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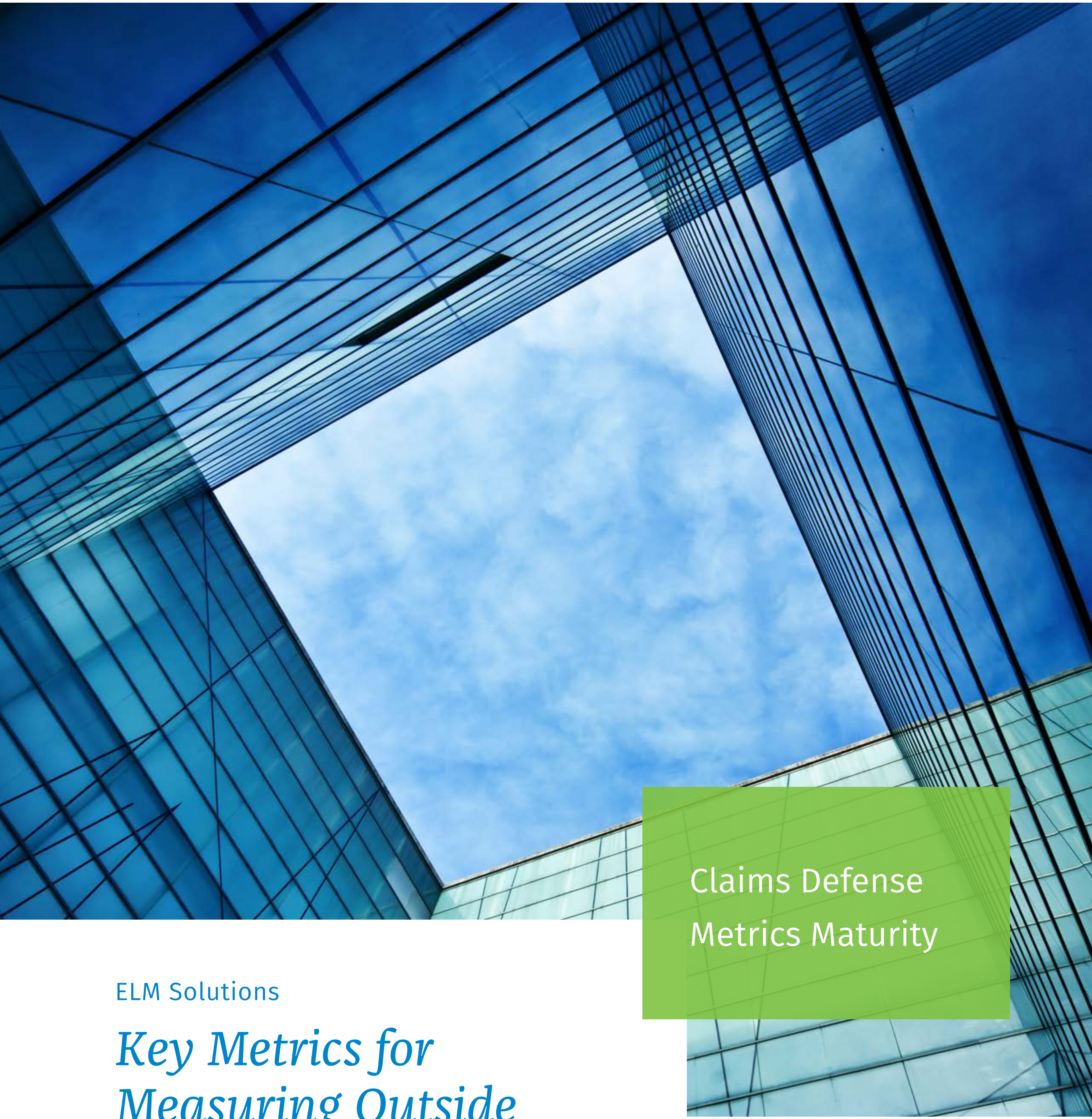
When you have to be right



Claims Defense
Metrics Maturity

ELM Solutions

Key Metrics for Measuring Outside Counsel Performance

This whitepaper will help your organization identify key claims litigation metrics and the types of reports that can drive improvements to your key performance indicators.

Target audience

Organizations with claims defense/litigation programs:

- Insurance claims organizations
- Self-insured companies

Roles:

- Claims professionals
- Claims litigation professionals
- Insurance and claims executives

Applied properly, this guide can help you improve the effectiveness of your litigation management initiatives, so as to improve your:

- Allocated loss adjustment expenses
  (i.e., controlling external costs associated with the litigation management process)
- Unallocated loss adjustment expenses
  (i.e., making your internal claim staff more efficient)
- Indemnity
  (i.e., improving loss cost outcomes on specific litigated claims)

Related Whitepapers:

- Five Key Disciplines for Creating Excellent Metrics
- Seven Core Metrics for Claims Litigation
- Six Core Staff Counsel Metrics
- The Role of Artificial Intelligence in Claims Litigation

Metrics Maturity

Capturing and analyzing metrics is an important part of any business. Claims organizations have a tremendous amount of data at their fingertips, and leveraging that data can significantly improve performance and outcomes, especially if they use that data strategically to enhance performance. Choosing outside counsel for claims defense is no different – organizations can aggregate and analyze their data to help claims professionals assign the right cases to the right firm at the right cost.

When a claim goes to litigation, finding the best representation is part of the fiduciary responsibility an insurer has to their policyholder, but they need to balance that good faith relationship with corporate financial goals.

The insurance company takes on the fiduciary responsibility for the liability of their policyholder, creating the tripartite relationship: the insurance carrier, the law firm, and the policyholder. It is in the insurance carrier's best interest – and that of the policyholder – to find the best counsel to defend their policyholder and provide for the best possible outcome to the litigation.

Claims organizations have a tremendous amount of data at their fingertips, and leveraging that data can significantly improve performance and outcomes

This often means taking into account factors such as geographic location, strong competence in a line of business, and understanding of the local jurisdiction and courts. The insurance carrier must also be able to defend their choice of counsel should it come into question for any reason.

All of this puts tremendous pressure on the insurance carrier to find the best possible counsel. We will explore the traditional ways of choosing outside counsel and how it is evolving to meet the needs of both the carrier and policyholder. We'll look at the role technology plays in helping insurance carriers find the best counsel to represent their policyholders while saving money on the total cost of litigation without sacrificing outcomes.

Counsel Selection - Past and Present

Before piles of data were aggregated into massive computer databases, how did we assign outside counsel to cases without qualitative analytics? The answer is simple – relationships and tribal knowledge. Let's break these down individually as they certainly established a pattern of behavior that is still very much a part of litigation management today.

Relationships

There is an old perception about deals with law firms being made on golf courses and over lunches instead of in boardrooms. While that is largely overblown, the fact is relationships do matter – and they should.

Knowing the law firm and the attorneys representing your policyholders, as well as being confident that they are excellent attorneys who will zealously defend your clients, are all good things. And for a long time, this was more or less the main method of counsel selection.

This doesn't mean that law firm performance wasn't evaluated. When challenges arose, the law firm manager at the insurance carrier would have very direct conversations with the law firm about remediating the situation.

This method was not without its challenges, however, as it relied on the visibility of problems. It was entirely possible that individual attorneys at a firm may not have been high performers, but this would largely be missed without granular data to evaluate – increasing the risk over time as work was awarded to this firm. It's easy for claims adjusters to miss small challenges when they have limited bandwidth and need to focus on the highest priority claims. This means the lower priority claims may not be on such solid footing.

Tribal Knowledge

Even when a firm was a good-faith partner with talented attorneys working diligently on the policyholder's behalf, only a few individuals at the carrier might have known that this was a go-to firm. When these individuals moved positions or left the company, all their knowledge of the firm evaporated.

Then, the reasons why those firms were preferred was lost to time, even when the firm's performance suffered due to staffing changes and their own tribal knowledge losses. The power of tradition took over, and carriers hired the same firms because "that's the firm we always hire for that work."

To truly find the best counsel, carriers need to combine the objective data with the human expertise of the claims adjusters and attorneys.

With e-bills 20 years ago came data and management systems for tracking information. Over the past 10 to 15 years, as this data has grown to levels where insurance carriers can make true qualitative decisions driven by real analytics, we have started to see a significant paradigm shift in the industry.

These systems track the history of a litigated claim – down to the line item. What attorneys were assigned? How much work did they do? What was the cycle time of the case? How much was the settlement? Now, powerful e-billing and claims systems and the mountains of data they captured provided the ability to objectively answer these questions.

Or at least, that is what everyone thought at first.

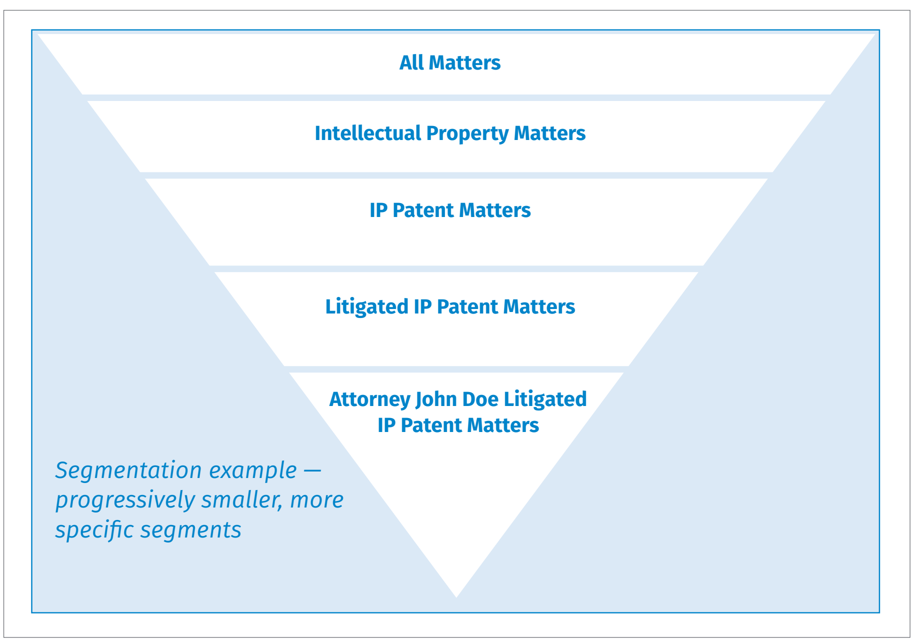
We now know there are both subjective and objective measurements in finding the best firms. The challenge is not only in collecting the data and building reports but also operationalizing that data into something actionable. To truly find the best counsel, carriers need to combine the objective data with the human expertise of the claims adjusters and attorneys. In the end, both the data and the relationship matter.

Finding and Managing Firms

So, in the age of big data, where do we even start if we want to leverage information to find the best possible outside counsel? The first guiding principle is simple: evaluate the criteria that will actionably lead to stronger outcomes and partnerships with firms.

One of the great challenges is the large amount of data available that needs analysis. Smart analytics need to be paired with human expertise and experience to find the truth. For example, a law firm's overall total case cost within a particular line of business is objectively measurable. Whether that number is higher or lower than other similar firms within the same line of business is also objectively measurable. But how do we translate deltas and variance into something operational?

This is where we combine objective data with human experts. Perhaps the cost is higher because they are handling the most complex litigation within that line of business or casework with the highest risk. These are subjective evaluations that rely on the insurance carrier's staff to know the nuances of their cases. That doesn't mean, however, that these items can't also be tracked, aggregated, and reported.



Example of data segmentation

One of the most important elements of your metrics program – and any system of record – is the ability to properly segment your data by focusing on one or more key data points.

Examples of segmentation include line of business; case or matter type; risk profile; jurisdiction/court; and outcome. Some of these may also have sub-segmentations (e.g., with law firms, it can be useful to know their expertise, size, experience of the involved counsel, etc.).

Once you have properly segmented the data, your experts can make true comparisons and evaluate the outcomes of the analysis. Many in the industry have been wary of the data journey because of concerns that the report will rule. In other words, the report will say that a firm is falling short of expectations, and they will no longer be able to use that counsel. Proper usage of data does not remove partners that are performing well but shows the path to help them perform even better.

Proper usage of data does not remove partners that are performing well but shows the path to help them perform even better.

The most important element of managing firms through analytics is that these measurements must be shared transparently with law firms. If the road to improvement isn't communicated openly, then they will be left in the dark. Insurance carriers that share metrics openly – highlighting where law firms and even individual attorneys have succeeded and where they can improve – help turn a vendor into a partner for success.

Operationalizing the Data – Panel Management and Enhanced Firm Selection

Once you have data segmented and shared with firms, how do you use those metrics to choose the best counsel? There are two main methods – panels and enhanced firm selection.

Panels are simply collections of law firms with a proven track record of success within a line of business and geographic location. They are effectively the old "handwritten list of approved firms" fashioned into a formal program. What has changed is that we can now more fully evaluate the performance of the law firms and attorneys on a panel. The panel formalizes tribal knowledge, but by applying evaluative metrics, we make sure that it doesn't become "that's the firm we've always chosen, and they're on the panel."

The second method for better firm selection is embedding analytics directly into the firm selection process. As technology and user interfaces have advanced, especially in the last three to five years, we have seen systems provide real-time analytics to claims adjusters and attorneys responsible for outside counsel selection. This makes critical information on factors like capacity, expertise, amount spent with the firm, and outcome history (by segmentation) available in real time to the individual making the law firm selection.

Foundational Metrics for Managing Firms

Given all these factors, the logical next question to ask is: what metrics are we using?

We need to know what metrics matter to properly evaluate law firms and collaborate with them for better outcomes. The short answer is that there is no silver bullet. There's no perfect mix of metrics that works across lines of business or carriers that will guarantee the selection of only the best firms.

Metrics need to be dynamic and responsive to the individual needs of an insurance carrier. The first step in a metrics program should be to perform a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis and determine the areas that need to be managed. Once you get beyond the foundational elements, the items measured and the analytics utilized by your organization need to be tailored to the challenges and specifics of your business.

Next, we'll cover a set of core metrics and examples of potential metrics that may be of value to individual carriers. Each metric can be further subdivided, segmented, and analyzed for additional insights. A single metric, like Total Legal Spend with a Law Firm, has many dimensions that can be broken down for further analysis.

Understanding Report Types

As we examine key law firm evaluation metrics, we will include some sample reports to illustrate what the data output of each metric might look like.

The type of report you choose to convey specific metrics will depend on your goals. We've explained these report types in detail in our Claims Defense Metrics Maturity: Five Key Disciplines for Creating Excellent Metrics whitepaper. We recommend you review that whitepaper to understand the fundamental disciplines of a successful metrics program.

Total Spend by Law Firm

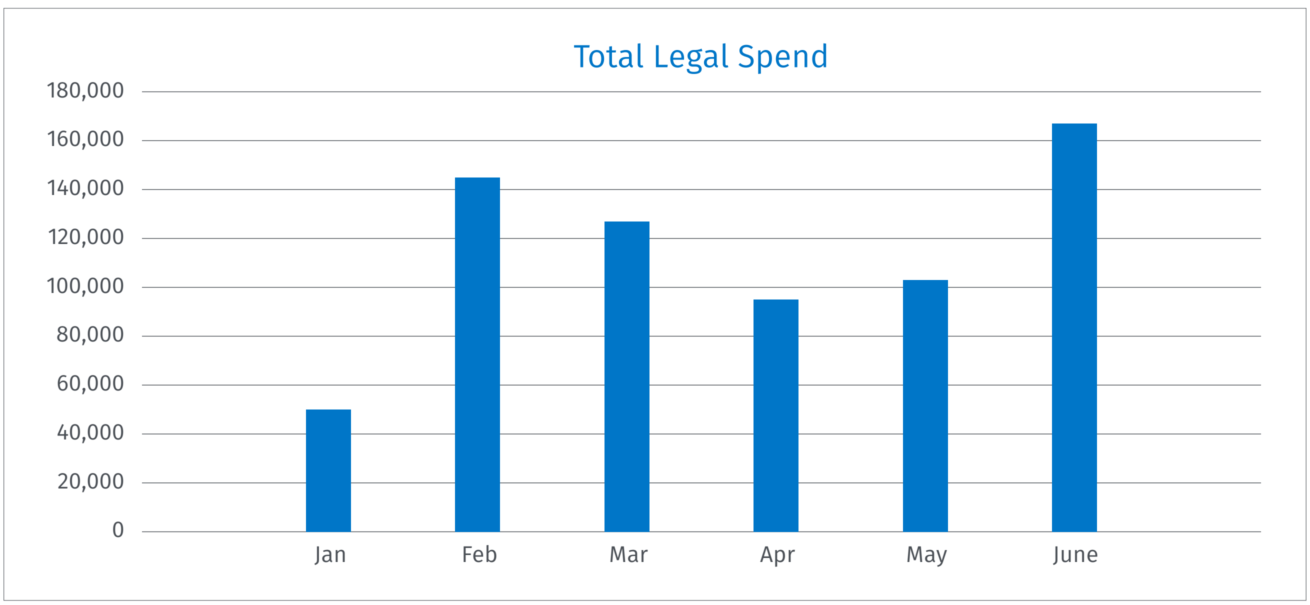
One of the most basic questions that every carrier should be able to answer is: what firms are earning your legal dollar and why? This metric gives you a clear picture of yearly and lifetime spend by law firm, focusing on the top five to 20 law firms.

Some key numbers to look at include:

- Total spend by firm
- Case complexity of the matters handled by firm
- Number of current cases

Report examples and how to analyze them:

The following report example breaks down one firm's legal spend over the first half of a calendar year. A report like this can help you identify larger trends over a period of time or compared to other firms. Always consider factors unique to a particular firm to better understand spend, such as fee arrangements, jurisdiction, and complexity.



Report example: outcome report showing legal spend by firm over six months

Why this metric is important

Carriers often utilize a large quantity of firms for their claims defense. Total Spend by Law Firm helps identify the top five to 20 firms that earn your legal spend, as well as firms to analyze further, and helps you strengthen relationships, enhance communication, and align expectations.

Positive Trends

There are two major positive trends to look for with this metric:

- Looking at Total Spend by Law Firm will help you confirm that the firms you believe are your go-to firms are receiving an appropriate amount of work and can provide leverage with that firm in future negotiations.
- You are appropriately paying firms for the complexity of the work (i.e., lower cost for lower complexity cases).

Red Flags

The red flags for this metric are often readily apparent:

- Unexpected firms at the top of the spend list are red flags that you should investigate. Firms may have a justifiable reason for being at the top of the list, but often it can be the result of process failures. For example, a line of business has failed to migrate to new panels or approved counsel and has instead continued using an older legacy firm.
- High-cost firms retained for low complexity work or vice versa.

These red flags could mean that your case management system is not directing the case assignments to the correct firms or providing the claim handlers with the information they need to make the best decisions at the point of assignment.

Best practices to improve in this area

This metric presents several opportunities:

- Your highest spend firms should be your go-to, A+ firms. If not, then your panels or approved counsel need to evolve, and you should direct legal work accordingly.
- Your highest spend firms should also receive a commensurate amount of attention. Regularly communicate how you measure performance and your expectations. Tighten the partnership between your organization and your best firms.
- Firms should be paired with appropriate work, based not only on specialty but also on complexity. Adjust, redefine, and refine your panels and case assignment process to ensure you are distributing the right cases to the right firms – controlling cost and risk.

Total Case Cost/Outcome by Law Firm

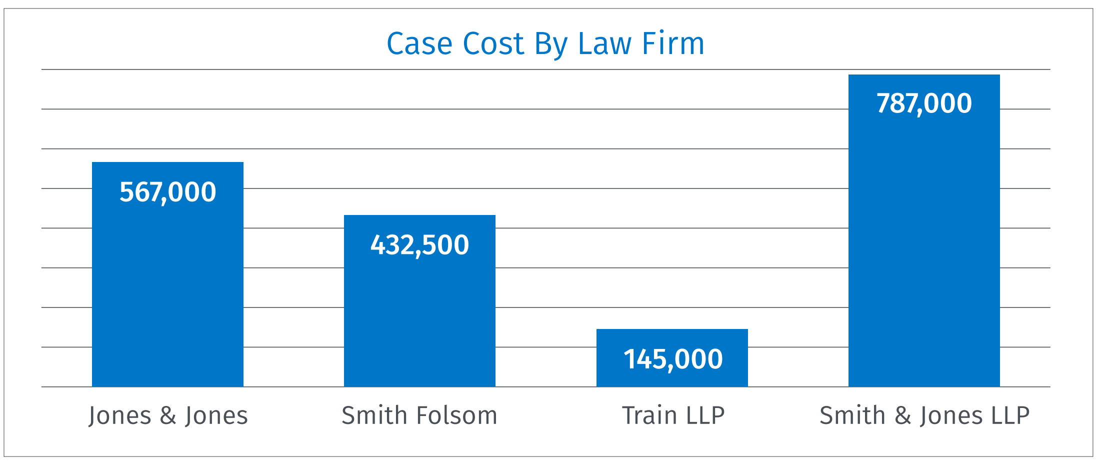
This metric is similar to Total Spend by Firm but broadens the reporting to consider not just the legal spend but also the outcomes (positive or negative) and the complete cost picture (including indemnity, settlements, etc.).

Key numbers to potentially include:

- Total case cost by firm
- Positive/negative outcome by matter by firm
- Case complexity of the matters handled by firm
- Number of current cases

Report examples and how to analyze them

Assessing case costs by firm can give you a complete picture of what a litigated claim is truly costing your organization. High-level reports such as the following example can give you a big picture view of where your legal dollar is going, but consider drilling down to see the outcome performance of each firm for a complete understanding of a firm's ability to successfully resolve claims.



Report example: outcome report showing total case cost broken down by individual firm

Why this metric is important

This is the most critical component to truly understanding the law firm's overall performance.

Total Case Cost is where the application of segmentation by line of business can be especially impactful. Law firms have expertise as manifested through the experience of their individual attorneys. It is possible that a law firm could be an A+ performer within a particular line of business but struggle in other lines of business or types of cases. Being able to understand that difference and employ the firm accordingly is a directly actionable and beneficial piece of data.

Positive Trends

Trends to look for with this metric

- Aggregate costs that remain at or near the expected outcome values. Many lines of business have expected industry settlement values, and if the firm is consistently holding at or below these expected values, this is a positive trend that shows they are responsibly handling the financials of the individual case.
- Aggregate outcomes that are positive. This does not always mean a win (in the case of trials) but rather that the outcome was positive overall for the carrier, given the realities of the case. Outcome is often a subjective measure (e.g., losing $2 million in a case where a $5 million loss was expected may, in fact, be a very positive outcome).
- In both examples, the aggregate is important. No law firm will hit 100% on these measurements, and a single poor outcome or higher cost should not damage a relationship. Concentrate on trends versus outliers.

Red Flags

The red flags for this metric are often readily apparent:

- Unexpected and higher total costs, given historical and industry norms.
- A trend of negative outcomes or even neutral outcomes where a positive outcome would have seemed possible, based on the initial case assessment.

These red flags could mean that your case management system is not directing the cases to the correct firms or providing the claim handlers with the information they need to make the best decisions at the point of assignment. You should dig deeper into the historical data of firms with red flags to ensure that performance over time has remained consistent or improved. If Total Case Cost is trending upwards outside of expected costs increases, it may be time to reassess usage of particular firms.

Best practices to improve in this area

- Data segmentation matters. Understanding the nuance of where a firm is succeeding and having challenges is critical to operationalizing this metric. Are firms succeeding within a particular line of business or type of work? Which firms are successful with lower complexity cases but struggling with riskier or more complex casework? How are your firms performing within a particular jurisdiction?
- Once nuances and trends are understood, it's easy to operationalize this data and spot firms that are struggling within a specific segment. This presents a great opportunity to refocus with the firm, discuss the attorney/staff assignments, and the types of work the law firm will take on going forward

Diversity Tracking

Research has repeatedly shown that firms which employ a diverse set of attorneys deliver better results. It is easy to think of this as a purely "feel-good" goal, but repeatedly we see that employing firms that value diversity results in better case outcomes and long-term cost controls.

Report examples and how to analyze them

The following report example not only captures the number of diverse timekeepers across many demographic categories but also shows trends over time. This type of metric shows growth and retention of talent in diversity categories important to your organization. It would be further helpful to break down by timekeeper to see career development within a firm. Firms can struggle with retention of diverse attorneys due to a lack of a development track and mentorship.

Diversity Organization - Davis & Davis

Jan 2017 - Mar 2018

	Survey Results	Survey Results
	Jan 2, 2018	Mar 19, 2018
Number of Attorneys	33	40
Percentage Change for Attorneys	0%	18%
Number of US Attorneys	20	40
Percentage Change for US Attorneys	0%	50%
Number of Partners	4	6
Percentage Change for Partners	0%	33%
Number of US Partners	4	6
Percentage Change for US Partners	0%	33%
Number of Female Associates	12	14
Percentage Change for Female Associates	0%	14%
Number of Minority Associates	8	10
Percentage Change for Minority Associates	0%	20%
Number of Female Partners	2	4
Percentage Change for Female Partners	0%	50%
Number of Minority Partners	1	2
Percentage Change for Minority Partners	0%	50%
Number of LGBT	2	2
Percentage Change for LGBT	0%	0%
Number of Disabled	1	1
Percentage Change for Disabled	0%	0%
Number of Veterans	7	8
Percentage Change for Veterans	0%	12%
Number of Flexx Time	2	2
Percentage Change for Flexx Time	0%	0%

Report example: outcome report showing demographic information of an individual firm

Specific Metrics To Capture and Analyze

- Total number of associates/attorneys/partners vs. total number of diverse associates/attorneys/partners
- Percentage of LGBT+, veterans, and disabled associates of the same cohort
- Number of diverse associates used on the carrier's specific work vs. total associates at the firm
- Legal spend broken down by timekeeper diversity

Why this metric is important

Organizations with diversity initiatives typically wish to reflect the community they serve, understanding that a diverse workforce is not only the right thing to do but also beneficial to the business in the long term. Diversity brings with it innovation and different viewpoints that propel companies forward. Companies with diversity programs will look to vendors who share their values regarding diverse staffing.

Positive Trends

The legal profession remains one of the least diverse professions, but this is changing, largely due to pressure from clients demanding diversity. A positive trend here is any improvement year-over-year representing an increase not only in the firm's diversity but also diverse representation across all timekeeper roles. Hiring diverse talent isn't enough – firms need to retain that talent and provide a path to advancement within the firm.

Red Flags

Percentages for the legal profession are likely not going to mimic U.S. society averages for many years to come, but several red flags can be identified:

- A firm with an extremely small diverse population of associates, senior attorneys, and partners.
- A low number of diverse associates utilized on billable work

Best practices to improve in this area

The first and most important best practice is to have an internal diversity program, starting from the top down, and demanding the same of the vendors providing your company services. Surveying your outside counsel on their diversity information, inquiring about their internal diversity programs and initiatives, and even requiring that firms have such a program to be a go-to firm on your panels are all great motivators to see positive trend-lines in the long term.

Case Assessment Reporting

Outside counsel frequently completes an early case assessment, which is important as it allows claims to understand the essential elements of the case. It also captures critical information for additional later reporting.

Early case assessment information should capture all relevant critical case data that can be used in summary reporting around case elements, like challenging jurisdictions, plaintiff counsel, or non-favorable judges. This case assessment data also adds important segmented information for all other reports, such as plaintiff counsel, judge, jurisdiction, predicted duration information, and other ephemeral classifications of the case that counsel recognizes initially or as the case progresses..

Why this metric is important

This report is critical because it:

- Delivers critical information and supporting background to the individual case.
- Rolls up into summary reporting, allowing for outcome aggregates that show higher risk cases.
- Adds additional dimensions and segmentation options to all other reports.

Positive Trends

This report is more about additional information rather than trends over time but can be used in the segmentation of other reports. Some of the key elements useful for additional segmentation include:

- Jurisdiction/Judge
- Plaintiff Counsel
- Complexity
- Settlement/Duration expectations

Red Flags

The red flags here are at an individual case assessment level. If a particular case has an assessment with several critical items, they can be surfaced as an exception report from the larger group of completed assessment forms. For example, certain plaintiff counsel may be flagged as challenging, and cases within a particular line of business where this counsel is present may then be flagged in turn as higher risk.

Best practices to improve in this area

The primary best practice for this report is to capture this information early – every time – and make it part of the existing workflow for case acceptance. It's important to make sure the information can be populated quickly and easily. The more cumbersome the data capture or reporting, the more difficult it is to record the various elements and the higher the likelihood of missing data.

Budget Adherence Reporting

This metric helps demonstrate how effective your law firms are at properly managing your litigated claims through all phases of the case and how experienced they are at understanding the individual nuances of particular cases. Some lines of business are far more susceptible to risk and widely varying costs than others. Note that the type of budget is also important. For example, total case cost budgets may be more susceptible to larger swings than individual phase budgets.

Report examples and how to analyze them

The following two example reports can be generated frequently to stay on top of budget adherence. Exception reports are highly useful when looking for budget issues because they flag issues, and you can take steps to remediate issues as they arise. Looking for larger trends over time is also very helpful (e.g., asking firms to modify their budgeting to better match your organization's expectations and margin of error thresholds).

Budget Exception Report
Jan 1, 2017 - Aug 31, 2018; User Currency - USD

Budget Violation Report by Law Firms			
Law Firms	# of Budget Increase Requests	# of Budget Exhausting less than 50% of original total	# of Matters/Closed Matters
Boat Floaters, LLP	0	1	2/1
Law Firm 1	5	5	5/4
Law Firm 2	6	4	2/2
Law Firm 3	2	6	3/3
Law Firm 4	3	6	3/2
Law Firm 5	2	5	2/2
New Org	0	0	1/1

Report example: exception report showing firms that have asked for budget increases or spent less than 50% of the original budget.

Budget Violation Report by Law Firms							
Law Firms	Matters	# of Budget Increase Requests	Original Budget (USD)	Current Budget (USD)	Final Spend Total (USD)	% of Original Budget Remaining	% of Current Budget Remaining
Boat Floaters, LLP	less than half matter	0	1,000.00	1,000.00	400.00	60.00	60.00
Boat Floaters, LLP - Total		0	1,000.00	1,000.00	400.00		
Law Firm 1	Budget Matter-01	3	11,000.00	1,400.00	5,000.00	54.55	-257.14
	Budget Matter-02	1	1.900.00	2,200.00	0	100.00	100.00
	Test matter 0001	0	1,800.00	1,800.00	1,500.00	16.67	16.67
	tt matter 001	1	7,000.00	8,000.00	1,975.00	71.79	75.31
Law Firm 1 - Total		5	21,700.00	13,400.00	8,475.00		
Law Firm 2	Budget Matter -03	1	4,300.00	4,800.00	0	100.00	100.00
	Budget Matter-01	5	2,600.00	3,195.00	0	100.00	100.00
Law Firm 2 - Total		6	6,900.00	7,995.00	0		
Law Firm 3	Budget Matter-03	1	4,800.00	5,200.00	0	100.00	100.00
	Budget Matter-01	0	1,400.00	1,400.00	0	100.00	100.00
	Budget Matter-02	1	2,700.00	2,701.00	0	100.00	100.00
Law Firm 3 - Total		2	8,900.00	9,301.00	0		
Law Firm 4	Budget Matter-03	2	5,001.00	5,004.00	0	100.00	100.00
	Budget Matter-04	1	4,200.00	4,210.00	0	100.00	100.00
Law Firm 4 - Total		3	9,201.00	9,214.00	0		
Law Firm 5	Budget Matter-03	1	2,500.00	2,502.00	0	100.00	100.00

Report example: performance reporting showing budget violations by matter

Why this metric is important

Law firms that have high adherence to budgets display that they are making bespoke considerations for each case, not applying a “cookie cutter” mentality and adjusting as later surprises arise. The ability to properly predict a budget is also essential for the insurance carrier to determine their overall upcoming costs for legal fees and expected spend.

Positive Trends

There are two main types of positive trend here:

- A low number of additional budget requests. Additional budget requests mean that the original budget (total or phase-based) was low, and additional funds are needed to bring the case to resolution. When few additional budget requests are seen in the aggregate data, it means that the law firm is experienced in the line of business and jurisdiction and is properly bringing the case to an effective resolution.

When a firm has a low number of budgets with large amounts remaining, it means they have accurately budgeted for the expenses with the litigated claim.

- A low number of budgets with large amounts (50%+) of budget remaining. A firm should not be over-budgeting (i.e., giving an outrageously high budget number so that they have clearance). When a firm has a low number of budgets with large amounts remaining, it means they have accurately budgeted for the expenses with the litigated claim. It is important to note that this measure has an exception: if the budgets used are total case budgets and the law firm moves to an early and positive settlement, it is entirely possible in this case to have a large amount of the budget remaining. It is important to combine this metric with another, such as Positive Outcome/ Settlement reporting, to truly understand the reason for the remaining budget. This is less prevalent when using phase-based budgeting, as these later phase budgets are simply never activated and hence should be absent from any reporting.

Red Flags

The red flags here are the inverse of the positive trends listed above. Large amounts of additional budget requests and large numbers of cases with high amounts of budget remaining are red flags. Note that there will always be cases that expand beyond the scope of the original budget, and there will always be cases that close early. This metric requires digging into the data segmentation and details to understand the nuances that cause the exceptions. Similarly, it is important that the red flag here is not an individual case but a larger trend, especially one you are not seeing with other firms operating within the same line of business.

Best practices to improve in this area

It is important for your claims adjusters and attorneys to collaborate with outside counsel to create realistic budgets. Understanding the case through effective early case assessment is a great first step to achieving realistic budget expectations both internally and for the law firm partner.

Metrics for Assigning Law Firms - Capacity and Overall Ratings

You can integrate many of the metrics covered into the law firm selection process. Your claims adjusters should understand the total amount of money being spent with a firm, the discounts they are offering, and their outcome history when making a new assignment. Where possible, all of these should be made readily accessible as part of the firm selection process. If associates have to go to great lengths to retrieve or synthesize the data, they may not do it, simply due to time restraints.

You can also utilize additional metrics at the time of selection that may be relevant. Your individual organization's strengths and opportunities should define the data points presented to your associates to facilitate their choices.

Capacity

Capacity is one of the simplest and most often overlooked metrics for law firm assignment, but understanding it and having it readily available are critical to ensure that your law firms are not being asked to take on more work than their available bandwidth (measure of the number of current cases assigned vs. total bandwidth available for cases). In those cases, the outcomes may suffer.

Report examples and how to analyze them

Capacity reports are fairly simple and straightforward. They will help you understand how busy a firm is with your claims defense work and if they're getting close to capacity, which may cause a necessitate distributing work to other firms as appropriate.

First Name	City	Capacity
A Firm		2/10
Barker, Boots		7/75
Boat Floaters, LLP		2/40

Sample report: performance report showing current number of cases assigned compared to total capacity

Why this metric is important

Law firms have a limited number of associates with a limited amount of time. Your firms supply the total capacity number and dynamically adjust it over time. This metric requires communication and collaboration with your law firm partners to make sure that you are working together efficiently for success.

Positive Trends

The positive trend here is simple: open availability of the law firm indicates a firm and its timekeepers are not over-taxed with too many cases. The law firm supplies this information. Note, capacity most often comes into play in small- to mid-sized law firms that have much tighter restrictions on their potential caseload than larger (250+ attorney) firms.

Red Flags

The red flags related to capacity usually manifest in other ways. You may not see the overcapacity directly but rather experience emergent issues in other areas. For example, staffing plans may no longer contain the mix of associates you would expect for the best outcome – and different or less experienced associates may be utilized more than expected. Outcomes may suffer. You can trace all these trends back to the firm or individual attorney that is over maximum capacity.

How to improve in this area – best practices

The most critical element for success in this metric is communication. The more you are sharing your expectations and having open conversations with your law firms about their availability, shared staffing plan discussions, etc., the more likely capacity will not surface as an issue. The insurance carrier as the purchaser of legal services must assign work in the proper amounts where the firm can still perform and succeed at the level expected.

Overall Ratings (Subjective Evaluations)

This metric is an umbrella measurement of performance. Every firm in your system should have an overall rating, which is an aggregate of objective and subjective criteria. For example, at the close of each litigated claim, your claims adjusters or attorneys should complete a simple four-question evaluation form, rating the law firm from one to five stars on their performance in areas like communication, effectiveness, knowledge, etc. These are soft skills and not easy to objectively quantify, but they are the very skills that separate good firms and attorneys from great ones. When enough of these subjective evaluations are measured, the collective experience of working with a firm and its attorneys kicks in and allows real insight into law firm performance.

When firm and attorney surveys are executed regularly, and the information is accurate, the resulting data is an excellent barometer of a firm's broader set of capabilities.

Report examples and how to analyze them

A subjective evaluation should be easy to fill out and report on. We suggest a five-star rating system that allows claims adjusters to report on their experience with a firm at case close. Those ratings can then be aggregated and included as a component of a firm dashboard.

In addition to the overall rating (i.e., the aggregate roll-up score), you may also want to report some additional items that contribute to this rating, such as scores for their communication or knowledge in the associated area of law.

First Name	Overall Rating	Budget Rating	Communication Rating	Experience Rating	Staffing Rating
A Firm	☆☆☆☆☆	☆☆☆☆☆	☆☆☆☆☆	☆☆☆☆☆	☆☆☆☆☆
Barker, Roots	★★★★☆	★★★★★	★★★★★	★★★★★	★★★★★
Boat Floaters, LLP	★★★☆☆	★★★★☆	★★★★★	★★★★☆	★★★★☆

Report example: firm ratings per performance criteria

Why this metric is important

The true value, skill, and abilities of a law firm are not easily summed up in numbers. If taken individually, they can be skewed. The key is to aggregate this performance data. When firm and attorney surveys are executed regularly, and the information is accurate, the resulting data is an excellent barometer of a firm's broader set of capabilities and can be an invaluable measurement of the true value of a law firm.

Positive Trends

The positive trend here is simple: the overall rating of the law firm should be neutral or improving. The benefit of aggregating simple ratings like firm performance is that they are easy to evaluate. Scores increasing or remaining the same if already positive is a good sign.

Red Flags

The red flag here is a decreasing firm score. In this case, the next step is to unpack the aggregate detail and pinpoint the specific issue(s). Is the source of a downtrending score from a line of business, particular types of claims, or specific attorneys at the law firm? This score is effectively the "canary in the coal mine," warning against possible unforeseen future danger.

How to improve in this area – best practices

The most critical element for success in this metric is to collect this data often – at the close of a case, during annual vendor surveys, upon each paid invoice, etc. To that end, the survey questions need to be very simple: four to six questions maximum with a five-star rating system or yes/no ratings. It is also beneficial for the claims adjuster or attorney to provide additional written detail as they see fit. These details can help in situations of poor performance to give greater context to the rating and reviewed as necessary.

Summary

The world of spreadsheets and written lists of approved firms and attorneys is gone, and this is a positive thing. In the end, relying on tradition, tribal knowledge, and even relationships to determine the best possible counsel to represent policyholders is not a strategy that is going to return the best results for the insurance carrier or the policyholder.

Insurance carriers are miles ahead of most other industries in the amount of data they collect during the claims, litigation, and billing process. This data is a powerful tool that should never be the sole driver or decision-maker but is more than welcome to sit in the passenger seat and help leadership to navigate the long road ahead.

The goal of your metrics program should be to make sure that the collected data is valuable. Value is defined by the data's ability to be actionable. To be valuable, data must be paired with human analysis and synthesis to result in real business decisions. If specific data is not contributing to creating value, then it shouldn't be measured nor should it be a burden on the insurance carrier's analytics staff. The challenge with analyzing data will always be finding the signal amongst the noise. By following the steps laid out in this paper and by working to define internal goals, strengths, challenges, and opportunities, you can draw real value from your analytics programs.

Contact information:
Wolters Kluwer's ELM Solutions
World Corporate Headquarters
3009 Post Oak Blvd., Suite 1100
Houston, Texas 77056
Phone 800.963.3273

Please visit **wkelmsolutions.com** for more information.

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