levels, such as the cost of discovery or experts; 3) resolution phase – meaning at what point are claims being resolved – early or late in litigation?; 4) indemnity results relative to cost (*i.e.*, what results are you getting for the money spent?); and 5) subjective components (responsiveness, etc.) based upon the input of file handlers. While firm performance metrics are certainly useful in identifying and addressing performance concerns, their value also lies in the ability to identify those firms that are delivering excellent value with the goal of molding and modeling other firms to work more like a successful firm.

III. How do effective outside counsel measure their own performance and how does this align with the insurer's perspective of firm performance?

Primary business questions for outside counsel firms

Relative to litigation management, the primary business questions that outside counsel firms should ask are driven by the challenges inherent in the tripartite relationship: these questions are designed to understand the client's and the insurer's respective issues and goals relative to the litigation at hand, and then identify a litigation approach that successfully balances these perspectives.

Understanding the litigation issues and goals for the client

Given counsel's duty to the insured, first and foremost the attorney must understand the client's litigation issues and goals. How does the client define a successful defense or resolution of the lawsuit? Success may mean dismissal of all claims (compensatory and punitive where applicable). Or, it could be defined as resolution of the claim within policy limits. Are the costs of litigation and defense of concern to the client in certain deductible or self-insured retention scenarios? What are the client's general litigation principles, goals, and philosophy? Are there reputational concerns at play? A clear understanding of the answers to these questions will serve as the foundation for a successful client relationship.

Understanding the litigation issues and goals for the insurer

Likewise, counsel must understand the insurer's litigation issues and goals – driven by both duty to the insured (duty to defend and/or indemnify) and the need for efficiency. How does the insurer define a successful defense, risk transfer, or favorable resolution? What litigation guidelines are in place to drive litigation efficiencies/minimize litigation costs and what is the emphasis on indemnity payout relative to litigation costs and strategies? What areas of concern does the insurer have relative to ensuring that cost concerns and efficiencies do not breach the duty to defend – *e.g*., retention of experts and taking of dispositions? What is the insurer's general litigation philosophy? Clarifying the answers to these questions upfront will significantly improve counsel's ability to meet the insurer's expectations and demonstrate his/her value – and identify potential areas of tension between the client's and the insurer's goals, which can then be addressed in open and collaborative conversation.

A litigation approach that supports/balances each party's goals in the tripartite relationship

Armed with a clear understanding of expectations using the questions above, the attorney is better equipped to develop a litigation plan that meets the goals of all parties in the tripartite relationship. Certainly, when balancing these two parties' expectations and goals, the duty to the insured/client must be prevalent. It's also critical to work collaboratively with the insurer to ensure compliance with litigation guidelines, identify litigation goals, and ultimately implement the most efficient litigation strategy possible – with the goal of balancing and obtaining the optimal litigation goals for both the client and the insurer.

Metrics outside counsel should track to measure effectiveness against client/insurer goals and better demonstrate their value

Many insurers have incorporated law firm or attorney scorecards into their performance management processes for outside counsel – but how many firms maintain their own "scorecard" metrics and proactively share these metrics with their clients? Doing so represents a significant opportunity to illustrate, in a measurable and objective way, the firm's effectiveness at meeting client/insurer goals and how the firm adds value to the litigation management process. It also makes the firm better prepared for conversations the insurer may want to have around the firm performance/scorecard metrics it tracks. Recommended metrics that can be readily and proactively tracked by outside counsel relative to their work with each insurer include: 1) total number of cases opened and closed per year; 2) total indemnity payouts relative to demands at inception of claims; 3) shelf-life of claims; and 4) the number of cases that were tendered (risk transference), dismissed (*i.e*., dispositive motion), settled, and tried. Ideally, within each category (tendered, dismissed, settled, and tried), counsel tracks each case's initial settlement demand, final result, and shelf life. This enables proactive and intelligent conversations with the insurer about the results the firm is achieving and the efficiencies the firm is driving in their management of litigation – and demonstrates that the firm is equally interested in litigation efficiency and success.