



**2016 CLM Annual Conference
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The Business Perspective: Advancing Litigation Management

I. Emerging strategies for pre-suit resolution and spend controls

The key to any effective partnership between an insurer or TPA and the insured/customer is to establish and maintain a collaborative approach in identifying and implementing strategies that best advance the customer's litigation needs pre and post suit. In doing so, the parties should discuss emerging practices and trends that may enhance the quantitative and qualitative oversight of firms and the customer's litigation program. Those pre-suit practices will include considering and employing effective strategies in addressing non-complex and complex claims. The parties will consider legal spend and outcome goals. Importantly, the parties also need to explore litigation probability/emergence rates and trends in order to engage in proactive avoidance of litigation costs where claim strategies and exposures warrant such.

A. Choosing the appropriate law firms – considerations:

1. **Prior use and experience:** What experiences have you or others at the company had with this firm? Has the firm handled a variety of cases of differing complexity? In general, did the attorneys provide good analysis, recommendations? Did the attorneys provide timely and impact status reporting, including a budget?
2. **Specialty work versus general work:** Is this the type of case which requires a firm who practices in a niche area or within a specific specialty?
3. **Request for proposals (RFPs):** When forming a national, regional or specialty panel, detailed and formal requests and the firm's responses can help to compare and benchmark firms' strengths and weaknesses.
4. **Staffing models/philosophy:** How does the firm staff cases? Are there multiple partners, associates and paralegals on files? Does

the firm discuss the addition of timekeepers on a file prior to the work being completed and invoiced? Do they push work down to the lowest, but most capable timekeeping level?

5. Bench strength: Does the firm have other attorneys who could step in and try the case should the handling partner leave the firm, fall ill? Are there other attorneys who have similar specialty experience who could take over the case if needed?
6. Appropriate venue coverage and resources: Can the firm or panel of firms cover the geographic footprint of the state? Is there a firm located directly within the potentially problematic counties of the state?
7. Audit history: What has review of the firm's invoices revealed about their billing practices? Has the insurer/TPA audited the firm on-site and what were the results?
8. Guideline compliance/billing issues: Does the firm comply with the corporate/carrier/TPA guidelines? How does the firm respond to reductions in invoices due to non-compliance?
9. Metrics analyses (WIP, Closed Case Outcomes, Trending)

II. Emerging practices for post-suit litigation management and spend

Not all claims can be kept out of litigation. Thus, the insurer/TPA and insured/customer must be in a position to best manage case handling and costs. In doing so, they should consider alternative rates and fee agreements (considerations include lines of business, jurisdictions, firms, tiers and phases by types of cases and/or statuses within a case, shadow billing, collars, reconciliations, etc.). The partnership is only strengthened by also increasing the interface between customer, firm and insurer/TPA on billing practices and compliance and qualitative handling (enhancing bill review, audit practices, communications and reporting before there are critical issues). Finally, using metrics (litigation costs, indemnity, medical payments, outcomes, cycle-times) at the insured and firm levels to assess performance and effectuate change are critical to a well-developed litigation management program.

- A. Rates/Alternative Fee Arrangements: Does the firm use partners, of counsel, associates, paralegals, law clerks? What are the rates for each level? Is the firm willing to consider or perform work under a flat fee or other alternative arrangement?
- B. Guidelines compliance, Errant Rate and Best Billing Practices: Monitoring a firm's guideline compliance and errant rate, while benchmarking against firms performing the same type of work, allows one to plan appropriate

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

C. Ongoing review of actionable metrics at the insured and firm levels:

1. Monitoring spend on open inventory: Analysis of firm's average spend per case, year to date, as well as monthly spend, broken out by complex and non-complex cases, allows one to track trending and, if available, compare to closed case metrics.
2. High dollar claims: Identifying, both at a firm and company level, new claims with either high potential exposure or pending matters which incurred significant expense; such reports allows for proactive monitoring and heightened engagement.
3. Firm fees and expenses as compared to budgets: Review of "burn rate" which indicates a firm's actual legal spend versus budgeted plan. This oversight requires firms to update budgets, leads to better claim reserve practices and company cash flow forecasting.
4. Firm labor rate/staffing: Monitoring average labor rates is one means of determining that firms are moving work to the most appropriate timekeeper level.
5. Resolution metrics: Ability to report on the case disposition, which can then be used for analysis of firm performance, and to monitor whether the litigation strategies and corporate philosophy have been followed.
6. Benchmarking data: Essential to compare firm and corporate experience across lines of business (WC/Auto), venues and complexity.
7. Task code reporting: Analyzing billing at the task and activity code levels allows one to assess staffing and activity distribution.
8. Other types of possible metric reporting.

III. Communication is Key

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