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A CLM Advisors Industry Snapshot

*Chief Claim and Litigation Officers Comment on
Law Firm Metrics and Billing Practices*

Round Table Discussion on
Law Firm Metrics
2014 Annual CLM Conference

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Introduction

In preparation for a Law Firm Metrics Round Table discussion at the 2014 Annual CLM Conference, CLM Advisors performed an Industry Snapshot Study to capture current buy-side thinking on issues related to law firm metrics and law firm billing.

Three questions were presented to chief claim and litigation officers across the property and casualty insurance market. The responses given to those questions are presented below.

The thoughtfulness and creativity with which respondents offered unsolicited commentary to two of the questions reflects how important these issues are to them. Given the importance of the same issues to law firms, this Snapshot is designed to help facilitate and improve the conversation between both segments of the industry. As we might say when facilitating a direct exchange between firms and their clients, "Make good use of this opportunity!"

Snapshot Notes

Take note that a data sample of this size is not statistically valid and should not be relied on as such. Percentages, to the extent they are used in this specific Snapshot, are simply to provide a point of comparative reference among this select group of executives,

The purpose of this exercise was to showcase the prevailing perceptions of senior claim executives on three specific issues, across a diverse group of insurance carriers. While this particular set of respondents reflects an appropriate industry mix, it is important nonetheless to see the results in an appropriate context.

Snapshot Methodology

Three short questions were distributed in a personal email to 96 executives, 75 (78 percent) of whom currently serve in chief claim officer roles for their organization. The remaining 21 executives (22 percent) serve in a chief litigation officer role for their organization.

Within a four-day period, written responses had been received from 37 participants, reflecting a response rate of 38 percent (within a four-day period). Due to timing constraints, only responses received within that four-day period have been used for this Snapshot.

It should be noted that an almost 40 percent response rate in such a short period of time is quite high for this kind of study, and may reflect the interest and importance that these executives place on the topics involved (law firm performance, law firm billing practices).

Twenty-eight of the responses (76 percent) were received from chief claim officers; the remaining 9 responses were from litigation officers (24 percent).

Additionally, please note that interviewees participated on the basis of confidentiality and anonymity and as such care has been taken to not tie direct responses back to specific entities or the claim officers involved.

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Snapshot Questions

Participants were asked three questions. No clarifying information was requested or provided in answering the questions. The questions were:

1: What are the 1-3 most important metrics that you believe a law firm should use to demonstrate their overall performance? (You do not need to limit yourself to metrics that firms might use currently).

2: On a scale of 1-10, how important is it to you that a law firm's invoice is "clean" and shows compliance with your billing and litigation process guidelines?

3: On a scale of 1-10, do you view errors and non-compliant line items on legal invoices as reflecting poorly on the quality of the legal work being performed? (1= invoices and legal work are totally unrelated / 10= invoices and legal work are extremely related)

Industry Snapshot Results: Law Firm Metrics

1: What are the 1-3 most important metrics that you believe a law firm should use to demonstrate their overall performance? (You do not need to limit yourself to metrics that firms might use currently).

Participants suggested 1 or more metrics that law firms might use to demonstrate overall performance. These are listed below.

Metric 1	Metric 2	Metric 3	Metric 4
Average time a case is open (cycle time)	Average expense	Average indemnity	% of cases resolved without indemnity payment
Indemnity result vs. the firm's assessment of exposure	Average dollar billed rate (efficient use of staffing)	Cycle time	
Cycle Time	Total Cost Per claims (loss paid, legal fees)	ratio of expense dollars to loss paid	
Legal subject matter expertise	Trial Experience	Communication Skills	
Time from assignment to resolution (cycle time)	% of claims that proceed to litigation	ratio of defense costs vs. costs to settle (excluding trials)	Ability to recognize cases that should settle
Exposure vs. result (impact on claim)	Total cost of claims (expenses plus losses) - (Like cases)	Ability to demonstrate responsiveness	Cycle time
Budget accuracy	responsiveness in providing timely analysis on liability and damages	file closing rate	
# of our cases tried to conclusion and % of defense verdicts	Overall and average costs of handling to conclusion (like cases)	# of days from date open to close (cycle time)	
Demonstrate ability to move case along	Demonstrate ability to keep insured informed	Strength of litigation plans and cost estimates	Does billing reflect reasonable time and lack of duplication
defense costs in relation to indemnity	cycle time	client satisfaction scores (communication; responsiveness)	Average pending per attorney; also..a standard on billing hours.
Responsiveness. Ability to meet deadlines	Expertise in field of practice	No 11th hour surprises	Fair and forthright recommendations

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Metric 1	Metric 2	Metric 3	Metric 4
Paid legal fees and expenses vs. budget	cycle time (by claim type)	Billable hours by timekeeper role	
cycle time (like venue, and case type)	resolution within lifecycle	cost per case (fees, expenses)	
cycle time (like venue, and case type)	Avg number of partners and associates assigned to a case over case lifetime	number of hours billed by timekeeper role	
Cycle time	Final cost	Outcome	
# of trials, including trial victories	Average cost to defend like cases	Number of cases settled pre-trial as a % of total inventory	
# of cases "won outright, or outcome that is considered a "success"	quality and timeliness of evaluations	Timeline budgets	Billing statements reflective of compliance with guidelines
Matter outcome vs. law firm evaluation	Average legal cost (equivalent closed matter)	Cycle time	
Impact on claim (exposure vs. result)	Expense of claim compared to average / baseline	Responsiveness	Cycle time
Ability to meet budget	Early mapping of case disposition strategy	compliance with guidelines	
Cycle time	Defense costs	compliance with guidelines	
Cost per file (expenses for month and year divided by total closures)	Duration (life cycle)	Claims handler and insured satisfaction (measured by survey)	

Metric 1	Metric 2	Metric 3	Metric 4
Outcomes obtained vs. outcomes projected	Demonstrate analysis, timely and expert case management	Demonstrate lack of churning activity	Demonstrate you spent the money as if it were your own
Life of case (cycle time)			
Legal expense as a % of total indemnity paid (like LOBs)	Thru-put: how quickly is counsel disposing of claims		
The expense to indemnity ratio – [compared against other firms in same venue]	Cycle time – Compare the time from assignment to closure again on similar cases	Average spend on similar cases – helpful to discussions of alternative fee arrangements or flat fees	
Cost as a function of outcome	Ability to demonstrate lack of file "churning"	Ability to demonstrate timeliness	
Cycle time; average case cost by LOB			
Number of days case has been in litigation	cost per case by LOB (fees, A/I, expert)	How does the average paid on specific LOBs line up with similar panel counsel in the venue in question	
Average age (of case)	Indemnity to expense ratio	Compliance with reporting guidelines (quality, not frequency)	
Cost of defense as percentage of total payout or total reserves (for commodity cases)	Outcome of case vs. predicted outcome or reserves	Rating of counsel by claims examiners	
Cycle time (like cases). Compare my matters vs. other clients'. Break down by attorney, LOB, and adjuster.	Breakdown of timekeeper hours (including paralegals) on my matters	Total cost per matter by quarter, year, attorney, adjuster, LOB	Firm turnover by attorney, para professional, with reasons; also does the firm have internal audit procedures vs. third-party involvement, or do they rely on clients' auditors

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In addition, several participants made more generalized comments about the use of law firm metrics generally. These included:

Comment 1:

"I have many lively discussions/debates with law firms on this topic. I have asked them what are their goals for their attorneys and not one has provided any specific goals that go back to the customer (insurance carrier) outside of "customer satisfaction"....To me a law firm on the claim side is much like an agent on the Underwriting side. We need them to do business yet they have no "skin in the game". Both get paid regardless of the result."

Comment 2:

"The biggest problem firms have is to frequently ignore staffing clients' staffing guidelines and requirements."

Comment 3:

"Cheapest is rarely best. Most expensive is rarely best. A measurement that to me tells me a lot is how often something is being "reviewed" in the billing statements. I know what a churned file looks like and I will not tolerate using my files to pad an hourly firm requirement. If things are always being done last minute it drives poor decision making (or at least hasty decision making). We want ease of use and we want freedom to pursue legal rights without too much interference from adjusters but we want aggressive, problem solving and proactive litigators handling our matters. We do not want wait until the last minute, do every bit of discovery before analyzing and posturing towards outcome.

Measuring 0.1's and total costs and billing rates is a losing proposition in my book. It does not drive good outcomes and that is what legal intervention should be for. The best possible outcome. Not the cheapest price to handle a case poorly or haphazardly."

Industry Snapshot Results: Importance of compliant invoices

2: On a scale of 1-10, how important is it to you that a law firm's invoice is "clean" and shows compliance with your billing and litigation process guidelines?

There were 37 numerical responses to this question. The average and median rankings (10=extremely important) were as follows:

Average: 7.8
Median: 8.0

A number of participants added unsolicited comments to their numerical ranking. These comments may add more insight into the importance these executives place on the law firm billing process:

Comments About The Importance of Compliant Invoices

We want to know that our partner law firms take our guidelines seriously

We are going to cut it if it is not complaint with our standards. If they cant figure out how to bill according to our guidelines, it only hurt them, not us.

Very important

Trending it over period of time does shed some light on the "partnership" you have with the firm. We have gone to a flat rate program with about ¾ of our panel to move away from the billable issue and focus on the legal issues.

the ultimate metric is the total cost of the case (or liquidated exposure, or defense costs + indemnity--it's all th same). The best firm bills fairly and gets good results, but I'd rather have the latter than the former.

The most important thing to me is that we have counsel on our panel that help us appropriately and cost-effectively dispose of litigation. Sure, our panel counsel team needs to be able to effectively try a case (and plaintiff's counsel needs to know that, too), but a realistic and resolution minded defense attorney is key. We are in the appropriate resolution business, not the litigation business.

The majority should be in compliance, but do not expect perfection or expect every case to fall neatly into our guidelines

the expectation is that a firm will perform well in terms of reporting and results and ALSO comply with guidelines

sometimes there is a reason it's not clean

Some panel firms do a good job of staying within [our] billing guidelines, however their overall work is average at best. Some of our better firms might average higher in the % of bill reduction then we want them to. However this issue is manageable when this issue is discussed with our higher ranking panel counsel firms.

Showing compliance with billing and litigation guidelines demonstrates the value a firm places in its relationship with the carrier and its willingness to act as a true business partner

Comments About The Importance of Compliant Invoices

Poor billing habits to me are annoying but it is not the be all and end all of the measuring tool for me any way. I think my colleagues make great mistakes in decision making focusing on the bill. Value is not found on the bill sheets very often

Median

it is very important (10 out of 10) that a firm's submitted bills are in compliance with our guidelines for acceptable billing practices. Again, we are a niche industry and while it may sound strange, trust is extremely important in the relationships we have with our outside counsel. Bills submitted that routinely disagree with our guidelines suggest a firm that doesn't understand what is expected of them, or doesn't care. Either way, it is a problem

If they have been working with us for a long time their bills should be in compliance. If they are new, we work with them to get them to full compliance. so.... but I have to say it is very important

Clean is a relative term. It may look clean as the firm knows how to bill (correct terminology and codes) but is it really clean? I would view this as not important. But, if they do not have "clean bills then the firm gets tagged and further review takes place. This is more than likely the most important factor for the law firm. It should not be the most important factor for the client.

Average

A clean invoice is very important. It allows the auditor to determine whether the attorney is following the established guidelines

It is important to see that the firm is on the same page and in compliance with the guidelines, but it really depends on the types of adjustments being made. A carrier doesn't want to see consistently incorrect rates being submitted or "requests" to go outside the guidelines (i.e. two attorneys at a mediation), but most expect to see the travel time reduced as part of the arrangement.

If we think they billed for work they didn't do, at any level, we're done. We can't use lawyers we don't trust

Industry Snapshot Results: Perceived Correlation between Non-Compliant Invoice Items and Legal "Quality"

3: On a scale of 1-10, do you view errors and non-compliant line items on legal invoices as reflecting poorly on the quality of the legal work being performed? (1= invoices and legal work are totally unrelated / 10= invoices and legal work are extremely related)

There were 36 numerical responses to this question. The average and median rankings (10=extremely related) were as follows:

Average: 6.3
Median: 6.0

While the overall correlation was less than the importance of compliant invoices generally, and while participants seemed more willing to separate legal "quality" and invoicing errors in concept, the correlation was more than mid-point. Participants' unsolicited comments provide insight into how they feel on this issue:

Errors and Non-Compliant Invoices and Their Relationship to Perceptions of "Quality"

At least a 5 but could be higher depending on the type of error or non-compliant item. A mistake on travel would not count as much as billing for duplicate time for the same work

I don't view them as related at all.

The way a firm conducts its business is often a reflection on their work

I think they are unrelated to the legal work but does show a focus of the firms focus on billing

it depends on the nature of the non-compliance. Poor descriptions of work performed, clerical sloppiness like duplicate billings, etc. do not, to me, reflect on the quality of work performed. Too many cooks in the kitchen, repeated editing and re-editing of every pleading, extensive time billed on even routine pleadings, etc. are another matter--NOW I question the quality of the work performed

I do not correlate the quality or effectiveness of legal work to billing, but do weight the issue against administrative compliance and expectations

Not on the "quality" per se but on both the attention to detail AND appreciation for the importance of compliance with [guidelines] and that there is a significant aspect of the cost of the defense which DOES impact the overall (economic) results

invoicing is a clerical task usually done by people who have nothing to do with practice of law. We hire attorneys and not law firms and their billing departments

When a panel firm does something without permission (filing of S-J motion, retention of an expert) I find this very troubling and it usually the beginning of trend of poor communication and performance by the panel counsel. Some issues on noncompliance I would consider minor, However it on a case by case analysis. I would be very careful to relate the non-compliance on certain aspects of the billing to poor panel counsel performance. Some of our best panel counsel firms (specifically the senior trial attorneys) are not the best business men, when it comes down to their billing.

If the errors in the billing are egregious or repetitive, that certainly raises the question of quality of the legal work. Even less significant billing errors raise the question of how well an attorney is managing the business side of the law practice. Further, as the handling attorney has the responsibility to review all legal invoices before submission, billing errors also reflect poorly on the overall quality of the attorney's work

It makes it hard to believe in someone who does not take the time to make things right in the way they present their work product including their billing to me. It is annoying more than a measurement for me though

As for number three, we don't get a lot of errors, and the ones we do get are either honest mistakes or a result of a misunderstanding. Obvious and intentional billing errors or non-compliant entries are viewed very unfavorably and would result in a loss of future work for the firm.

It speaks to the overall practices of the firm, and certainly does not reflect well. Indicates limited attention to detail, and overall sloppiness. Although if the lawyer is really good I would hate to penalize him or her for the administrative staff (if that in fact was the reason for the non-compliance, etc).

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Errors and Non-Compliant Invoices and Their Relationship to Perceptions of "Quality"

Again, if you are only reviewing based on compliant items then most if not all invoices if clean, will go thru unchallenged. The real opportunity is to review against the litigation plan. Is the firm doing what you asked them to do and agreed upon or not? Are they staffing appropriately or not? Are they efficient and effective or not? One time I did a law firm audit and noted that the firm billed a .1 task as 100. The difference was \$10,000, obviously an administrative error. This was questioned not for the administrative error, for why they did not have an appropriate oversight in place to catch something like this. One would expect the firm's electronic bill system to reject any task item over a certain amount, either based on time or dollars, for further review before going to the client. This should have been done either electronically or via the management review process. The work may have been appropriate but the internal review process was lacking. This alone could be enough to do an in-depth review of the firm's billing practices.

While a clean invoice is very important, I do not believe that errors necessarily reflect the quality of the legal work performed. It has more to do with the failure of the firm as a business venture. Non-compliance and errors may indicate a failure of efficiency, which can cost the client.

We all know good lawyers are frequently not the best business people . . . and usually don't want to be bothered with the billing aspects. It is however a reflection on the firm's commitment to the relationship and most likely a reflection on their desire to commit resources for a proper billing department.

Non-compliance at some level means they don't care or aren't willing to put in the time to ensure the invoice has been correctly prepared.

Can certainly vary by firm. One firm resolves cases favorably, quickly and for an overall reasonable cost, but invoicing is poor vs. a second firm that is not as effective, and invoices poorly. At the end of the day, file handlers know who's doing a good job, doing it efficiently and fairly, and who is not. That said, invoice issues do often reflect the overall quality of a firm or attorney. Thus, though possibly a mistake to generalize this question, I would give this a 9, as, in my experience, most times when invoicing is handled poorly, so goes the handling of the matter itself

It makes me wonder how well they are focusing on the legal issues if they can't bill properly. However, it is not a 10 as the billing may be done by someone else. But there still should be a QC process in place to verify accuracy

I believe there's a link between the quality of an invoice and the general quality of a firm (this is true beyond law firms). It goes to the issue of operational discipline.

Errors and Non-Compliant Invoices and Their Relationship to Perceptions of "Quality"

if non compliance is something blatant like multiple partners billing, I feel they know they shouldn't do that and it is obvious . If it is things like extra hours for review or motion prep, those are a little less offensive as it can be a judgement call and no two are alike etc better firms will tailor bill to our needs and concerns

I am willing to distinguish billing from performance (and make allowances for sloppy billing/problem billing – stopping short of accepting 100% non-compliant billing) IF the performance is outstanding and claims/insured satisfaction is outstanding. Does the Diva at the opera not command fresh flowers and champagne in her dressing room because her singing is unrivaled and she packs the house every night to rave reviews? However, as performance diminishes - so does my appetite and patience to accept anything less than satisfactory (or better) billing

About this Industry Snapshot Study

This Study was conducted by Taylor Smith, president of CLM Advisors. CLM Advisors is the consulting and advisory arm of the Claims and Litigation (CLM) Alliance. With over 25,000 members and fellows, the CLM is a collaborative, inclusive, organization that promotes and furthers the highest standards of claims and litigation management and brings together thought leaders in both industries. The CLM's Members and Fellows include risk and litigation managers, insurance and claims professionals, corporate counsel, outside counsel and third party vendors. The CLM sponsors educational programs, provides resources and fosters communication among all in the industry. More information about CLM Advisors can be found at www.clmadvisors.org. More information about the CLM can be found at www.theclm.org.

Questions about this Study

Question about this Study and its findings should be directed to:

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