

How Lean Can Law Be? Successful Strategies for Reducing Cost

Case Study 1: Can We Change The Way We Make The Widgets?

Biggie Oldtime, a comfortable and established trial partner from a well known, major law firm was shocked to get a call from his longtime client, Franklin at Forward Insurance telling him new cases would be assigned to a newer, lesser known firm. Oldtime Law has some truly great trial lawyers, but like most traditional firms it is highly leveraged (many junior support lawyers for each senior partner); the best offices in the most expensive down-town space, a liberal number of secretaries including after hours and weekend support, paper files with only its own work product in digital form, all lawyer and support functions located within the brick-and – mortar structure. Franklin explained he was under intense pressure to improve results and lower costs and, despite their good working relationship over many years, Biggie’s firm had fallen behind the times and, more specifically, failed to: (1) deploy cost saving technology; (2) adopt modern structures to encourage efficiency; and (3) address unnecessary and costly overhead. Biggie unsuccessfully tried to salvage the situation by offering to address Franklin’s concerns. Franklin explained, “It’s more of a mentality, or a way of doing things. We’re not convinced your firm gets it. We need to move in another direction.”

Biggie Oldtime promptly called a meeting with the firm’s administrator, senior and junior partners to develop a plan to be more competitive. “How can we change to be more competitive for clients like Forward?” What changes should Oldtime make in the short term to address its competitive position?

- What can Oldtime do to become lean and efficient to attract and keep clients like Forward?
- What process improvements in everyday functions can be made quickly and inexpensively?
- Can Oldtime use principles employed in other businesses like just-in-time resource management? If so how?
- What structural changes in the firm may help it compete?
- How can the firm use technology to improve its efficiency and work quality?
- Should the firm consider outsourcing support and/or other functions? What are the pros and cons?
- Are there law firm compensation structures that might reward innovation and efficiency?
- What attributes do modern, well designed law firms have that attract demanding new clients?

How Lean Can Law Be? Successful Strategies for Reducing Cost

Case Study 2: Construction Defect Litigation: The Additional Insured Dilemma

Insurer's of subcontractors often pay no indemnity on behalf of an additional insured general contractor or other additional insured subcontractors, however, the defense costs for a large, complicated construction defect suit can be enormous.

Introduction of Case:

Tarpley was the general contractor for a residential construction project in North Carolina called Wombat Acres. Tarpley retained numerous subcontractors. Two of these subcontractors were Lucky Construction and Snap-Tight Framers. Lucky was hired to do concrete work, such as foundations, driveways, walkways, and stoops. Snap-Tight did the framing.

Tarpley's subcontracts with Lucky and Snap-Tight required each of them to add Tarpley as an additional insured to its CGL policy. In fulfillment of these requirements, Lucky and Snap-Tight each purchased CGL coverage from Tempest Insurance Company. Each endorsement limited the coverage for Tarpley to liability arising out of the named insured's work (Lucky or Snap-Tight).

Each Tempest policy contained an endorsement making Tarpley an additional insured, but "only to the extent that [Tarpley] is held liable for your acts or omissions arising out of and in the course of operations performed for [Tarpley]."

In the ensuing construction defect suit brought by homeowners in Wombat Acres, Tarpley, Lucky Construction and Snap-Tight Framers were individually named. Although Tempest admitted that the homeowner's complaint alleged liability arising out of Lucky and Snap-Tight's work, i.e., it alleged defects in the concrete and framing, Tempest contended that the complaint also alleged liability not arising out of Lucky and Snap-Tight's work, i.e., not related to the concrete or framing, and therefore not covered by Tempest.

All three have requested a defense from Tempest based on the policy and additional insured endorsements.

How can Tempest most effectively manage the ensuing litigation and associated costs?

Issues:

- Conflicts (i.e. is separate counsel really needed for each party)
- Multiple attorneys
- Strategies & ideas for containing costs

How Lean Can Law Be? Successful Strategies for Reducing Cost

Case Study 3: Bankruptcy

The ABC hospital was undergoing significant renovations during which time a patient was found in the construction area with multiple fractures and other injuries related to a fall. The plaintiff patient alleges negligent supervision against the acute care facility and asserts a general liability claim against the contractor for failure to secure the construction site.

The Professional Liability carrier is responding on behalf of ABC hospital and the contractor's GL carrier is responding accordingly. Limits are comparable for both parties.

ABC hospital has no contract transferring risk to the contractor, i.e. there is no hold harmless. Further, ABC hospital, which has a six figure SIR, is unresponsive and refuses to participate in early negotiations to resolve the claim.

ABC hospital subsequently goes into bankruptcy while the litigation is ongoing. In settlement discussions before the Court, the codefendant contractor requests the professional liability carrier drop down and satisfy ABC hospital's six figure retention. The carrier has strong language which prohibits this action. The codefendant construction company suggests to the plaintiff's attorney that he file a dec action and allow the Court to determine the obligation of the ABC hospital's professional liability carrier to satisfy their Insured's SIR. Of note, based upon the plaintiff's demand, ABC hospital's obligation in the settlement would be satisfied by payment within their SIR.

The case is stayed because of the bankruptcy action although the Court has a preliminary hearing to learn of the issues described above. Defense Counsel for the hospital advises the Court he would be seeking a dismissal for the dissolved entity. The codefendant contractor refuses to settle the claim without contribution from the hospital, which no longer exists or its carrier, who refuses to drop down.

- How can the carrier efficiently spend its defense dollars?
- Is there a way to appropriately explore the issues without having separate defense, coverage, and bankruptcy counsel?
- Does time help or hurt the resolution of the claim and the expenditure of costs?
- Is less activity better than more?
- Is a Senior Partner's fee justified given the complexity of the issues?

How Lean Can Law Be? Successful Strategies for Reducing Cost

Case Study 4

Introduction of Case:

Consider the following hypothetical taken from a matter tried to verdict. A rupture of an underground liquid media pipeline causes injuries to occupant(s) of a large commercial – light industrial park facility, when floor slab fails due to subsurface soil migration.

Assigned the matter at the outset, what does ‘lean’ mean as far as positioning the case for successful resolution by way of verdict or settlement?

Theories could include depending on detail & quality of initial assessment:

- Inadequate design of underground pipe restraint system
- Defective components of system creating corrosion – failure risk
- Repair contractor’s failure when responding to a prior incident to warn owner of possible ‘systemic risk’ at other facility locations.
- The pump house operator’s failure to detect the leak in its incipient stages through monitoring of pressure charts and activity of jockey and main pumps.
- Failure of owner’s on site emergency crew to promptly close a street valve.
- Failure of co-tenant to maintain a common shut off for the building within its mechanical room.
- Soil engineer and site contractors’ failure to protect the site from unique risks of underground soil migration presented at construction.

If goal is to be lean & cost-effective, from a consumer of legal services standpoint, what ‘cost control’ approach is going to best control expense & achieve a successful outcome:

1. Getting a 10% rate discount.
2. Using ebilling and/or legal audit software to analyze | reduce submitted bills.
3. Requiring ‘risk analysis’ and ‘project management’ from a law firm to allocate resources based on strategic weight to the case.

With respect to #3--- Legal issues & problems can be classified to use one analogy as: pebbles, rocks, boulders, hills, mountains or asteroids.

A 10% rate reduction is beside the point if reducing the work to a pebble or rock size or even skipping it altogether is an option.

With respect to the current emphasis on project management: How many use law firms that deploy software that allow timekeepers to see, when they pull up a matter for work on their computer, some kind of dashboard display of where they are on a matter with respect to budget, and other set parameters?

It's difficult to be sensitive to budgets & metrics in designing and executing an approach to a case if budgetary information and case management parameters aren't collected and posted as a guidepost to inform the 'litigation team'.

If you see 'risk analysis' (i.e. not having every legal issue treated as a metaphorical mountain or asteroid) and project management as having value, --Do you best encourage that emphasis by assignment of matters on a typical straight --- I'll pay you for hours your firm records----- or using a variety of Alternative Fee Arrangements which by their nature incentivize adherence to budgets and strategically weighted litigation management plans?