The 2020 CLM

Defense Counsel Study

Report of Findings

A discussion with industry defense attorneys
about the State of the Union in
insurance defense litigation.

March 2020

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Introduction

About the 2020 Defense Counsel Study

This Study of defense counsel was commissioned by the CLM and performed by Suite 200 Solutions. It follows on the heels of the CLM's 2019 Litigation Management Study, which surveyed senior claims and litigation executives.

This is the CLM's fourth industry-wide study litigation management study, and the first to focus exclusively on the thoughts and observations of defense counsel. A primary purpose of the Study is to provide information and data that will facilitate improved communication and working relationships between defense attorneys and the litigation executives who hire them.

Study participation was anonymous, and all data and any information provided by the participants is strictly confidential. In many cases, we have drawn comparisons to the results of the 2019 CLM Litigation Management Study (which we refer to also as the 2019 Buyers Study). However, as with all of our studies, we view the information outlined to be a point-in-time snapshot of the industry. Given the relatively confined data set, we caution against drawing too many statistical conclusions or then-to-now trends.

We encourage readers to use the Study for the primary purpose for which it was intended — as a framework and foundation on which all members of the litigation management industry – including claims organizations, litigation vendors, and law firms — can collaborate and exchange ideas about how to promote the highest standards and best practices in our industry.

Thank You to All Participants

We wish to thank each of the 400 defense attorneys who responded to the Study's survey. Without their participation this Study could not have been possible. The time they invested in participating in this project benefits law firms and buyers of legal services alike, both within and outside of the CLM Community.

Thank You to Our Sponsors

We also want to thank each of the sponsors who made this Study possible. Without their underwriting support, the effort and time required to perform a Study like this would not have been possible.

Our sponsors recognize the importance of understanding emerging trends in the litigation management field, and each is a thought-leader in their respective litigation-oriented fields. This Study's sponsors are listed below.

Signature Sponsor

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More information about each sponsor, and links to their organizations, can be found at the end of this Report.

Steering Committee Members

This was a Study of the industry by the industry. Accordingly, the Study's questions were developed with the input of a dedicated Steering Committee. Committee members represent a diverse group of law firms and serve a diverse range of industry clients. Their help was invaluable in designing a survey that promotes dialogue and meaningful discussion across the industry.

The dedication of these attorneys is a reflection of their commitment to the industry and speaks to their interest in promoting and furthering the highest standards of claims and litigation management. We thank them very much.

Our Steering Committee members were:

Daniel A. Berman
Firm Chairman and Co-Founder
Wood, Smith, Henning & Berman LLP
Los Angeles

Daniel P. Costello
Managing Partner
Daniel P. Costello & Associates, LLC
Chicago

Michael P. Lowry
Partner
Wilson Elser Moskowitz Edelman & Dicker, LLP
Las Vegas

Preston L. McGowan
Chief Transformation Officer
Goldberg Segalla
Princeton, NJ

Trula R. Mitchell
Member
McAngus Goudelock & Courie (MGC Insurance Defense)
Atlanta

Hope Zelinger
Principal
Bessler, Amery & Ross
Miami

Our Observations

There are many facts and figures in this Report on which to draw your own conclusions about the State of the Industry for defense attorneys. We encourage readers to form their own opinions as they digest specific findings and particularly as they observe correlations (or a lack of correlations) between data points.

However, as we assembled the data, we made several high-level observations, which we summarize as follows:

General Sentiment

Attorneys are on the whole very positive about the state of the industry, their own practices, and the value they offer. Generally, participants reported that things have improved for them (or at least that they are "doing better") in multiple areas. They feel they have improved relationships with their clients, understand their clients better, and are delivering more value. They feel that they are billing better, following process guidelines better, and using metrics more.

We also noted, however, that roughly a quarter of those in firm leadership roles believe their client relationships to be weaker. That is a notable number, and one that is much higher than the six percent of litigation executives who feel that way also.

To those attorneys who feel things are more challenging and that client relationships are weaker, we might suggest that things are not as bad as they seem. Conversely, to those attorneys who think they have improved in the multiple areas we asked about, we urge them to take note of the fact that buyers appear to have a more tempered view (and in some cases, much more tempered) of these improvements. Firms may do well to say to their clients, "But enough about me, what do you think of me?"

Payment Friction

We observed that the complexities of being paid for legal services provided continues to be an important issue in the relationship between attorneys and their clients and principals. Operationally, about half have larger billing departments than three years ago. Roughly two thirds of payments are still by physical check and are made more than 60 days from invoice. Attorneys struggle with the subjective nature of the adjustments being made to their invoices and are giving up roughly seven percent annually to client-driven adjustments.

While attorneys scored their pain level with these processes at surprisingly moderate levels, they also identified issues related to payment and rate as the two leading friction points in their relationships with clients. In addition, the vast number of open-text comments critical of bill review practices suggests a much higher frustration than the pain-level scoring would suggest on its own.

In terms of alternate compensation modalities that might reduce some of this friction, such as alternative fee arrangements (AFAs), we noted some findings that may call for more exploration. While some attorneys said that their clients don't want, and in fact explicitly turn down, AFA proposals, the attorneys also reported relatively low comfort levels with proposing and using them. A full quarter of the Study's participants reported that their firms use no AFAs at all. This may or may not be a missed opportunity, since buyers of legal services have said that they are impressed when attorneys do propose AFAs and a notable segment of the buyer community is frustrated with how nominally they are being used.

Performance Data

Lastly, one area of continued dialogue we believe is relevant to all parties is in the realm of exchanging performance data. Very surprisingly (to us, at least) attorneys reported higher comfort levels with their own performance data than buyers (payers) reported having in theirs. Yet very few attorneys share this performance data as part of an established client communication strategy. Few attorneys ask for data from their clients, and indicate some skepticism that clients will give it to them.

On the buyer side, only two percent of buyers say they receive metrics from firms frequently and highlight that it is very rare that they are asked to provide such information to firms. That said, they indicate they will provide the data when asked, and we encourage firms to test that assertion and also their own belief that their metrics are aligned with the metrics used by their clients.

We emphasize our interest in the performance data dialogue for several reasons. First, we see no indication that performance data is going away. We believe its use will continue to become more sophisticated and more prevalent, expanding to data points outside of those that can be gleaned from a legal invoice. Second, we believe firms and attorneys have a great deal to contribute to this conversation, and the opportunity to shape the discussion, rather than be a passive spectator to it, should not be overlooked.

We hope that using these observations, and other data points in this Report, can serve as a foundation on which to build great client-attorney conversations.

Key Findings

Some of the key findings from the 2019 CLM Litigation Management Study include the following. Items in blue were of particular interest to us:

Study Demographics

- 400 defense attorneys participated. One quarter (24 percent) self-identified as being in law firm leadership roles. These were Managing Partners, Executive Committee members, and non-practicing firm executives. Eighty-two (82) percent of the respondents self-identified as partners. Thirteen (13) percent were firm associates.

- Participants have been practicing law for an average of 22 years. The average years of practice for associates was eight (8) years; the average for partners was 19. Those in firm leadership roles reported an average of 28 to 29 years. On average, participants said that 86 percent of their caseloads are insurance policyholder defense and 15 percent is coverage work.

- Approximately 40 percent of the respondents work in firms of less than 30 attorneys; one quarter work in firms of 31-150 attorneys, and one quarter work in firms of 151-300 attorneys. Two thirds of the respondents said that their law firms are larger today than they were three years ago. Only eight percent said that their firms are smaller.

Client Relationships

- Sixty (60) percent of attorneys feel that firm-client relationships are better today than they were five years ago. Fifty-four (54) percent of legal services buyers feel the same way. Almost one quarter of those in firm leadership roles feel relationships are weaker.

- Eighty (80) percent of attorneys feel their ability to “understand client needs” is higher than five years; Sixty (60) percent of buyers agree.

- Seventy-nine (79) percent of attorneys feel that their ability to “create value for their clients” is higher than five years ago; Forty-eight (48) percent of their clients agree.

Describing Law Firm Value

- Buyers of legal services rank the ability of law firms to "describe their value" at a lukewarm 51 out of 100. Attorneys rank their ability to do this at a 79 out of 100 (associates scored an 85 out of 100!).

- From a pre-set list of attributes, attorneys identified expertise and metrics as their firm's two primary law firm distinction points. Efficiencies and trial skills were next, followed by process and technology. Despite listing metrics high on the list, only 26 percent said they frequently share their performance data with clients as part of an established client communication strategy.

- In contrast, only 11 percent of legal services buyers believe that firms maintain good metrics about their own performance and only two percent of buyers feel that firms share metrics with them "frequently."

Per-File Costs

- Buyers are twice as likely to feel that per-file costs have increased over the last three years as attorneys. Exactly half (50 percent) of buyers said that per-file costs have gone up; only 23 percent of attorneys said this.

- Attorneys are twice as likely to feel that per-file costs have decreased over the last three years as buyers. Thirty-seven (37) percent of those in firm leadership roles said that those costs have decreased; only 17 percent of buyers said this in the 2019 Study.

Guideline Compliance and Metrics

- Seventy-four (74) percent of attorneys feel they are complying with billing guidelines better than three years ago; only 56 percent of buyers feel this way. Sixty (60) percent of attorneys say that they are complying with non-billing (process) guidelines better than three years ago; only 44 percent of buyers say this.

- Participants identified numerous metrics used to measure performance in their firms. A quarter (26 percent) don't tie these metrics to individual attorney compensation; an additional third tie the metrics to compensation only "informally."

- Attorneys score their comfort and confidence with their own metrics at a 70 out 100. Buyers score their comfort and confidence with the metrics they have at a 60 out 100.

- Attorneys don't ask clients for performance data their clients may have about them very often. They scored this as a 38 out of 100. A full 96 percent of buyers said that firms do not ask for such information enough.

- Attorneys appear skeptical that clients will share information with them if asked. They scored this as a 54 out 100. In contrast 92 percent of buyers said they will share such information upon request. That said, attorneys scored the "helpfulness" of the information shared, when it is shared, at an 83 out 100.

Client-Assessment Questions

- Attorneys scored their clients' ability to describe their claims and legal needs as a 63 out of 100. They scored their clients' ability to describe their strategic business needs as a 47 out 100.

- Participants scored claims professionals' ability to engage in deep discussion of, and negotiation around, litigation budgets as a 23 out of 100.

- More positively, 42 percent of respondents said that individual case strategy setting is a collaborative process, with both the claims handler and attorney working together harmoniously.

- A full 27 percent of the attorneys said that the expertise of the claims handlers they work with is less than five years ago. Thirty-four (34) percent of attorneys who are managing partners or in leadership roles said this.

Core Philosophical Questions

- Both attorneys and buyers agree that it is generally the attorney being hired (vs. the firm as a whole). Sixty-four (64) percent of attorneys said this; 84 percent of buyers said this.

- Essentially everyone (94 percent of attorneys, 100 percent of buyers) believe that some attorneys are better at file resolution than other attorneys. Twenty-eight (28) percent of attorneys attribute this to good processes at the firm level; 43 percent of buyers do.

- Fifty-five (55) percent of attorneys believe that spending more money on the defense of a lawsuit will generally reduce indemnity costs; 21 percent of buyers believe this.

- Sixty-five (65) percent of attorneys believe that more compensation to firms generally translates to better attorneys and better outcomes; only 16 percent of buyers feel this way.

Competitive Pressures

- Eighty-five (85) percent of attorneys feel that the environment for law firms is more competitive than five years ago; 62 percent of buyers believe this. For 65 percent of the attorneys, the source of the "most" competitive pressure is the same law firms they've been dealing with previously.

- On the whole, attorneys do not believe that insurance company utilization of staff counsel operations negatively impacts the economics for a defense firm. They scored this economic pressure as a 54 out of 100.

- Two primary factors stood out for participants as posing the greatest economic pressure over the next five years: low rates and challenges with hiring and retaining new attorneys.

Billing and Invoicing

- The most common minimum billable increment for most attorneys remains a ".1" (six minutes). Eighty (80) percent of participants cited this figure; however, almost one in five (19 percent) said that their minimum billable is now a ".05" (three minutes) for at least one client. In 2019, eight (8) percent of buyers reported using ".05" as their minimum requirement amount.

- Forty-eight (48) percent of attorneys say that their billing departments are larger (in proportion to attorney count) than three years ago. Attorneys in firm leadership roles say that 66 percent of invoice payments are still in the form of a physical check; 63 percent say that

they would like to receive more electronic payments.

- Attorneys believe that 83 percent of their invoices are now e-billed; that 72 percent of invoices are now audited by a third-party; and that seven (7) percent is the annual post-appeal invoice adjustment rate. Buyers identified that their average adjustment rate for panel firms is six (6) percent. Seventy-six (76) percent of attorneys feel that invoice adjustments are very subjective. On a "pain scale" of 1 to 100, attorneys scored the process for getting paid for the work performed at a 56.

- Roughly one in 10 (11 percent) of firm leaders said that they use software application to pre-check an invoice against client guidelines before submitting an invoice; Seven (7) percent said that they use a third-party invoice preparation service (both experts and software) to prepare more compliant invoices before submission.

- The common duration between invoice and payment (65 percent) is 60-90 days. Roughly 17 percent are paid within 30 days. On a pain scale of 1 to 100, attorneys scored the timing of payment at a 56.

Use of Alternative Fee Arrangements (AFAs)

- Respondents estimated that roughly 10 percent of their own caseload, and 14 percent of their Firm's cases, involve an AFA of some type. Twenty (20) percent of attorneys said that their firms don't use AFAs at all.

- Twenty-eight (28) percent said that their use of AFAs is greater than it was five years ago; 21 percent of buyers said this in 2019. Thirty-two (32) percent of respondents estimate that their use of AFAs will be greater five years from now; 29 percent of buyers said this.

- In terms of general comfort levels with proposing and using AFAs, those in firm leadership roles score higher, but all attorneys were relatively lukewarm in their levels. The all-respondent group scored a 43 out 100; those in firm leadership roles scored a 50.

Study Methodology

This Study was comprised of approximately 80 questions classified into the following categories:

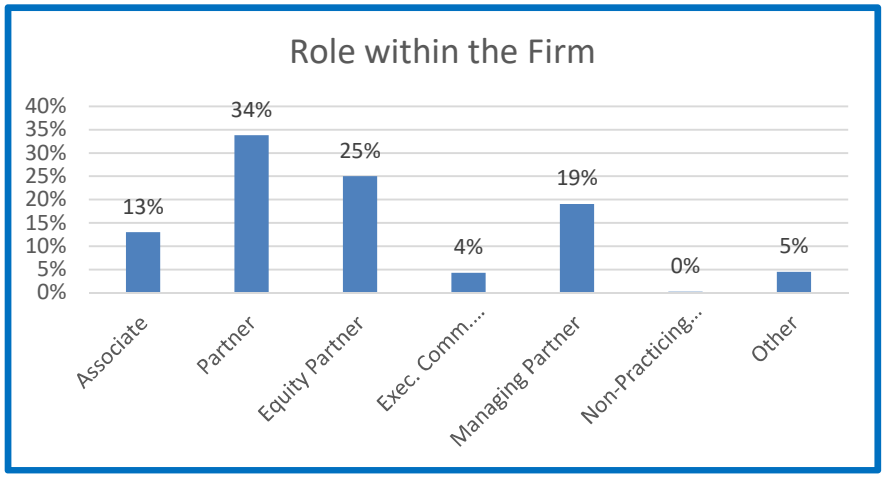
1. About the Respondent
2. About the Respondent's Law Firm
3. A Self-Assessment
4. A Client Assessment
5. Core Philosophical Considerations
6. Law Firm Economics
7. Future State Predictions

Almost all questions were formatted as multiple choice, including several forced-binary questions. Several questions called for priority rankings.

All respondents were advised that the use of estimates was acceptable when responding to questions that called for numerical answers. As a result, certain numerical answers differed from attorney to attorney within the same law firm. This was consistent with our intent, however, as our desired focus was on capturing sentiments at the individual attorney level, and not at a firm or corporate level.

Participant Demographics

Role and Tenure



Exactly 400 attorneys participated in this Study. Participants self-identified as being within one of seven primary roles within their firms.

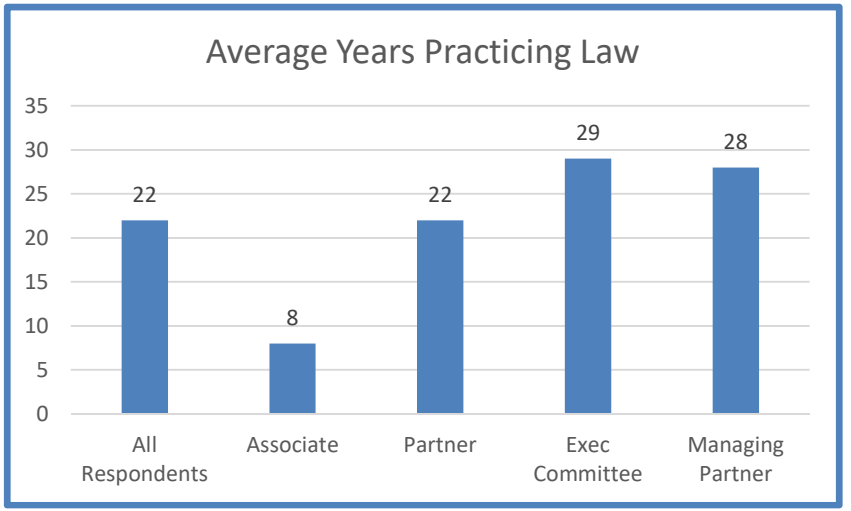
Eighty-two (82) percent identified themselves as being in non-associate Partner roles. The majority of the five percent who self-categorized as "Other" were "Of Counsel."

We have referred those who identified as "Managing Partners," "Executive Committee Members," or "Non-Practicing Firm Executives") as being in "Firm Leadership" (i.e., the day to day running of a firm). This group comprised almost a quarter (24%) of all respondents.

We are fully cognizant that many of the attorneys who do not have those specific titles also help to run their law firms. However, we wanted to have a discrete group against which to compare the thoughts and opinions of all respondents as a whole.

The average number of years in the practice of law across all respondents was 22.

The average for associates was 8 years; the average for partners was 19. Those in self-identified leadership roles had an average of 28-29 years.



Insurance Defense and Coverage Focus

Study participants work predominantly in the insurance arena. We defined "insurance defense" as representing an insurance carrier's policyholder or a self-insured organization. We defined "insurance coverage" as providing insurance coverage opinions or coverage defense for insurance carriers. Almost all of the respondents' caseloads meet these criteria. Additionally, they reported that almost the entirety of their firm's focus falls into these areas as well (82-90%).

PERSONAL PRACTICE FOCUS	Percent of Respondent's Caseload AVERAGE	Percent of Respondent's Caseload MEDIAN
Insurance Defense Work	86%	94%
Insurance Coverage Work	15%	5%

ESTIMATE OF FIRM'S FOCUS	Percent of FIRM AVERAGE	Percent of FIRM MEDIAN
Insurance Defense OR Coverage Work	82%	90%

Client Involvement

We asked each respondent two questions that related to client management and client interactions generally.

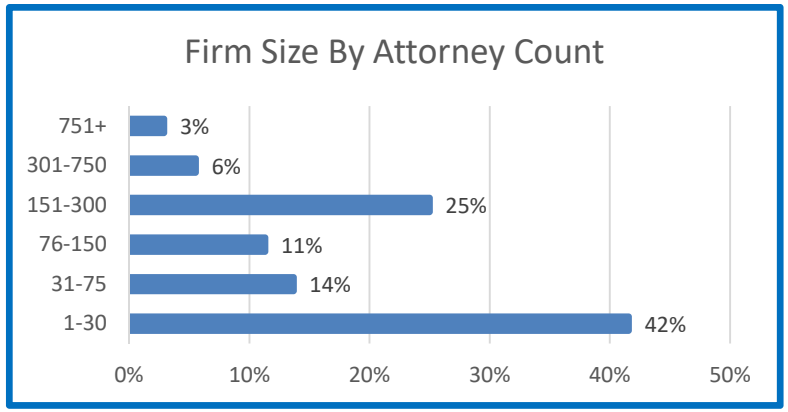
Managing Client Relationships — First, we asked if the attorney "considered themselves personally responsible for managing one or more client relationships." A total of 89 percent of all respondents answered "yes" to this question. Among associates, 52 percent considered themselves as having this responsibility.

Securing New Business — Second, we asked if the attorney considered themselves "personally responsible for securing new client relationships;" (emphasis added). A total of 91 percent of all respondents answered "yes" to this question. Among associates, 60 percent considered themselves as having this responsibility.

Firm Demographics

Firm Size

The anonymity of the Study prevents us from determining how many unique law firms were represented across all 400 attorneys. However, the average number of attorneys reported in a firm was 127. The largest firm represented reported having 1,500 attorneys.

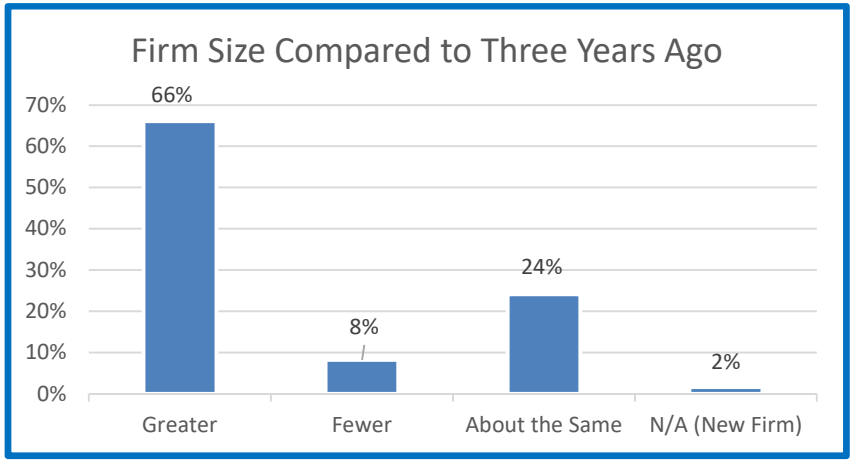


A more helpful way of viewing this distribution is to spread the answers across several categories of firm size.

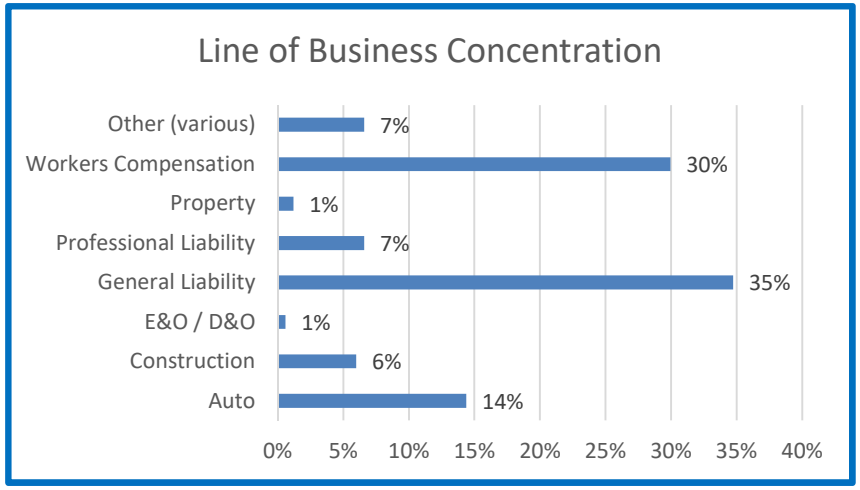
The largest group of respondents work in firms of less than 30 attorneys; the second largest group work within firms of 151-300 attorneys.

Respondents were asked to share whether the current number of attorneys in their firms is larger or smaller than it was three years ago.

Only 8 percent reported a smaller law firm. A full 66 percent said that their firm is larger than it was three years ago.



Line of Business Concentration



Forty percent of respondents said that one specific "line of business" constitutes more than 50 percent of the firm's insurance-related work.

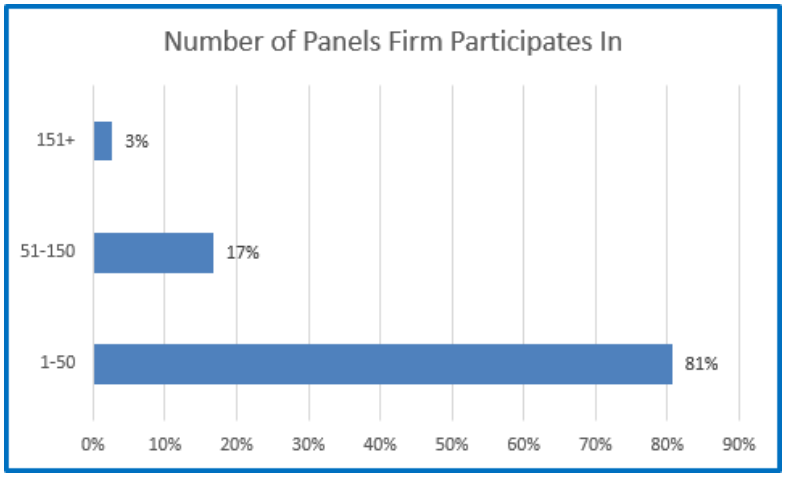
For those reporting a high concentration of specialty, General Liability, Workers Compensation, and Auto were the three primary areas of firm specialization.

Approved Panel Participation

Each respondent was asked to estimate the number of "insurance companies, TPAs, and self-insured corporations" that identify their law firm as pre-approved for assignments (either as approved panel counsel or as exception counsel).

The average number provided as 44; the median number 25. The largest number reported was 800. Given the wide range of answers, we've put them into buckets by percentage of responses provided.

For 67 percent of the respondents this number is higher than it was three years ago. For 29 percent this represented no change in the number of clients. Only 4 percent reported working for fewer clients.



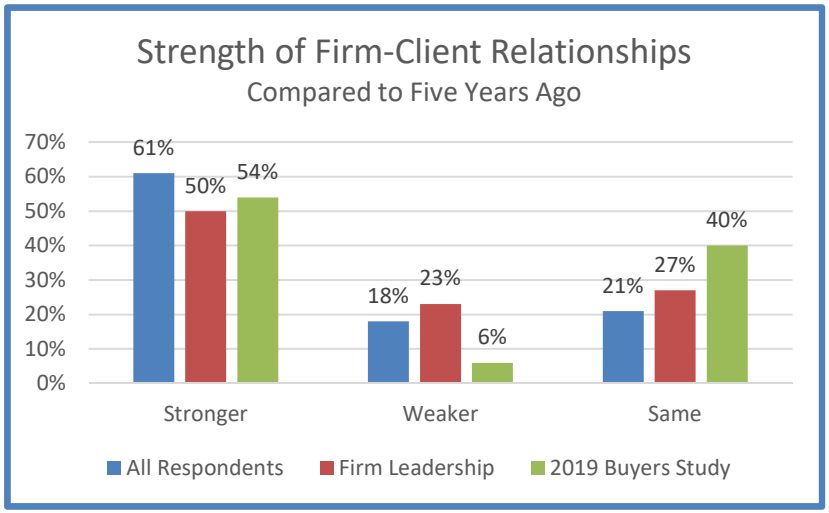
Self-Assessment

Strength of Client Relationships

Study participants provided three points of data to help capture the general state of relationships between their Firms and their clients. The three questions asked were:

- Overall, when compared to five years ago, do you feel that your firm's relationships with [your clients] are stronger, weaker, or about the same?
- Overall, when compared to five years ago, how good a job do you feel the firm is doing in terms of understanding [your clients'] needs?
- Overall, when compared to five years ago, who good a job do you feel the firm is doing in terms of "creating value" for [your clients]? (Define value as you wish).

With regards to overall firm-client relationships, participants were very positive. Across all respondents, 61 percent reported stronger relationships; 21 percent reported no change; and almost one in five respondents (18 percent) reported weaker relationships.



Those in a firm leadership roles (Managing Partner, Executive Committee Members, and Non-Practicing Firm Executives), were more tempered in their responses. Fifty percent of this leadership group reported stronger relationships; 24 percent weaker relationships, and 26 percent the same.

We believe the almost one in four (23 percent) negative response from these law firm leaders is something to be noted and discussed.

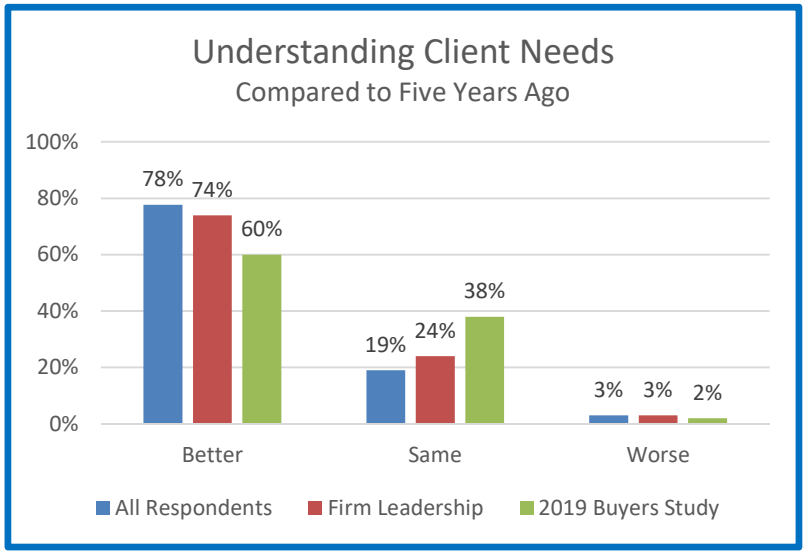
In two categories, buyers from the 2019 Study feel more positive about their relationships with firms than the attorneys in them. More buyers than all-respondents feel the relationships are stronger; fewer buyers than both all-respondents and those in firm leadership roles feel relationships are weaker.

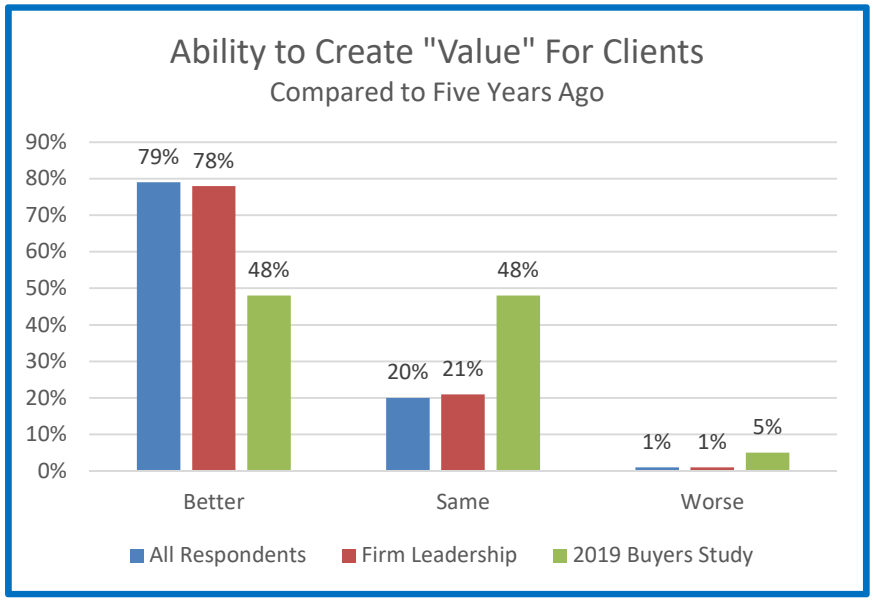
Understanding Client Needs

With regards to "understanding client needs," overall responses were also positive.

Seventy-eight (78) percent reported doing a better job of understanding client needs; 19 percent reported the same level of understanding; and only 3 percent reported doing a worse job. Responses from those in a firm management role were similar.

2019 Study buyers were a bit more moderated in their assessment. Fewer of them felt that firms are doing a better job, but fewer of them feel that firms are doing a worse job too.





Creating Value for Clients

Attorneys were very positive in their self-assessment of their ability to "create value" for clients (respondents were allowed to define value as they wished). But their assessment differed significantly than the assessment of those they are creating value for.

Fewer buyers felt firms are doing a better job of this (48 vs. 78 percent); and more felt firms are doing a worse job (five vs. one percent).

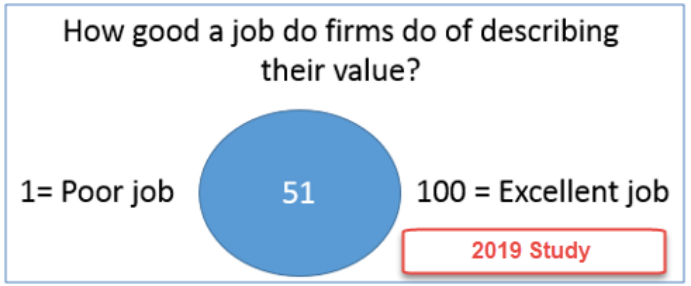
Describing Law Firm Value

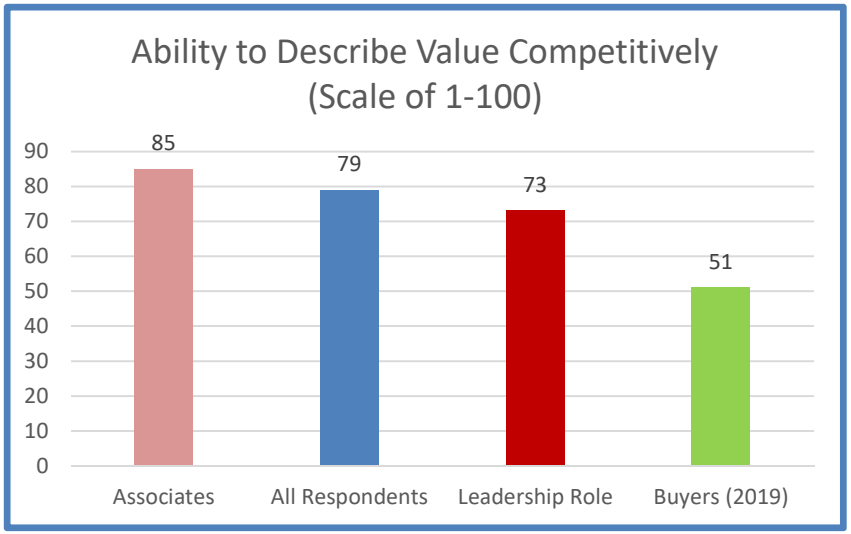
How effectively attorneys describe the value of their firm is subject of great interest to us (and to attorneys seeking new clients). To some degree, the benchmark for this effectiveness can be described not by the attorneys doing the describing but by the buyers of legal services who are listening to the description.

In the **CLM's 2019 Litigation Management Study**, we put this question directly to the 80 senior claims and litigation officers who participated.

Specifically, we asked respondents in the 2019 Study to identify, on a scale of 1-100, "How good a job do law firms do in describing their firms' value, and to competitively distinguish their firm from other firms?"

The average of all answers was a 51 out 100, which we deemed to be a somewhat lukewarm response (though a vast improvement over the 3 out of 10 response we received in the 2015 Litigation Management Study).





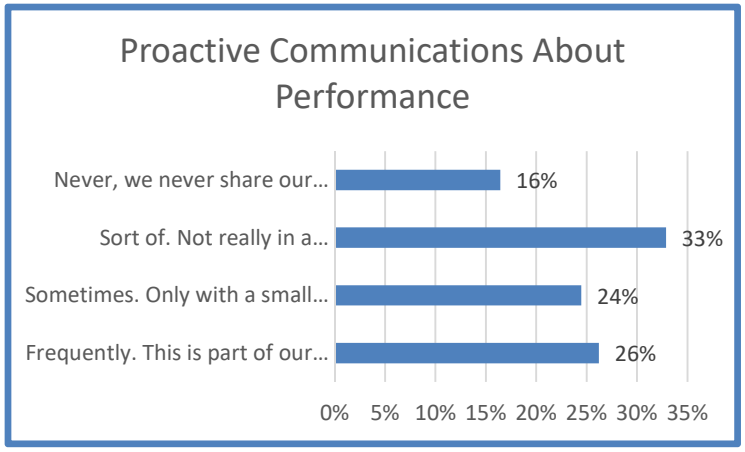
Against that backdrop, we noted that when asked the same question, attorneys scored their ability to describe their value, and to distinguish their firm from other firms, at a level much higher than buyers.

Associates are the most positive, with an average score of 85 out of 100. Those in firm leadership roles were more circumspect, with an average score of 73. Across all answers the average score was 79. Again, all these scores can be compared to the 51 out of 100 that buyers provided in 2019.

We note this as an area we feel firms would find productive to explore further, especially with their clients and prospective clients.

To better understand what attorneys point to as competitively positioned areas of value for their law firm, we provided several options from which respondents could choose. We weighted the responses by first, second, or third choices. Expertise and metrics scored significantly higher than efficiencies and trial skills, which in turn scored above process and technology.

Law Firm Competitive Distinction Points	
Attribute	**Weighted Score**
Expertise – our attorneys have tremendous expertise.	**2.46**
Metrics – we measure and capture performance metrics very well.	**2.13**
Efficiencies – we know how to be efficient in our handling of cases.	**1.87**
Trial Skills – If you need to try a case, we know how to do it best.	**1.86**
Process – We follow established processes to get great results.	**1.63**
Technology – we have fantastic technology to stay on top of things.	**1.58**



We asked how firms convey their performance to existing clients. Specifically, we asked, "Do you proactively share your firm's performance for a specific insurance client with them? (Through a letter or other proactive communication)?"

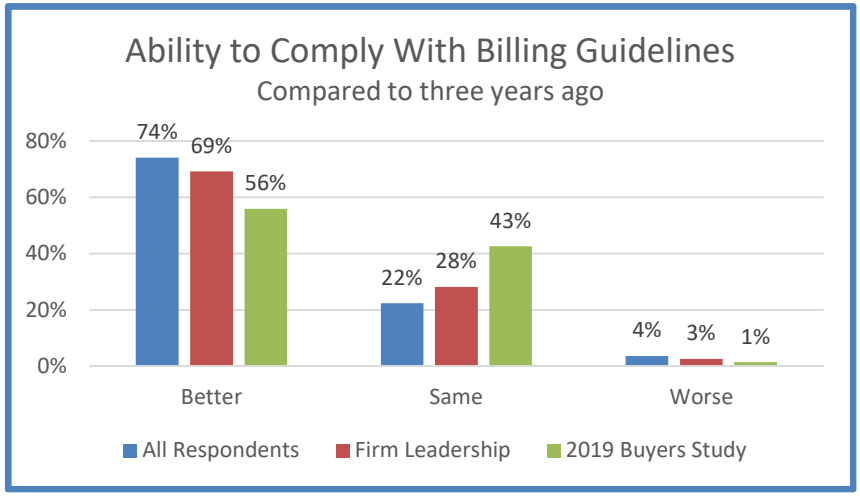
Only a quarter (26 percent) said they do so frequently and as part of a client communication strategy. Fifty-seven (57) percent do so informally or sometimes. Roughly one in six respondents (16 percent) said they never share such information.

In contrast, only two (2) percent of buyers say firms share metrics "frequently," and 90 percent said it is "very rare" that they receive metrics from firms.

For those firms who wonder if proactively sharing their own performance metrics is a good idea, we offer the following context from the 2019 CLM Litigation Management Study:

- Only 11 percent of buyers believe that firms maintain good metrics about their own performance;
- Buyers score their own confidence in the metrics they maintain about law firms at 60 out of 100, suggesting that more information from firms is helpful to the dialogue;
- A full 67 percent of buyers wish their metrics were better for rating individual attorneys (as opposed to rating the firm);
- Sixty-four (64) percent of buyers are "impressed" when firms deliver their own metrics (only five (5) percent are "skeptical");

Billing Guideline Compliance



We asked two questions about guideline compliance. One question related to billing compliance guidelines; the other asked about compliance with file-handling or process guidelines. Respondents feel that they are doing better with billing compliance when compared to three years ago.

Across all respondents, a full three quarters (74 percent) believe compliance is better. Only four percent reported a decrease in compliance.

When examining responses from just those in leadership positions (Executive Committee members, managing partners, and non-practicing firm executives), the results were not appreciably different.

As a point of comparison, attorneys are more positive than buyers that they are doing "better;" Conversely, attorneys are more self-critical in their assessment of doing "worse" than buyers are. Overall, everyone seems to feel that firms are doing "better" in the big picture with billing compliance.

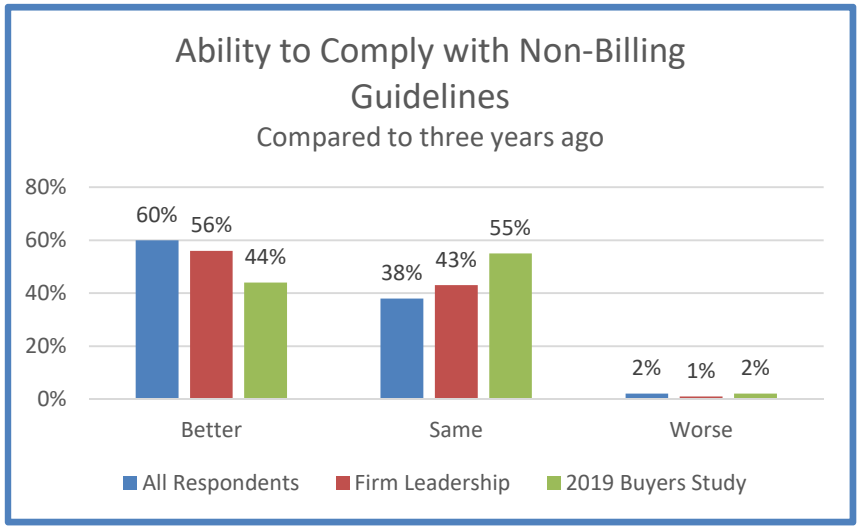
Non-Billing Guideline Compliance

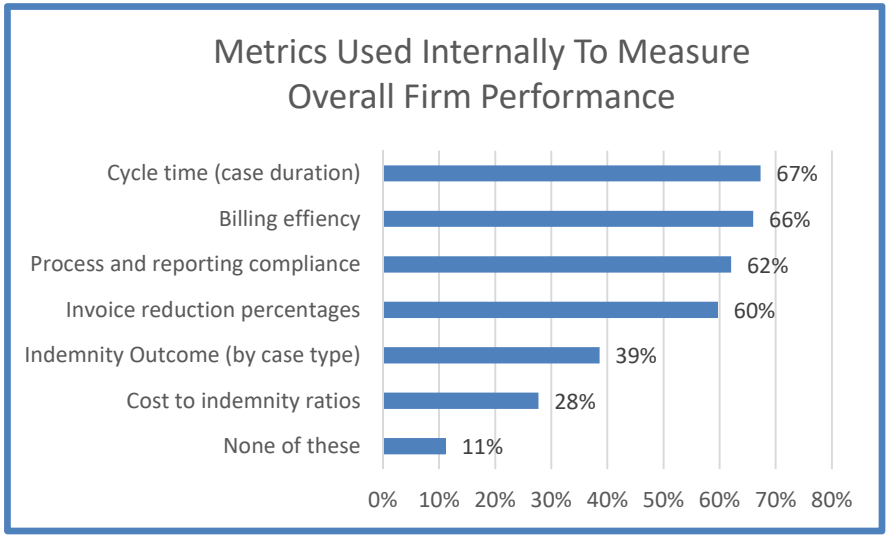
When it comes to compliance with non-billing guidelines, those in firm leadership roles are not quite as optimistic in their self-assessment as they are with billing compliance.

Fifty-six (56) percent believe they are doing better; 43 percent believe they're doing about the same; one (1) percent feel they're doing worse.

The assessment of buyers in the 2019 Study was a little more moderate, with only 44 percent saying that law firms are doing better in this area than three years ago.

Still only two (2) percent of buyers feel firms are doing worse when it comes to non-billing guideline compliance and in our view the overall sentiment of both attorneys and buyers should be viewed as quite positive.





Most Commonly Used Metrics

Metrics have become a critical component to every discussion about litigation management effectiveness. We asked respondents to comment on no less than eight questions about metrics and their use of them. And, (as is noted above), metrics were identified as the second most commonly cited firm point of distinction when describing a law firm's value.

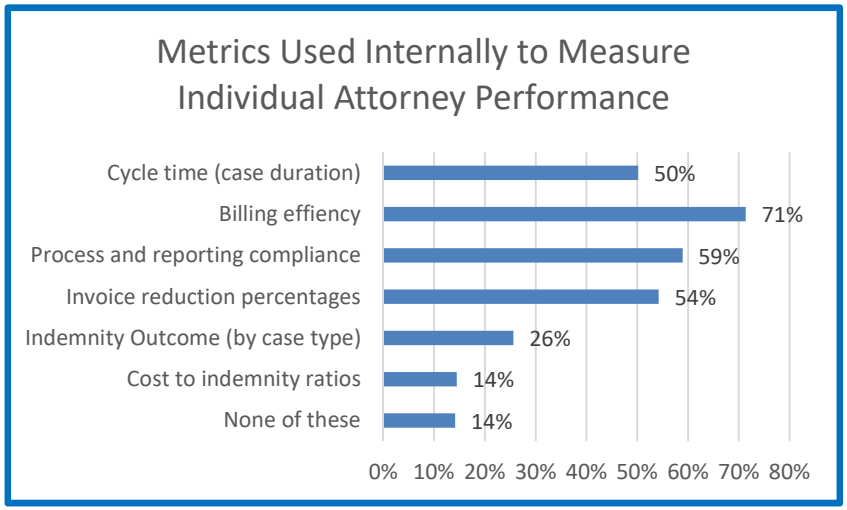
Metrics to Measure Firm Performance

In terms of measuring overall firm performance, respondents cited four primary data points when given a list to choose from. These

included cycle time, billing efficiency, process compliance, and billing accuracy. It should be noted that roughly one in 10 (11 percent) of the Study's participants identified that they use none of the metrics listed.

Several respondents offered up additional metrics that they track, and which were not on the original list of choices. These included:

Additional Metrics Used to Measure Firm Performance			
Budget to actual ratio	**Over 100 data points per case plus UTBMS analysis**	**Legal cost per case**	**Allocation of tasks by Partner / Associate / Paralegal**
Motions per case	**Depositions per case**	**Resolution type analysis**	**Client satisfaction surveys**
Effective rate compared to standard rate work	**Total attorney fees collected per file**	**Coding accuracy**	



We also asked participants to identify what metrics are used internally within the law firm to measure individual attorney performance (as distinct from overall firm performance).

The major differences between firm measurement and individual attorney measurement included:

More emphasis on billing efficiency and process compliance, and invoice reduction percentages.

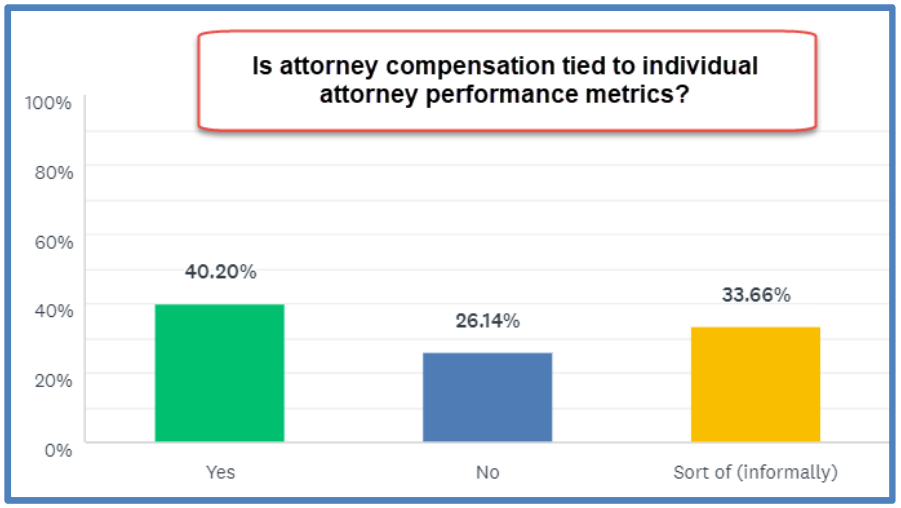
Less emphasis on cycle time, indemnity outcome, and cost to indemnity ratios.

We also noted that the number of respondents who use none of the listed metrics listed rose from 11 to 14 percent.

Respondents also offered a number of additional metrics that were not on the original list. These included:

Additional Metrics Used to Individual Attorney Performance			
The difficulty of the client	**Repeat requests for that attorney**	**Amount of possible damages in specific cases**	**Overall billing and effective rate**
Communication with our client to assess satisfaction with an attorney's services	**Additional compliance measures**	**Total case cost and Cost per case**	**Month over month trends for collections, worked value and opened cases**
Average legal fees per case	**Yearly file audit**	**Total attorney fees collected**	

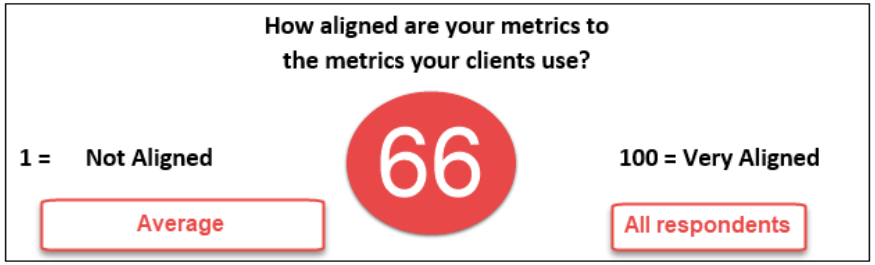
In regards to individual attorney performance metrics, we asked the following question: "Is individual attorney compensation tied in any way to any of the performance metrics identified above?"

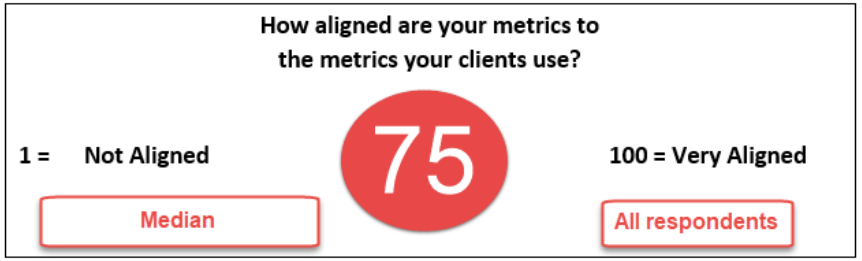


Forty (40) percent of all respondents said yes, and an additional 34 percent suggested that compensation is tied to the metrics, but informally so. Roughly one quarter (26 percent) said that there was no direct tie between the metrics and attorney compensation.

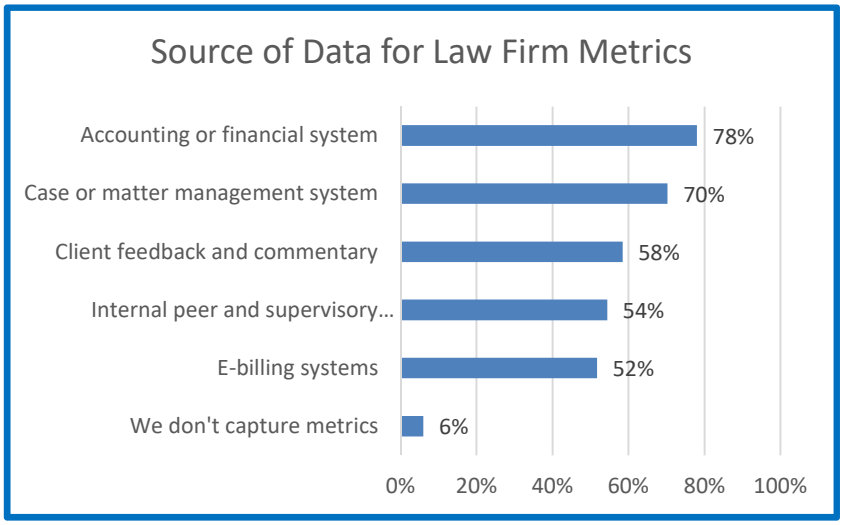
When examining only those responses from those in firm management roles, the numbers change slightly. Forty-four percent said "yes", 28 percent said "no" and 28 percent said "informally." We did not view this to be a material change.

We were curious if law firms feel that the metrics they are using align with the metrics their clients are using. We asked this on a scale of 1-100, with 100 meaning "Very closely aligned." The average and median scores provided are reflected in the two figures below.





All respondents as a group scored their answer with an average of 66 and a median response of 75. There was little appreciable difference in how those in firm leadership scored this question. They scored an average of 65 and a median score of 70. We view these scores as reflective of a pretty strong belief that their metrics are aligned closely with those of their clients.



Study participants helped to identify the various sources of data from which they compile metrics. We examined the data from both the perspective of "all respondents" and then just those in leadership roles. (The figure to the left is for all respondents).

Attorneys in leadership roles scored these sources in essentially the same way, except that those in leadership roles slightly favored "internal peer and supervisory discussions" over "client feedback and commentary."

Attorneys report a higher degree of comfort and confidence in their process for measuring firm performance than their clients do with client-side processes. Average and median scores are noted in the figures below.

Respondents provided an average score of 70 and a median score of 75 (out of 100). In contrast, buyers in the 2019 Study scored their own processes for this at a 60 out of 100.

However, firms do not ask their clients for the performance data their clients maintain about them very often. Respondents scored this as a 38 out of 100 on average, with an even lower median score of 32.

This correlates to a finding in the 2019 Study that 96 percent of legal services buyers say that law firms do not ask for such information enough. Particularly given the fact that firms feel pretty good about their own performance measurement, and also feel that their metrics align with those being used by their clients, we feel there is an opportunity for firms to ask their clients for more data. Putting these two data sets side by side would be good for both parties.

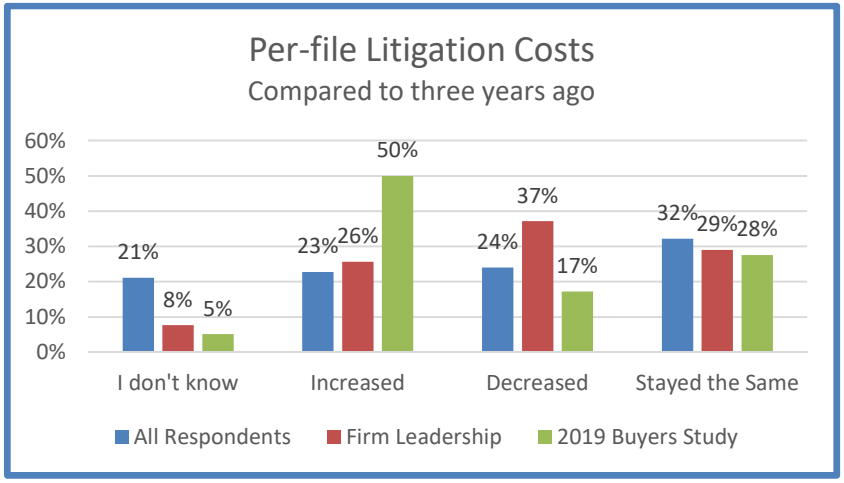
Per-File Costs

We asked participants to share whether they believe that, when compared to three years ago, their firm's average per-file fees and costs have increased, decreased, or stayed the same. This is a key metric used by many clients to assess the effectiveness of their litigation management initiatives.

More buyers than attorneys (about double) feel that costs per file have increased.

More attorneys than buyers (about double) feel that costs per file have decreased.

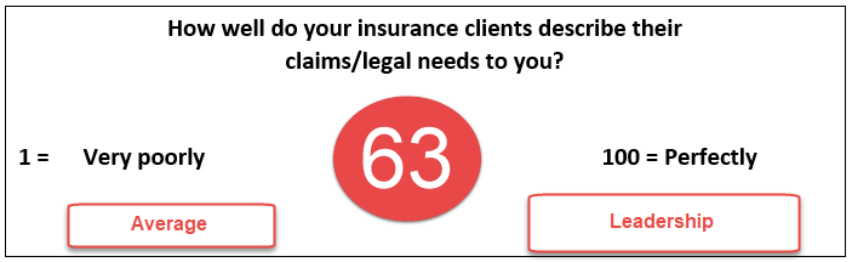
We find this discrepancy to be noteworthy and worthy of further exploration.



Client Assessment

We asked all 400 participating attorneys a series of client-assessment questions, each designed to provide buyers with a sense of where there may be opportunities for improvement on the client side.

Claims, Legal, and Business Needs



When managing partners and law firms leaders are asked how well their client organizations describe their claims and legal needs, they provided an average score of 63 (median of 65) on a scale of 100. When non-leadership roles are included, the scores rise to an average of 68 and a median of 75.

Scores are less positive when asked how well their clients describe their strategic business needs. Those in firm leadership roles gave their clients an average score of 47 (median of 50).

When all respondents are included, the average score rose to 51, with a median score of 50. We view this to be a lukewarm assessment rating. Particularly given buyers' desires to have their firms serve in more business partnership roles (and to understand their strategic business needs better), we view this to be an area of opportunity.

Use of Budgets and Case Direction

We asked participants to rate their interactions with claims handlers around litigation budgets. On a scale with "100" being a "deep discussion and negotiation around budgets," and a "1" signifying that the claims handler just approves the budget outright, the median score for all respondents was a 23.

Those in leadership roles within firms had an even lower median score of 20. (Average scores were 31 and 32, respectively).

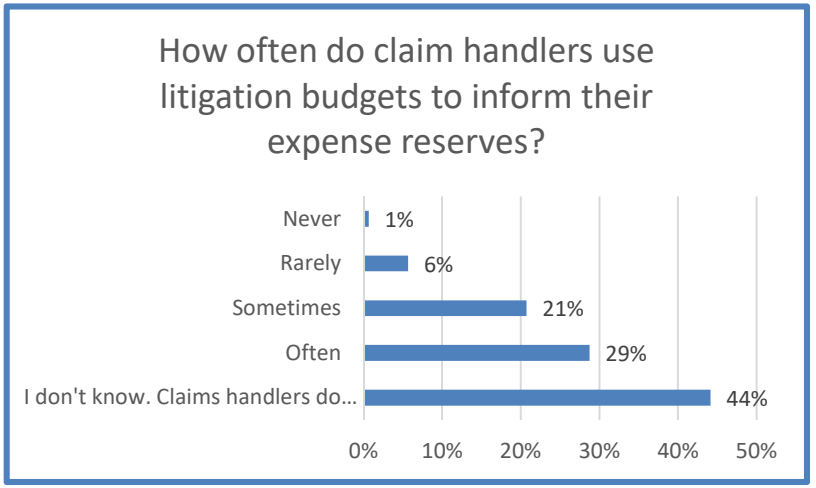
Claim and litigation executives think more highly of their claims handlers' ability to evaluate and negotiate budgets with counsel. They scored their own staff's ability to do this at a 47 out of 100 (2019 Buyers' Study), almost twice as high as the attorneys did.

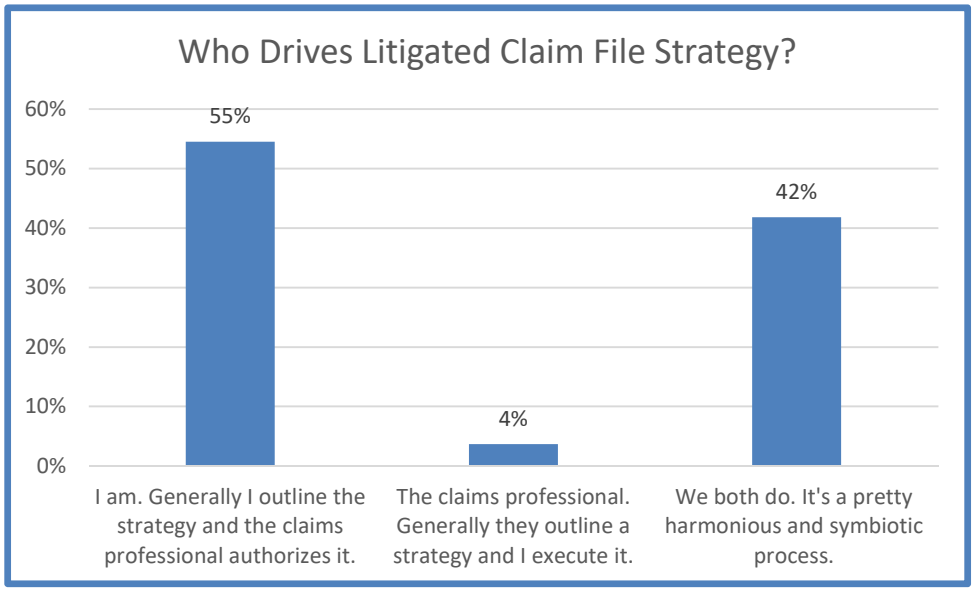
Both scores (23 and 47 out of 100) reflect, in our view, the fact that both constituencies are critical of this skill set, and we view this to be an area of opportunity.

We were also curious about whether attorneys understand the interplay between litigation budgets and overall reserving (or conversely, whether claims handlers describe to attorneys how budgets fit into the larger picture).

The specific question we asked as "How often do claim handlers use your litigation budgets to inform their expense reserves?"

Exactly half (50 percent) of the attorneys said "sometimes" or "often." However, a full 44 percent said they didn't know, as "claims handlers do not discuss their reserving practices" with them. We view this as consistent with many claim organizations' practice of keeping hidden from counsel the specific reserves on individual files.





On the topic of who drives case strategy, we provided three options.

We were delighted to see that, across all attorneys, roughly 4 out of 10 (42 percent) feel that strategy setting is a collaborative process, with both the claim handler and attorney working harmoniously together. This should bring joy to all claims executives (except those who believe that the claims handlers should be setting direction exclusively).

The majority of attorneys (55 percent) identified that they generally set the strategy and the claims professional authorizes it. A smaller number of attorneys (four percent) said that the claims professional drives the strategy.

All of that said, when we limited answers to just those in firm leadership roles, the numbers changed slightly. More (61 percent) feel the attorney sets the strategy. More (5 percent) feel the claims professional drives strategy. And fewer (33 percent) feel the process is a joint collaborative effort.

Client Expertise

The loss of experienced claims professionals is often characterized across the industry as a 'talent crisis". We were curious if this is something that has been observed and felt by outside counsel. We asked if, when compared to five years ago, "The expertise of the claims professionals you work with seem greater, less, or about the same?" We analyzed answers across several different respondent groups:

1. Those in managing partner and firm leadership roles
2. All respondents, including associates; and
3. Respondents with more than 15 years of experience.

The following table illustrates those results:

Respondent Group	Greater	Less	Same	I Don't Know
Managing Partners and Leadership Roles	27%	**34%**	38%	--
All Respondents	29%	**27%**	40%	3%
Attorneys with more than 15 Years of Experience	31%	**30%**	38%	--

While the answers differed slightly across the three respondent groups, overall sentiment can be described as similar. Roughly four out of 10 believe that expertise is unchanged over the past five years. The remaining 60 percent believe that an equal number of claims handlers have either more or less expertise.

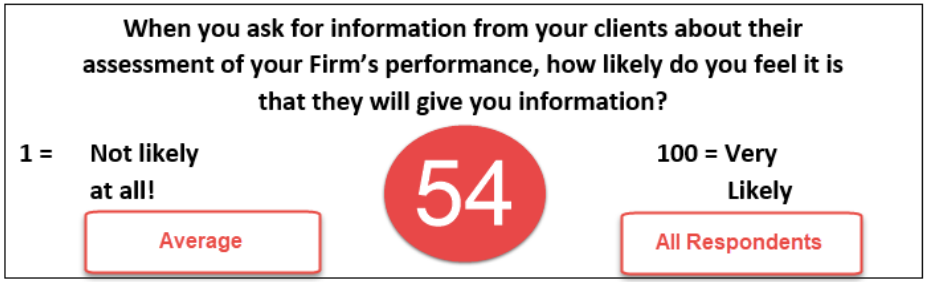
Perhaps worthy of further exploration and discussion on the buyer side is that roughly 30 percent of all three sample groups feel that they are working with claims professionals with less expertise than they were five years ago. This may be directly related to the "talent crisis" that claims and litigation executives are dealing with, or to something else, but we feel it is a finding to take note of.

Client Feedback

Attorneys seem a bit lukewarm when asked how likely they feel it is that a client will provide information about their firm's performance with them.

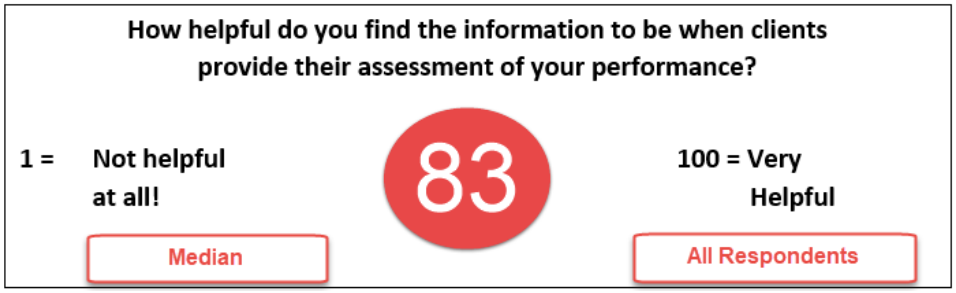
All respondents provided an average score of 54 and a median response of 50. The scores of those in firm leadership roles was essentially identical.

In contrast, 92 percent of buyers (2019 Study) said they will share information about a specific firm if asked by that firm.



Importantly, when clients do provide performance information back to the firm, respondents suggested it is very helpful them.

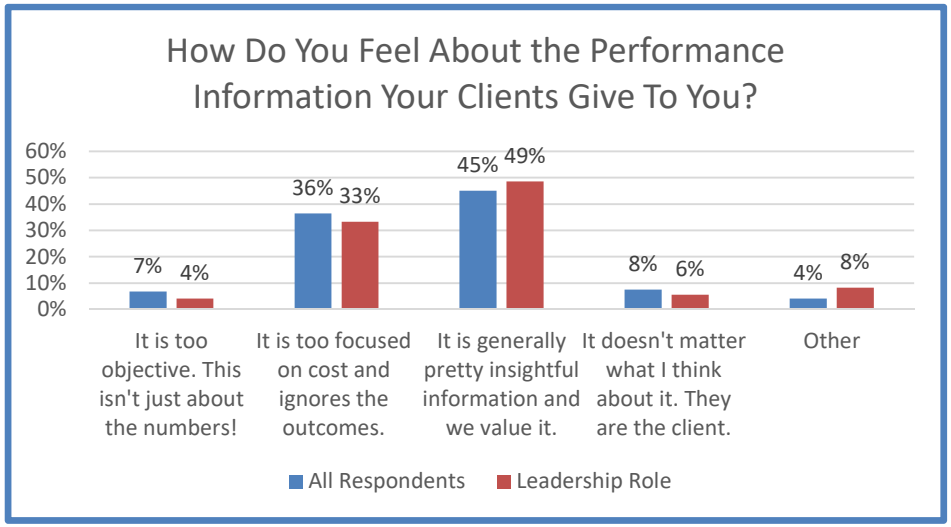
The median response for all respondents was 83 out of 100. The average response was 76. Scores from those in leadership roles were essentially identical.



We view these scores to be 'high." That is, attorneys find this information to be very helpful.

The balancing act here is that attorneys are skeptical they'll get the information (54 out of 100) and they don't ask for it very much (38 out of 100).

Seen in this context, we recommend that firms consider putting their skepticism aside and focus on asking for more data, particularly because so many find the information helpful once received.



As helpful as the attorneys said that client-provided information is, we wanted to identify how such information could be improved in the eyes of the recipients of it. We offered several categorizations and the associated chart summarizes those results.

About half find the information be insightful and value it. Roughly 37-42 percent feel the data is either too objective or focuses too much on cost. Another 6-8 percent identified that it really doesn't matter what they think, since the data is being driven by their client.

A number of respondents provided an "other" response. Those are summarized below.

Feelings About the Performance Information Provided To Us By Clients	
Often times, comparisons with other firms are skewed by the fact that our firm may have more complicated cases from the same vendor. As a result, we would expect both our costs and indemnity to be higher.	It just depends on the volume of data and whether we are comparing apples to apples. Most of my clients are great. In the past we had one client reduce its panel list based solely on total defense costs per file. We only handled larger files - deaths and catastrophic - so we certainly billed more on a fatality than another firm billed on soft tissue, non-operated claims. The volume/scope of discovery in state and federal court is by rule set to a certain extent by the nature of damages. The client only admitted its process was flawed after it ran the numbers. But that has been an outlier.

Line level people care about different things than upper mgt.	The source of data is not adequately explained and does not provide us with enough information regarding data sources--almost cryptic. We then cannot align our performance metrics with clients so that we are often comparing apples and oranges.
Never happens. They talk big about early resolution but 95% don't evaluate objective data to measure counsel	It's just a piece of a bigger puzzle. We're professionals, not trainees hoping to advance.
Carriers don't focus enough on results obtained that benefit the insured	Sometimes we have found it to be inaccurate.
It doesn't match what is actually happening. Poor/small sampling	It is too focused on checking the box vs. outcome.

Friction Points

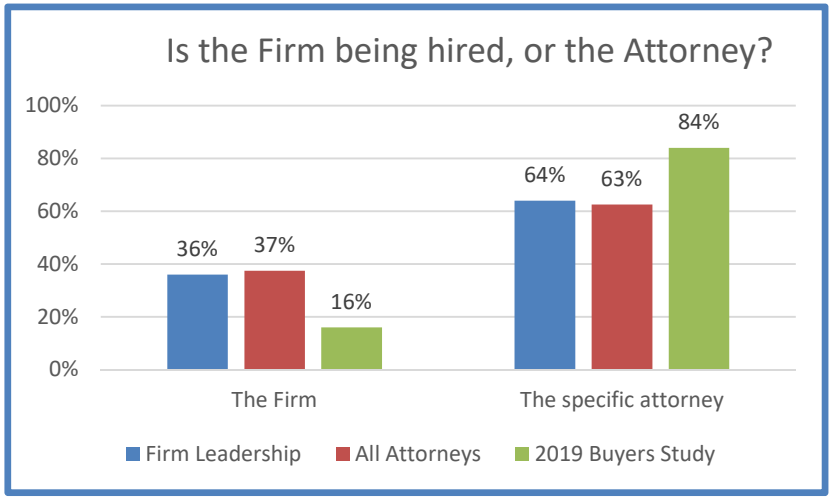
In the vein understanding the most common friction points between counsel and buyers of their services, we asked respondents to rank up to five (5) friction points in their relationships with insurance clients. Responses were given a weighted score and the results can be summarized as follows:

Friction Point	Weighted Score All Respondents	Weighted Score Leadership Roles
Payment issues - adjusted invoices, slow payment, not paid for work done	4.1	4.1
Rate issues - required rates make it hard to make a profit	3.8	3.9
Responsiveness issues - slow client response	3.2	3.1

Valuation issues — clients don't really seem to value my work	2.6	2.7
Assessment issues — no client feedback; no advice on how to increase volume	2.6	2.5
Expectation issues — clients have unrealistic expectations	2.4	2.4
Strategy issues — I'm hampered in my ability to provide the best defense	2.3	2.3

Two respondents offered additional commentary on this question. One stated that "Clients are unrealistic about attorney time for tasks and are increasingly making it difficult to generate even the slightest profit." A second comment highlighted that clients engage in "micro-management."

We noted that client responsiveness issues ranked as the first non-financial friction point, something of relevance to all parties given an industry focus on cycle time and duration of litigation.



Philosophical Considerations

Firm or Attorney?

We have been interested for some time in the philosophical orientation around whether clients are hiring the law firm, or the individual attorney. We recognize of course that the answer could be both. However, we felt that understanding these philosophical considerations is important to a clear and productive dialogue between those who buy legal services and those who provide them.

In 2015, 84 percent of buyers said "the attorney;" in 2019, (an identical) 84 percent said "the attorney."

In contrast, 63 percent of Defense Counsel Study participants said "the individual attorney." (Sixty-four percent for those in firm leadership roles).

File Closure Skills

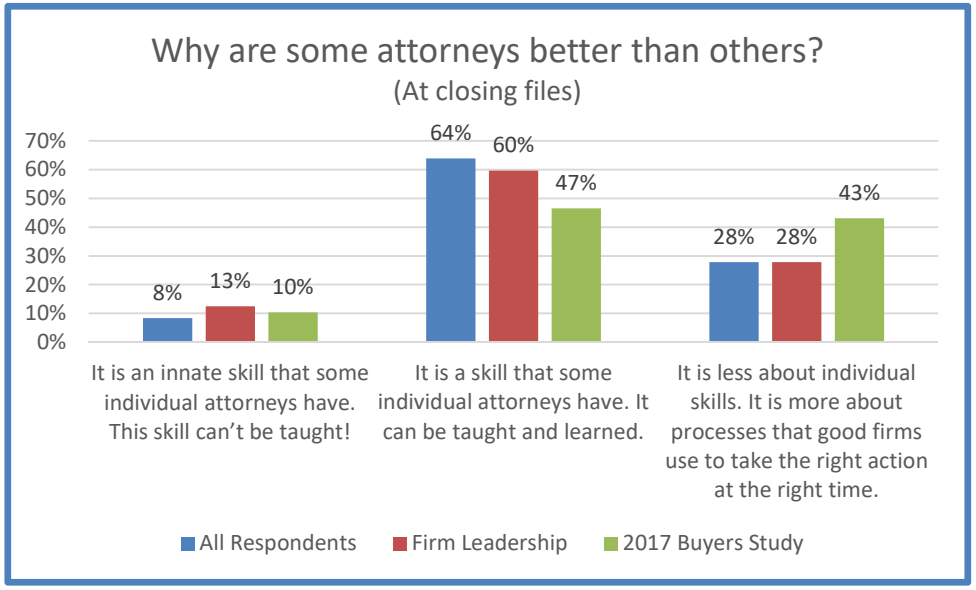
There seems to be uniform agreement across both buyers and providers that some attorneys are better than other attorneys at closing files (resolving litigation). In the 2019 CLM Litigation Management Study a full 100 percent of buyers said this is the case (it was the only question in the Study in which there was no disagreement in responses). With a similarly high uniformity, 97 percent of attorneys feel this is the case.

While it is perhaps overly obvious that some attorneys are better than others at file resolution, we were very interested in determining why respondents feel this is the case. We compared attorney answers to how buyers of legal services responded in 2019.

A similar number across both buyers and attorneys (8 to 13 percent) feel that it is an innate skill that cannot be taught.

Buyers, however, attribute much more of this skill to process and the application of that process to take the right action at the right time. While 28 percent of attorneys cited process, a full 43 percent of buyers did so.

We think this difference in philosophical orientation is an important one and one that attorneys would do well to take note of. A firm that can describe its processes may be more attractive to buyers than a firm that describes only its attorney and is silent as to process.



Timing of Case Resolutions

Study participants were asked, "Do you feel that a majority of litigated claims settle later in the process than is necessary?" The perspectives of buyers and attorneys differed on this topic. A full 80 percent of buyers in the 2019 CLM Litigation Study said "yes" to this question; in contrast, 63 percent of attorneys said "yes."

Use of Hourly Billing

Participants were asked how well they feel the traditional hourly billing model aligns the interests of firms and their clients. They provided an average response of 69 out of 100. In contrast, in the 2019 Study, buyers provided a score of 60.

Core Beliefs

As we did in the 2019 Study, we asked two core-belief questions. These were:

1. In general, do you believe that spending MORE money on the defense of a lawsuit will generally reduce the indemnity costs (verdict, settlement) in that lawsuit?

2. In general, do you believe that higher compensation to law firms (higher rates), usually translates to the client getting better attorneys and better case results?

QUESTION	2020 Answer (Attorneys)	2019 Answer (Buyers)
Does spending more money on a lawsuit generally reduce indemnity costs?	Yes – 55%	Yes – 21%
Does high compensation to firms translate to better attorneys and outcomes?	Yes – 65%	Yes – 16%

The answers to these two questions are markedly different between attorneys and buyers. In our view, the differences highlight a normal institutional tension between both groups. Buyers believe that spending more on defense costs in a specific case is not likely to substantially change the indemnity they are going to pay on the file, while more attorneys feel it will change the indemnity.

Buyers are also less likely to equate they payment of higher hourly rates and compensation to defense attorneys with getting better attorneys or improving the outcome of the file. That said, as we outlined in the 2019 CLM Litigation Management Study, most buyers do have firms that they consider "go-to" firms for difficult and complex cases. And, while those go-to firms are often held to the same generally rate structure and compensation levels, 60 percent of buyers acknowledged that money "is not as important" with those firms.

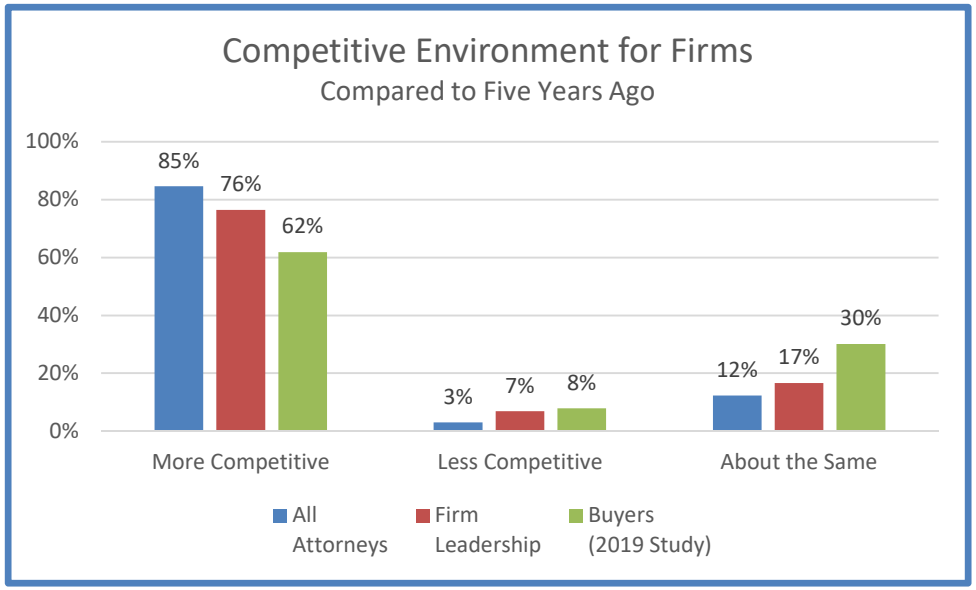
Firm Economics

Competitive Pressures

We asked respondents to identify whether they believe the operating environment for insurance defense firms, when compared to five years ago, is more or less competitive.

Both buyers and attorneys appear to have great appreciation for how competitive the environment is for insurance defense firms. Attorneys, perhaps understandably, feel the competition more acutely (85 vs. 62 percent).

Interestingly, those in firm leadership roles were slightly less likely to say "more competitive" than their attorney peers.

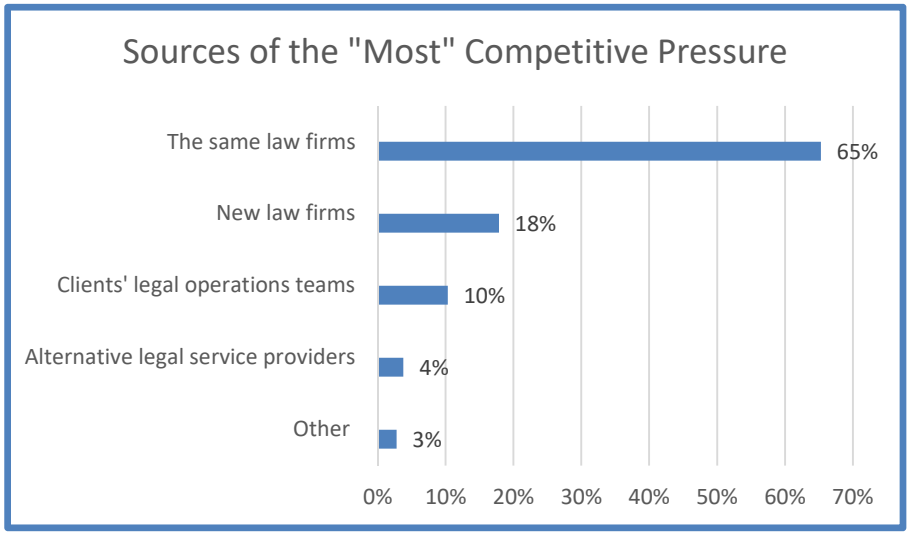


We were curious where attorneys feel the “most” competitive pressure is coming from.

Overwhelmingly (65 percent) respondents identified “the same law firms” (that they’ve competed with previously).

Roughly one out of five (18 percent) identified “new law firms” (within the last five years).

Client legal operations teams accounted for 10 percent of responses. Any competitive threats from alternative legal service providers (as the “most” competitive pressure) was a nominal four (4) percent.



Respondents did add several comments in response to this question (the first response will please claim and litigation executives).

These were:

Adjusters settling cases	**Captive firms willing to accept low flat fee arrangements which are unrealistic and present ethics issues**
National firms moving into our market	**No one wants to do defense work anymore. Our volume is the highest it has ever been.**

Notwithstanding the comment above about "captive firms," respondents overall seemed relatively lukewarm about the competition pressures created by the utilization of staff counsel (captive firms).

When asked to rate the impact on defense firm economics on a scale of one to 100, the average response was "54." No appreciable difference was apparent between all-respondents and those in firm leadership roles.

Still in the spirit of examining competitive pressure, we asked respondents to rank a series of factors that might challenge defense firms economically over the next five years. We then scored and weighted those responses.

Factor	Weighted Score	Factor	Weighted Score
Low rates	2.5	Unfair AFA Programs	1.6
Hiring and retention of new attorneys	2.3	Alternative legal service providers	1.4
Expansion of staff counsel	1.7	Technology advancements (i.e., "artificial intelligence")	1.4

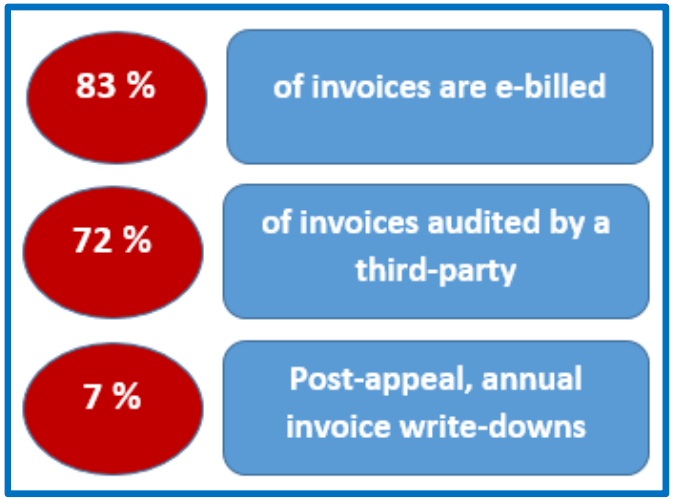
Low rates and attorney retention topped the list. Staff counsel pressures and "unfair" AFA programs were in the second tier. Alternative legal service providers and technology advancements were in the third.

In comparing responses from those in firm leadership roles vs. the all-respondent group we noted that firm leaders are:

- Slightly more concerned than others with hiring and retaining new attorneys and with staff counsel expansion
- Slightly less concerned with alternative legal service providers
- Of a similar mindset (i.e., no difference) when it comes to low rates, unfair AFA programs, and technology advancements.

Participants provided several comments, reflecting several additional important sources of challenge over the next five years.

Less auto casualty based on safety avoidance	**Micro-management by clients**
Retirement of senior attorneys and the inability of more junior attorneys to continue the business	**No one wants to do defense work. There are going to be fewer and fewer attorneys.**
Increasing "cost of doing business" requirements (e.g., required technology platforms for billing, required technology platforms for provision of metrics/data, etc.) without additional remuneration. Implementing new initiatives required by clients constantly creates disproportionate reductions in firms' profit margins.	

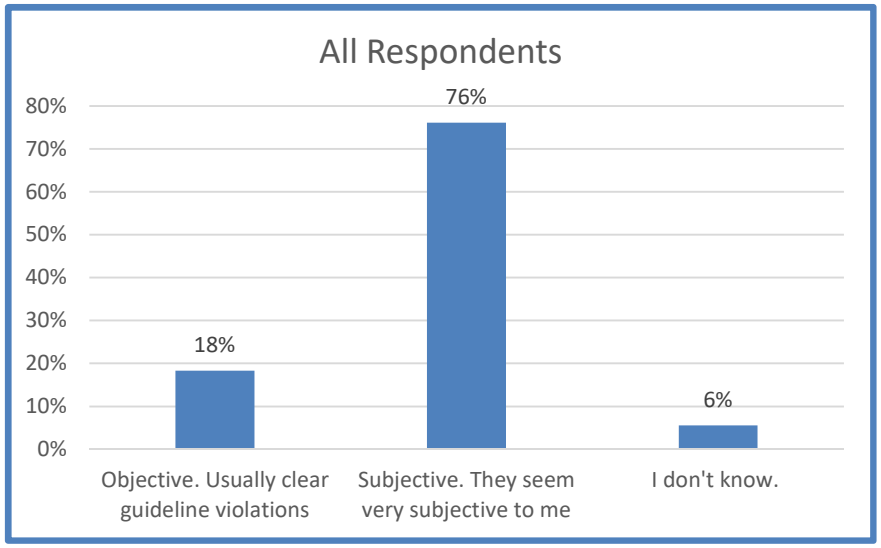


Billing and Invoicing

Participants identified on average that 81 percent of their invoices are now being submitted to their clients through an e-billing platform. Those in firm leadership roles believe it to be higher, at 83 percent.

Attorneys perceive that clients are using third-party auditors at high levels to look at their invoices. Those in firm leadership believe that 72 percent of all invoices are reviewed by a third party; 69 percent of all respondents said this.

Both all-respondents and those in firm leadership estimated that post-appeal, annual invoice write-downs rates hover at seven percent. (This correlates to our 2019 Study in which buyers reported an average adjustment rate for panel firms at 6 percent).



Attorneys believe, to a significant degree, that the invoice adjustments made by their clients are more subjective than objective. Only one in five (18 percent) feel that the adjustments are objective and are based on clear guideline violations.

The fact that almost 80 percent of attorneys categorize invoice adjustments as subjective seems to us to be in line with our belief that most invoice adjustments in today's environment involve some form of human discretion.

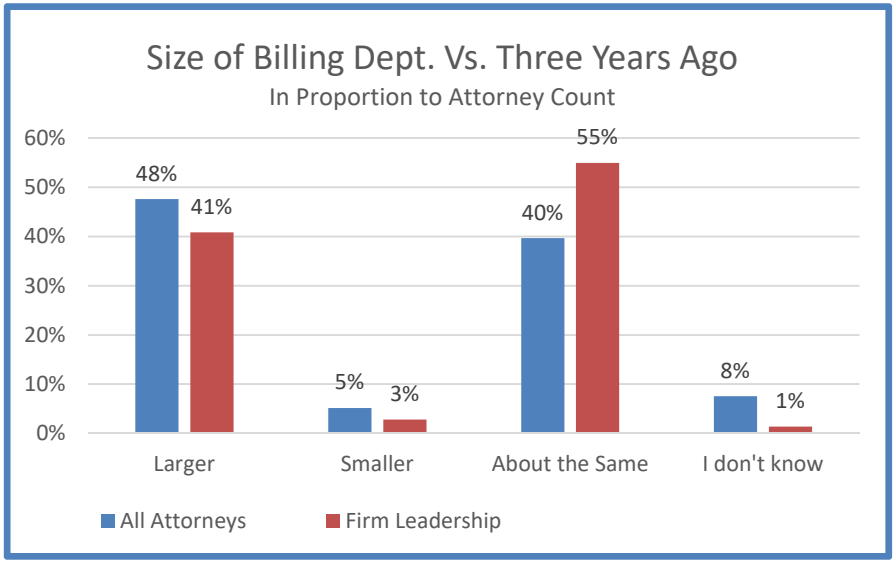
We take note of the fact that, in the 2019 CLM Litigation Management Study, a full 97 percent of senior claims and litigation executives said that they review invoices for "reasonableness," in addition to compliance.

Was the time spent reasonable? Was there authority granted for an activity that required authority? Was it reasonable to have performed the activity in the first place? These are some of the questions that by definition require human, and arguably subjective, intervention.

Invoice adjustment levels are being captured and measured by law firms in several ways. This suggests to us that this is an important issue to firms.

Firms are very likely to be measuring adjustment rates by individual attorney and by client. They are less likely to be measuring this by line of business or practice area.

Does the Firm categorize, quantify, and regularly measure invoice adjustment levels by…		
	All-Respondents	Leadership Role
By individual attorney	78%	73%
By client	73%	74%
By practice area	31%	24%



The function of billing clients continues to require more resources. A significant number (41-48 percent) of respondents reported that their billing department has grown in size in the past three years (in proportion to the number of attorneys in the firm).

Despite these additional firm resources (and costs), only one in 10 (11 percent) of those in firm leadership said that their firm uses a software application (separate from their time and billing system) to "pre-check" an invoice against client guidelines before it is sent to the client.

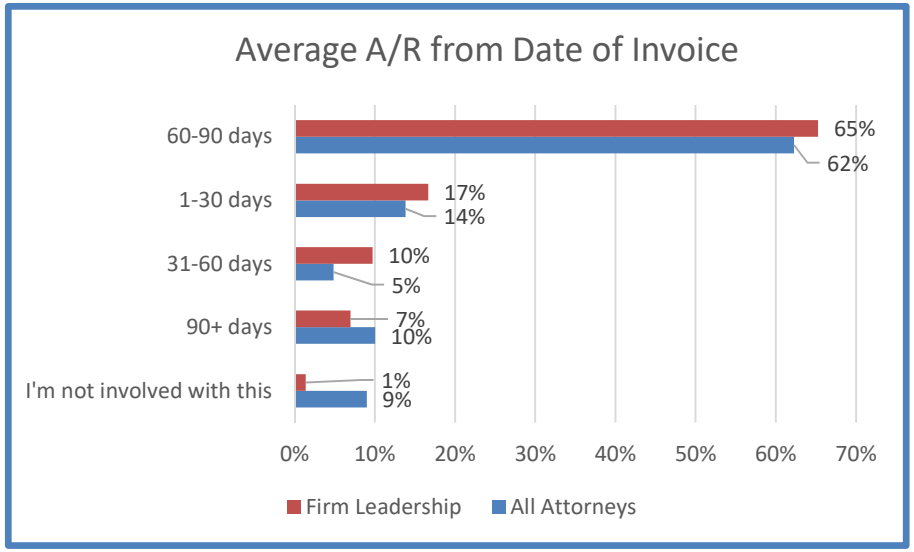
An even smaller percentage (seven percent) of firm leaders said that they use a third-party invoice preparation service (software and experts) to pre-check and prepare more compliant invoices before they are sent to clients.

In an environment where firms are taking a seven percent post-appeal adjustment rate to their invoices, where roughly three quarters (76 percent) of attorneys feel the adjustments are subjective, and where almost half report a larger billing department, we wonder whether these types of invoice preparation solutions are being under-utilized.

Firms appear to still be receiving a high percentage of physical paper checks. Those in firm leadership roles reported that roughly two thirds (66 percent) of invoice payments are coming to them in paper form. (This was surprising to us, given the high prevalence of electronic invoice submission).

Perhaps not unsurprisingly, given the high costs of processing paper checks, almost two thirds (63 percent) said they would like to be receiving more electronic payments.

	All Respondents	Firm Leadership
Estimated # of Payments by Physical Check:	57%	66%
Yes – I would like more Electronic Payments	63%	63%

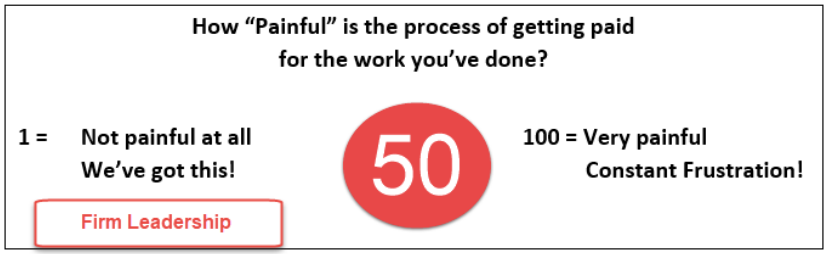


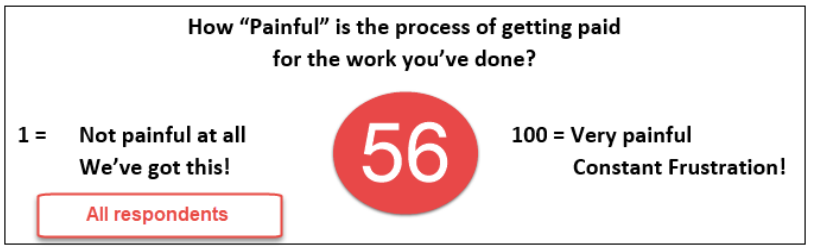
When it comes to the timing of payment, most (65 percent) reported being paid in the 60-90 day range from the date of invoice. Roughly one in six (17 percent) said they are getting paid in less than 30 days.

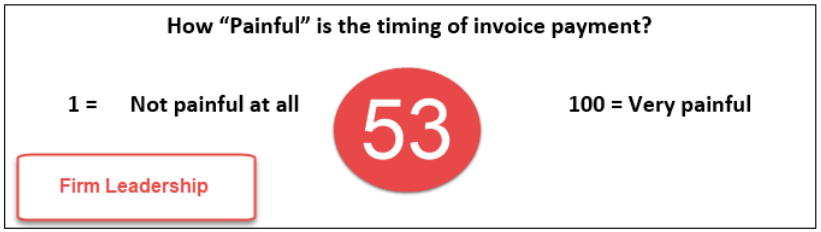
Interestingly, as was pointed out to us by managing partners, some of the primary payment pain points for their firms revolve not around payment timeframes from the date of invoice, but rather from the date of work being done. Several highlighted for us that client-driven quarterly billing requirements can be very painful in the aggregate for their firms, since they may be essentially waiting 90 days to issue the invoice, and then waiting an additional 60-90 days to be paid.

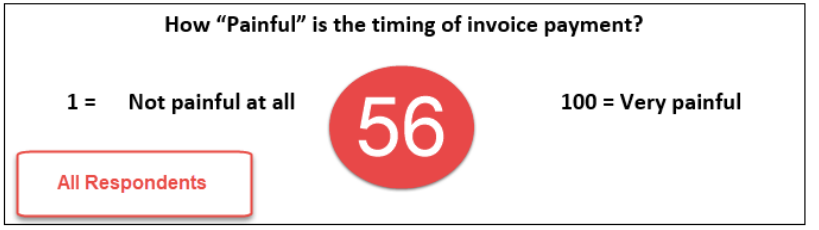
This is not an issue we explored in this Study but will do so in future ones.

Several scoring questions helped us to summarize overall pain levels that attorneys feel when it comes to getting paid generally.





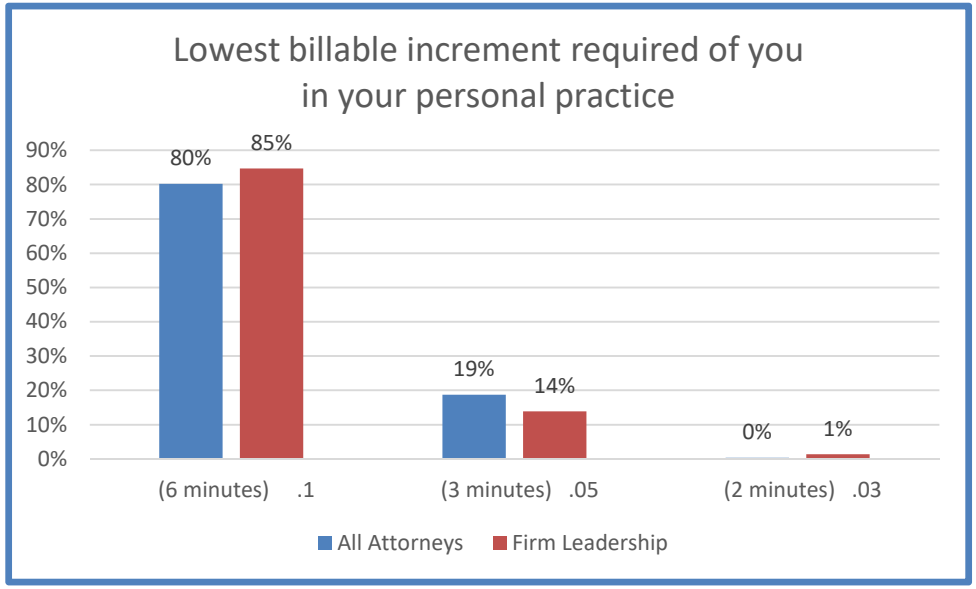




Those in firm leadership roles were pretty much in the mid-point of a one to 100 scale in terms of both getting paid and the timing of payment. Answers from all-respondents were slightly higher for both.

In our view these scores reflect pain, but only moderately. We would not have been surprised to see all scores at a higher level, but would have been surprised to see them any lower. This is particularly true when we factor into consideration many of the free-text comments recorded elsewhere in this Report.

Minimum Billable Increments



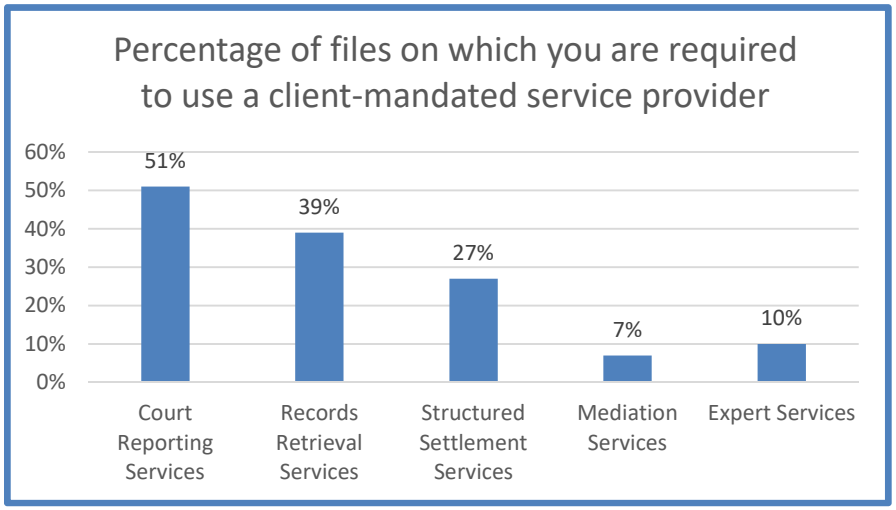
We had been surprised, frankly, to find in the 2019 Buyers' Study that roughly eight (8) percent of those executives said they now require counsel to bill in .05 (three minute) increments.

However, a full 19 percent of all-respondents and 14 percent of those in firm leadership roles, said that .05 (three minute) is the lowest billable increment required of them in their practice. In fact, one percent of those in leadership roles reported that their lowest billable increment is a .03!

The vast majority (80-85 percent) reported the traditional .1 (six minute) increment. This is consistent with the 2019 Buyers' Study, in which 77 percent of executives said that the lowest increment they require is six minutes.

Use of Mandated Vendor Programs

Mandating that attorneys use "pre-approved vendor panels" for a variety of litigation support providers is increasingly common across claims organizations. For example, in the 2019 Study, 57 percent of executives said their organization has an approved court reporting provider or providers; 42 percent said this about records retrieval services; 62 percent said this about structured settlement providers.



We were curious how this program penetration translates to actual attorney utilization at the file level. We therefore asked respondents to estimate the percentage of files on which (if they use the service) they are required to use a client-mandated service provider.

The answers can be seen in the associated chart.

We are quick to point out that we expected, and found, only a general correlation between general program penetration levels at the corporate level and the specific answers in this Study. This is because the clients of these respondents may differ significantly from the 80 or so organization that participated in the 2019 Study.

On a broader level though, we viewed some of these results to reflect opportunities for claims and litigation executives. This is particularly true in the area of mediation services. We know, for example, that claims organizations have been using pre-approved mediation panels within staff counsel operations for some time and with great successes. The lower utilization of pre-approved mediation panels across these 400 attorneys may signify an opportunity to expand the benefits of such programs with outside counsel programs as well.

Alternative Fee Arrangements

About one quarter (22 to 24 percent) of Study participants said that their firm does not handle cases on any alternative fee arrangements (AFAs).

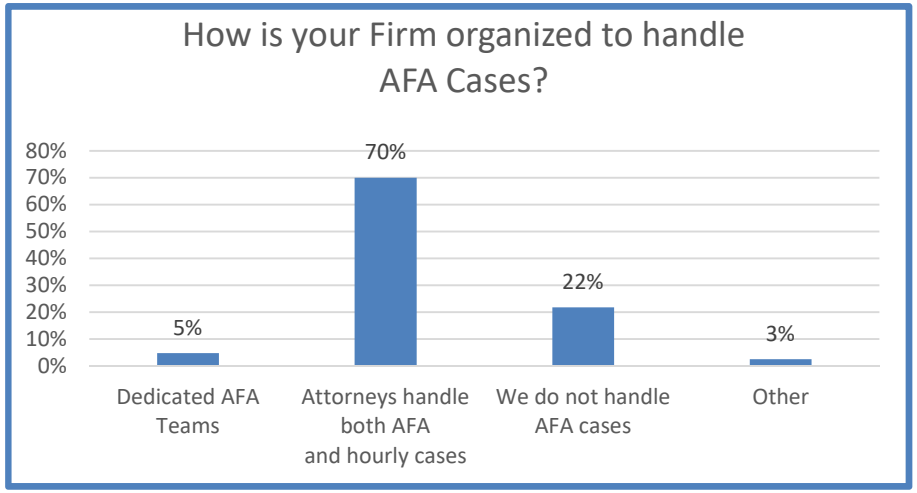
	All Respondents	Firm Leadership
% of cases you are working that involve an AFA of some type:	10%	9%
# of matters your firm handles that involve AFAs:	14%	12%
Our Firm does not handle AFA cases at all	22%	24%

Generally though, those whose firms do work on some AFA cases reported that that between 12 to 14 percent of their firm's caseload has an AFA of some type. At the personal caseload level, respondents said that essentially one in every 10 of their files has some type of AFA.

In the 2019 Buyers' Study, 51 percent said that they use AFAs of some type. However, we did not determine in that Study the level of AFA utilization as a percentage of individual cases, so these answers are helpful in that regard.

In terms of the types of AFAs used, those in firm leadership roles identified the top three as Phase (48 percent); Fee Cap (43 percent); and Portfolio (24 percent). A number of different AFAs were identified as well, including:

Identify What Types of AFAs Your Firm Has Used Comments		
Reduced rates combined with %	**Custom Value Generating Agreement**	**Flat fee. Bonus for achieved goals**
Contingency fee for subrogation	**Monthly fee per open case count**	**Flat; transactional flat; flat plus hourly**
Fixed fee / flat fee	**Aggregate yearly retainer**	**Contingency**



We were curious as to the level of organizational specialization around AFAs. Only five (5) percent said that their firm uses dedicated AFA teams.

The vast majority (70 percent) have structures where attorneys handle both AFA and hourly cases.

Three percent identified their firm as being in an "Other" category and added the brief comments listed below.

Respondents added several comments stating a general lack of interest in AFAs across their client base. (I.e., they have offered AFAs to their clients but their clients have declined them.

Despite this fact, we noted from the 2019 Buyers' Study that 47 percent of litigation and claims executives reported that they have a "positive reaction" and are "impressed" when firms offer or propose AFAs. We did not ask in the prior Study, however, for any information that would identify what percentage of those proposals from law firms they are likely to accept.

Respondents were asked to prioritize a number of potential challenges to handling AFA cases at the firm level. Those selections were then scored and weighted.

Most Challenging Aspects of Handling AFA Cases	
Attribute	**Weighted Score**
Resolving cases under time constraints	**2.2**
Establishing fees	**2.1**
Measuring profitability	**2.0**
Allocating work to associates and paralegals	**1.7**
Allocating work to third-party vendors	**1.7**

All five options in the pre-determined list were scored in a relatively tight range. "Resolving cases under time constraints" and "establishing fees" were the two challenges at the top of the list, with "measuring profitability" following those.

At the bottom of the list were "allocating work to associates and paralegals" and "allocating work to third-party vendors."

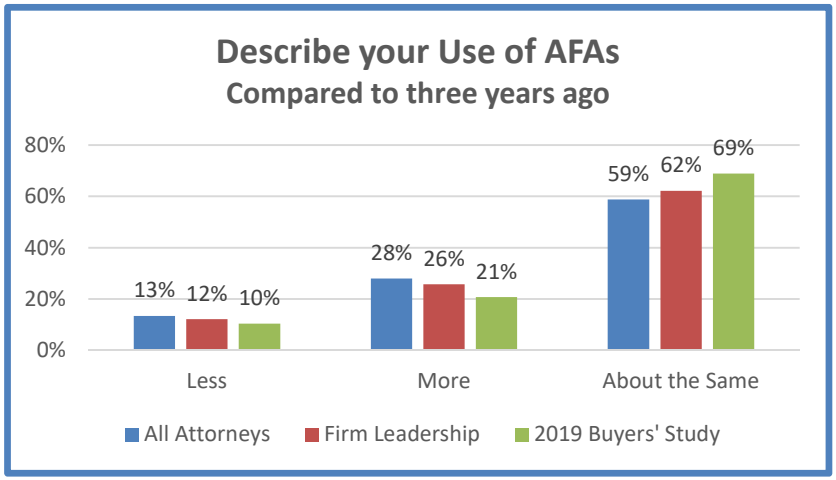
A number of respondents added additional comments to this question, however, and their responses are illustrative of some of the practical challenges that arise when their firm utilizes an AFA.

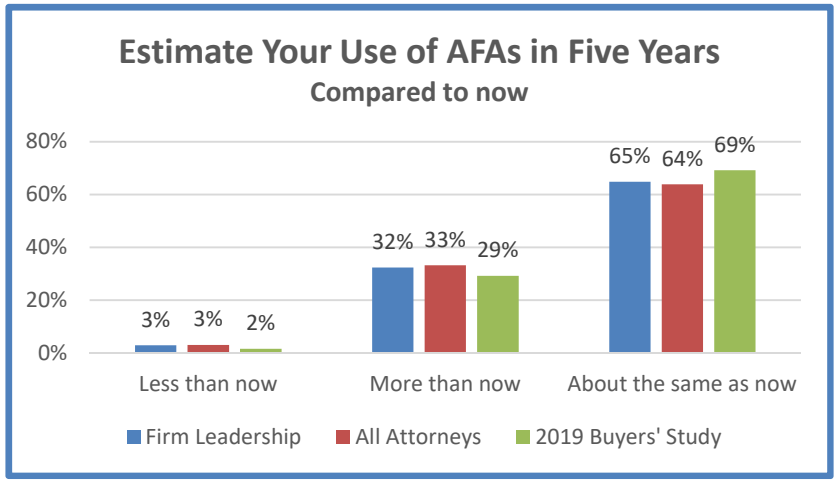
Most Challenging Aspects of Handling AFA Cases Comments	
Negotiating the AFA	**Profitability**
Aligning client and firm in terms of litigation and resolution strategies	**AFAs create conflicts of interest**
Not being given authority to resolve the case	**Establishing a reasonable flat fee**
Approval of change from flat fee to hourly (if things change with the case)	**Client requests for unnecessary work**
Getting the client to understand the partnership	

In an effort to determine whether the use of AFAs is growing or shrinking or staying the same, we compared answers to the 2019 Buyers' Study.

The data suggest that buyers and attorneys are remarkably in sync with one another, both in terms of changes over the past three years and projections over the next five.

Roughly a quarter (21 to 28 percent) of buyers and attorneys feel that AFA utilization has increased over the past three years. Roughly 30 percent of both groups (29 to 32 percent) believe that AFA use will grow over the next five years.





Approximately 10 to 13 percent of both groups feel that AFA utilization has gone down over the past three years. However, a much smaller percentage of both groups (two to three percent) believe that AFA use will decrease over the next five years.

However, in the big picture, the majority of both buyers and attorneys believe that AFA use now is the same as three years ago (59-69 percent) and that it will be the same again over the next five years (64-69 percent).

We take of the fact that respondents' answers to both questions are so similar.

In the context of all these estimates of what has happened and predictions relative to what will happen, we think it is worthwhile to point out that 19 percent of claim and litigation executives reported being "frustrated" with the lack of wider use of AFAs in their organization (2019 Buyers' Study). In fact, more executives were "frustrated" than "happy" (16 percent), with the majority saying they were "neutral" on the topic (66 percent).

To sum up general law firm sentiment about AFA utilization we asked respondents to rate their general comfort level with proposing and using AFAs. Those in firm leadership roles are more comfortable than the "all-respondents" group; however, we view the responses given by both groups to be lukewarm in general.

Technology Requirements

On a positive note, Study respondents do not seem overly challenged by requirements to "keep up with and maintain" client-mandated technology standards and tools.

Whether it relates to security or software requirements, participants fell more strongly on the side of "Not difficult at all; We've got this!" rather than identifying it as a very difficult challenge.

This was the last of the multiple choice and scoring questions asked in the 2020 CLM Defense Counsel Study. However, we did ask two open-ended questions of all participants and all 160 of their additional answers are detailed below in **Exhibit A: What Clients Should Change**.

We appreciate the extra time spent by participants who took the time to share these thoughts with our litigation management community, and we encourage all readers, and especially buyers of legal services, to review them.

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We want to thank each of the Study Sponsors whose contributions have made this Study possible. Each organization is an important thought-leader within our collective litigation management community.

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Further Questions

A copy of this report can be obtained, without charge, by writing to defense.study@suite200solutions.com, or by asking any of the Study's Sponsors (listed above) for a copy.

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The CLM, a member of The Institutes, is dedicated to meeting the professional development needs of the claims and litigation management industries. Founded in 2007, CLM maintains a membership of more than 45,000 industry professionals who benefit from the CLM's networking events, continuing education programs, and a wide variety of industry resources. More information can be found at www.theclm.org.

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Questions about this Study may be directed to: **Taylor Smith | President | Suite 200 Solutions | 224-212-0134 | taylor.smith@suite200solutions.com**

Exhibit A: What Should Clients Change?

At the conclusion of the survey, participants were given an opportunity to provide open-ended suggestions recommending specific things they felt their clients could change when it comes to litigation management. Specifically, the questions were:

a. What is the ONE THING you would recommend that your insurance-related clients CHANGE that would improve your collective ability (you and they) to improve litigation management, control costs, and achieve optimal outcomes? (100 characters max); and

b. What is a SECOND change you would recommend that your insurance-related clients adopt that would improve your collective ability (you and they) to improve litigation management, control costs, and achieve optimal outcomes? (100 characters max)

Roughly 160 responses were provided. We have categorized and listed those responses below. For ease of review we have put all comments into one of eight categories. (We recognize that some comments could be assigned to one or more categories).

These include:

- Client Feedback and Communication
- Compensation Models and Rate
- Diversity and Inclusion
- Guidelines and Oversight
- Invoice Review and Payment Practices
- Relationship Management
- Staffing, Training, and Responsiveness
- Vendor Management

CATEGORY: CLIENT FEEDBACK AND COMMUNICATION
Be more collaborative; help us understand what we are doing well and what we could improve upon so that we are not constantly worried about our firm's status with the insurance client.
Case closed "report cards" for attorneys.
Clearly explain goals of resolution
Collaborate and review each case at the end of the case to evaluate each party's performance and to jointly discuss ways each party can improve their handling of the case.
Communication regarding performance and evaluations. Performance/satisfaction should be discussed annually. I have gained new business after carriers dropped other firms without even notifying them of dissatisfaction. And we have lost business due to the work and delays of a few (problem) attorneys of which we were unaware, and no one contacted the Firm/Lead Partner to discuss the same. Just as firms have a lead (contact) partner for a client, carriers should have a main point person, and the 2 should have candid conversations at least annually. And, "in person" is even better, even if it is on the tab of the Firm.
Decide what your litigation philosophy and risk tolerance is, and communicate that clearly to your defense counsel.
Greater communication relative to status Reports and budgets
Increase the channels of communication (i.e. online chat services)
Increasing communication as to what the insurance carrier's litigation management priorities are instead of waiting to see if insurance counsel can figure it out on their own (at their peril).
Mesh technologies to create clearer goals and communication.
Periodic feedback and dialogue between claims management team of company with law firm managers to insure that firms handling of cases is aligned with Company strategies and if and when a change in philosophy occurs that it be communicated in a meaningful way.

Quarterly meetings to address concerns of either carrier or firm so both the firm and carrier are always on the same page
Regular check-in and reporting/responses
Regular sharing of data. Inform us of what they view as key and tell us where we stand in relation to firms in our jurisdictions.
Share more data and information to achieve our common goal of reasonable efficient case resolution.
Share more information (data and direction of the company) so that we can help one another create new ideas that will benefit both the client and the firm.
Use metrics that look at overall success and reduced indemnity/settlements to evaluate outcomes and increase rate flexibility for highly successful counsel.
using a repository for communications and reference
Value indemnity savings and develop metrics for indemnity savings. That's where seven figure savings are made every day in law firms like mine.

CATEGORY: COMPENSATION MODELS AND RATE
Alignment on compensation model that promotes early resolution, sharing of $ saved from improvements and a relationship that fosters continuous process improvement.
Avoiding flat-fee arrangements
Be more reasonable about periodic rate increases when it is shown that the firm is providing high quality work and great results.

Better collaborate with their successful law firms to implement changes that result in cost reductions for clients while maintaining or enhancing profit margins for law firms. It is not a revenue issue. It is a profitability issue. The profit squeeze is real.
Better hourly rates
Compensate those lawyers for their VALUE as opposed to clinging to the traditional "although it appears your firm saves the carrier over $1,000,000 in early resolutions last year, we can't give you a 10% rate increase because it will be too high compared to other firms."
Consider whether flat fee arrangements place attorney representing insured in an ethical quagmire.
Evaluate the attorneys/firms you are retaining and whether the rates/fee structures are in alliance with the results you are seeking.
Fair AFAs.
Focus on the best law firms that serve them and pay them so we can attract and hire the great lawyers they need to best represent their interests.
higher rates
Higher rates. Don’t go to the next firm that’ll do the work cheaper. You get what you pay for, and if you’re looking for the lowest rate, you’ll likely get the worse attorney.
Increase rates
Minimize hourly engagements and increase AFAs.
More willingness to enter into AFAs.
NO MORE FLAT FEES.

Pay rates commensurate with the skill and experience level required of the work you are sending; don't hire a wheels lawyer to defend a med mal case or expect a med mal lawyer to work for wheels rates.
Pay reasonable rates, hire individual attorneys based upon established expertise for the type of case
pricing and payment behavior, including rate, audit, bill review process, bill processing process.
Raise rates.
Rates should be higher to allow us to attract and retain good lawyers. If we can show through our metrics (which we can) that even with higher rates we can deliver lower costs overall, I would hope clients would become less fixated on the rates (hourly or AFA) and more on the total case cost/program cost. Unfortunately, for too many clients, it all starts and ends with the hourly rate which in some cases, does not allow us to keep up with rising associate and staff salaries, technology requirements, and inflation.
Work with attorneys to find ways to remove the friction created by billing guidelines and auditing. AFA's may likely be part of the answer to this. An attorney's core job responsibility in litigation is to position the client for the most favorable resolution possible. This can be difficult when carrier/payor and counsel are not aligned.

CATEGORY: DIVERSITY AND INCLUSION
Work on diversity and inclusion.

CATEGORY: GUIDELINES AND OVERSIGHT
Adopt risk specific two page practice protocols rather than one size fits all guidelines.
Allow defense counsel more discretion in conducting discovery and depositions

Allow inter-office conferences between and among outside counsel teams.
Autonomy when determine what needs to be done to bring case to conclusion, as far as legal expertise is concerned.
Be more flexible. Understand that it is very costly to comply with the guidelines in terms of unpaid work. While labor costs have gone up over the years, insurance defense rates have not kept pace. Insurance defense firms are expected to provide some level of free (non-billable) work in order to operate the case. That pressure, combined with low rates and high expectations, has created such an unprofitable business model that I expect it will eventually squeeze small to mid-size insurance defense firms out of the market. I see this as a detrimental thing for insurance companies, because it is my belief that larger firms as a whole require higher spend and less flexibility, ultimately leading to worse results. Small insurance defense firms are looking at downsizing because we cannot afford the operation, which leads to more difficulty in providing excellent client service. The industry wants more production for less payment. I agree on streamlining and efficiencies, but the overall impact of rigidly applied guidelines may be detrimental to the industry in the long run.
Be reasonable about settlement and odds of successful litigation
Be willing to settle cases sooner rather than later.
Carriers are focused on binary evaluations. Was the litigation plan received by X date, yes or no? If no, the firm is fired. A more comprehensive evaluation is needed. Yes deadlines are important, but did the breach substantively affect the claim's course? Despite the missed internal deadline, did the firm perform well in other areas?
Check the expertize of the individual attorney handling the case and act appropriately
Consistent communication on strategy to avoid insurer and counsel losing credibility by settling highly defensible matters that were previously not settlement candidates. Plaintiffs lose motivation to settle early if they believe the insurer or their counsel is bluffing and more money will be available later on if they can create pressure by driving defense costs upward.
Constant open lines of communication for expectations on both sides.
Don't be afraid to resolve a case early by getting reserves up when you know the trajectory of a file.

Don't rely on metrics. The firms that use metrics are by far the least capable providers of defense services (at least in our state). You get what you pay for, and with metrics driven firms, you get poor quality work.
Establish a more efficient method of case reporting and evaluation. A secure portal where claims and counsel can more efficiently share documents, information, and evaluations would be beneficial.
Fewer reports on benign information and more focus on true strategy to close a file.
focus more on benefit to the insured and not to the carrier
If the major carriers would get together and come up with a unified set of billing and reporting guidelines.
More accuracy in identifying when to send a file out for defense. Holding onto a file to save legal costs may result in increased cots. Partnering with defense counsel to identify early and cost effective resolution strategies can go a long way in reducing the cost and outcome of a file.
more conversations versus emails
More realistic litigation budgets
More reliance on the expertise and honest efforts of litigation counsel handling the file.
Put substance over form. Too many different insurance company reports. Make it universal and simplified.
Recognize that we work for multiple clients who each have their own litigation protocols. We try to adhere to your rules, but it's hard to always comply. We need to remain efficient and we can't consult your rules all the time, particularly if we don't have that many cases together. We strive for perfection, but don't get upset (and cut our bill) for appropriate work that wasn't reported the way you want.
Sometimes there is too much focus on form over substance, such as with rigid reporting requirements. Often, a simple email update or phone call can cut to the chase, save the carrier money, and allow us to focus on getting to work, rather than filling out a lengthy report form.
stop requiring reports when nothing has occurred unless its caused by the lack of proactivity of counsel

Take a more strategic approach to resolving a particular claims instead of being so process driven.
Take my advice more on settling claims.
Understanding that no matter our best efforts, Plaintiff's counsel, especially the large firms, who do not handle their files or negotiate reasonably, causes extended legal fees beyond our control.

CATEGORY: INVOICE REVIEW AND PAYMENT PRACTICES
Pay their bills timely.
Pay us on time!
Pay your bills timely.
Soften interference in law firms' ability to internally allocate legal activity tasking by mitigating the more subjective and arguable components of legal bill audits.
Stop cutting bills arbitrarily.
Greater efficiency in payment.
Heavy bill auditing and slow invoice processing places defense counsel and insurers at odds with each other, and distracts from the business of defending the underlying cases. If defense counsel are worried about being fairly compensated, they naturally tend to focus more on that and less on defending the underlying cases, which is far from optimal.
Auditing is a reality. But if your auditor finds something wrong with a significant percentage of entries on a regular basis and seeks to cut based on too much time being billed, the insurer needs to discuss it with the firm. Either the auditor is justifying its existence or you need a new firm. Reductions should be the exception, not typical. With one client our reduced rate was 0.1%. We were the top 1% of their firms. On one occasion, they lost the audit and redid it on their own. But we had both the original and subsequent. And the audited entries did not have

any correlation at all. Two different auditors; two different sets of reductions. Only thing in common was that about the same % was reduced from each audit.
Insurance companies select a target reduction percentage they want on attorney invoices and arbitrarily cut to meet that number. Soon, the plaintiffs' attorneys will figure this out, and there will be massive bad faith, class action litigation. So, stopping the arbitrary fee reductions is critical.
less complex/detailed billing guidelines
Less contractual agreements with third party billing vendors to cut invoices. Sometimes there is no rhyme or reason to the cuts and it takes time away from the defense of the case to deal with billing issues.
Limit the use of billing auditors. More and more frequently, the auditors look for reasons to deduct billing entries, and are a "moving target" in terms of consistency. And because we cannot set a precedent that allows valid entries to be cut, the result is a time-consuming appeal process that cannot be avoided. Billing auditors take time away from firm attorneys doing other, more important work.
More reasonable with use of auditing of bills.
Not charge us 3% to accept payment on time--how degrading!
Optimal outcomes come from experienced attorneys who are paid fairly. The insurance industry is defunding outside counsel and paying huge amounts to plaintiffs. This will soon be a crisis.
Outside bill reviewers who are not attorneys rarely have a clue as to what it takes to staff and litigate matters. These bill reviewers make artificial cuts in work such as preparing for depositions or preparing summary judgment motions without knowing what was involved in the legal work. These reviewers should not be hired.
Pay fair rate, for the work performed. Get rid of unnecessary bill auditors, which has just become a huge game on how to get paid.

Recognize that the constant pressure on defense firm profitability through unreasonable billing guidelines and audits is having a serious effect on the firms' ability to attract and retain the best talent to defend client interests.
Spend more time and resources on case resolution and less on "auditing" defense counsel invoices to pay less. Admit that you are trying to cut your costs at your business partner's expense.
Stop billing guidelines
Stop ebilling
Stop relying on computer programs that determine whether a listed time entry is legitimate or acceptable legal service, but if you insist on using such programs, make sure that the notification you send us explains WHY the entry is purportedly problematic or non-compliant with your guidelines.
Stop the arbitrary bill cuts. If they have a question about a bill, they should call us or write us. I can't just walk into a store and give them nine dollars for a ten dollar item.
Tell the prospective attorney if they use an audit company that charges the defense firm a fee for the privilege of auditing and reducing their bill. If so, the rate must be increased. Insurance companies should focus not on the hourly rate but on the final total cost for the services. Many attorneys have become experts in playing the game of low hourly rates and still have bills that are more than a firm with a higher billing rate would charge. The insurance company should want to know if the firm has billable hour requirements for its attorneys. If so, that firm's hours for a file will always be higher than another firm with a higher hourly rate but no in-house minimum billing requirement.
The current focus is almost exclusively on reducing the fee payment to the defense attorney, since this seems to be one of the few metrics with an objective standard. It has two problems. It is penny wise and pound foolish - resulting in greatly increased indemnity payments. And - billing is like a water bed - the volume is static. Push down on one point and it will increase elsewhere.
The review/audit of bills by outside vendors that have no connection with the case and are not privy to discussions between attorneys and claims handlers. Too often, the claims handler gives specific approval for something outside the billing guidelines. This approval is submitted with the bill, then the Third Party auditor strikes the entry for non-compliance and states that the claims handler cannot approve these issues.

There seems to be a resurgence of bill reviewers. That doesn't end well!
Uniform billing guidelines or simplification of billing guidelines. One of the biggest issues is trying to maintain compliance with multiple sets of billing guidelines.
After you do step one (find an attorney you trust), stop cutting bills. Pay reasonable rates. Many of the most experienced defense attorneys are transitioning to plaintiff's work because carriers have made it difficult to operate profitably. Many seasoned associates are leaving for higher paying commercial litigation or personal injury positions because defense firms can't afford to pay them what they are worth.
Apply billing guidelines that are focused more on fundamental fairness, and take into account the realities of legal practice. Some insurers appear to be so focused on making sure they don't overpay that they end up losing sight of reality.
Avoid the practice of maximizing billing reductions, particularly by auditors who either don't understand litigation and law firm practice, or act ignorant of it just to justify their existence as auditors.
Be more realistic in billing guidelines. For example, we are subject to billing guidelines from insurers that will not pay the defense attorney to "local travel time" required to get to the deposition/client meeting/court appearance. In a city, it might be an hour one-way to get to a location. So an attorney is supposed to lose two hours of her day because the insurer's policy is that they won't pay local travel?
Be realistic as to billing (i.e. it takes more than 6 minutes to answer discovery).
bill audits
Billing audits typically cut time a Partner spends to edit important Case Evaluations and documents Drafted by an Associate as "Duplicative". The Partner edits are a significant value-added to the file. Billing audits do not encourage Partner input which can directly lead to increased indemnity payments by the insurance carrier.
Billing rates and overall auditing process. Stop using third-party/ severely objective auditing systems and let the adjuster handle the billing/invoices, since they understand what needs to be done on each case and can better assess the invoices/costs.

Don't nitpick bills just to find something to hit to meet a quota.
Don't treat us as adversaries when it comes to billing. You preach we're partners, then claim it's out of your control when your outside bill auditing company chops our bills for no good reason. The adjuster who is working the file is in the best position to review a bill and determine what's appropriate. If you feel that a firm is overbilling, then don't use them. But don't punish the rest of your panel counsel, with whom you've chosen to do business.
Ease up on fee write-offs. This is demoralizing, especially to associates, and somewhat offensive when you think of it (as it says either (1) we are lying about time or necessity of a task, or (2) we are inefficient). If the firm is not living up to expectations on billing, we should have a dialogue about it, not impersonal software-generated write-offs.
Eliminate auditing companies that cut time arbitrarily.
Eliminate third party billing reviewers because their motivation is to cut bills, including legitimate attorney tasks.
Employ more knowledgeable bill reviewers.
Establish consistent e-billing guidelines
Find individual attorneys you trust. Pay them fair rates. Then trust us.
Get rid of bill review companies and adopt industry standardized billing guidelines.

CATEGORY: RELATIONSHIP MANAGEMENT
Better communication and goals.
Bring back Trust. Instead of more checklists and forms. Sometimes this business is now more form over function.

Focus on developing long-term, stable relationships with firms. Lawyers are viewed as disposable and interchangeable. Carriers want firms to invest in relationships with the carriers, but the carriers never invest in the relationship with the firm.
Give a small firm a chance! We care, we know what we're doing, and we do it ourselves, and we are cheaper than big law!
Go back to a team approach rather than thinking of attorneys as just another vendor We do make a difference in the end results
Hire the firm not the attorney because insurance clients have a large portfolio of cases and need a firm partner that will assign the matters appropriately and manage the portfolio of litigation together with upper management.
I am willing to invest time and resources to create a genuine relationship of trust with my insurance-related clients. Often the insurance-related clients seem to be driven by too many metrics-driven mandates on their side that prevent any real relationship of trust with counsel. Relationships are everything!
I would recommend that the insurance company hire lawyers that they trust and truly partner with the lawyer for the best outcome. If the insurance company assumes that the lawyer has an agenda that is not aligned with theirs, it is unlikely that they will trust feedback. Each jurisdiction, venue and claimant's attorney poses different obstacles.
Insurance companies need to be more transparent about exactly what metrics they use to measure success. The lack of transparency creates a disconnect. They also need to be agile enough to settle early appropriate cases.
Modify the metrics to account for the case severity.
Objectively measure their lawyers and they will see who is the most/least effective at litigation management, achieving optimal outcomes, etc.
Partner more with firms and scale back staff counsel. 19 years ago, the relationship seemed much stronger between client and firm when the focus was at least as much on outcome as cost, and the relationship was more of a partnership. A great deal of the focus on cost reduction and certain strategies seem to have created a competitive relationship that can have mixed results in terms of long-time partnerships between firms and clients.

Recognition of excellence in trial results and the positive effect that has on trial outcomes and settlement amounts
Recognize the settlement value differential between quality lawyers with strong negotiating skills and "mill lawyers," with lesser skills.
Reward us (firms) when meeting or exceeding whatever arbitrary benchmarks established for one or more metrics they think important - positive reinforcement instead of negative does wonders.
Treat us as trustworthy professionals rather than mere vendors.
Trust your lawyers and develop personal relationships with panel firms.
Trust your lawyers with respect to billing/time or get new lawyers.
Work with us to increase volume so that we can afford to continue to offer them increased diversity, technology, and alternative fee arrangements. Volume allows us to remain successful at lower profit margins.

CATEGORY: STAFFING, TRAINING AND RESPONSIVENESS
Adequate claims staffing with reasonable files counts so that experienced, well-trained adjusters can make prompt decisions on strategy and resolve cases promptly
adjusters being more prepared at mediation
Allow experienced adjusters to carry appropriate authority levels. The "red tape" most adjusters must go through to get appropriate authority on a large case can often cause the adjuster and attorney the loss of opportunities to resolve the case at various times during the litigation.
Assign adjusters fewer files. Many of them are overworked and are unable to obtain authority in a timely manner or otherwise pay sufficient attention to files.

attending mediations in person makes for better claims handlers (unique and quality experience) and for better outcomes
Be more responsive and give settlement authority sooner. We could settle and close claims a lot faster than we do because we are waiting for settlement authority.
Be more responsive on files
Better training and lower file counts for claims professionals.
Claims personnel being more communicative and involved in proactive strategies
Don't put form over substance. Your rigidity creates barriers to creative, proactive and efficient claim resolution.
Eliminate unnecessary management reviews by people whose jobs seem to exist to create unnecessary obstacles to payment, which generates unnecessary legal expense and delays in settlement.
For low value cases provide attorneys who handle a large volume of claims 'desk authority" or something similar to resolve minor claims quickly.
Greater assignment of a "portfolio" or claims across an insured's book of business would reduce redundancies in obtaining documents for discovery and would allow a more focused litigation strategy.
Greater use of claim reviews between carrier and counsel.
Have more direct communications about files. Many times, they only have us submit a budget and plan, and then it is difficult to get their input in the process, but the vendors cut bills without having any real sense of the issues we have encountered such as the rogue opposing counsel, venue issues, difficult judges, etc.
Higher limits on authority with main contact (time to "go up the chain" is wasted time)

Hire more claims professionals to increase the time they have to be actively involved with partnering with the attorney to manage the file for the best outcome in the most cost effective way.
Identify and assign cases counsel is encouraged to litigate "all the way" to push back against bad actors and build credibility for both the insurer and their counsel as willing to fight unreasonable demands or fraud to the end.
Implement scheduled phone calls with counsel to discuss status check-ins. This improves responsiveness of both adjusters and their counsel.
Increased willingness to settle for less than the cost of litigation
Institute and comply with response requirements.
Insurance clients should provide resources to defense counsel (medical summaries, physician record review, deposition banks, outlines, prior favorable rulings on case specific issues).
Listen to the attorney as to the state-related law on the case. Just because a defense tactic worked in another state, doesn't mean it's going to work in this state. Trust the legal analysis the attorney provides.
Lower case counts for adjusters.
Reduce workload volume of claims professionals so they can actually think about the claims files they are handling (many are overloaded and consequently not responsive) - as defense counsel, even providing exemplary service and meeting every guideline requirement however pertinent does not matter if we cannot get answers or collaboration when needed.
Retention of claims adjusters/examiners - the constant change in people results in less experience and differing handling over time.

CATEGORY: VENDOR MANAGEMENT
Eliminate required vendor arrangements. For instance, we are required to use a national court reporting service on some accounts and that service does not have a geographically convenient office. Because it does not have any "local" court reporters it contracts that service out to reporters we most likely would have chosen had we not been required to use this service. The fee the national vendor charges is higher than what the local reporter would have charged if we would have hired them directly.
Get rid of vendors who promise an ability to do volume initiatives but actually botch up defense of the matter in the interim.
Stop the practice of putting inferior national court reporting services on insurance panels. The larger the company, the longer the turn-around and the more inferior the work product.