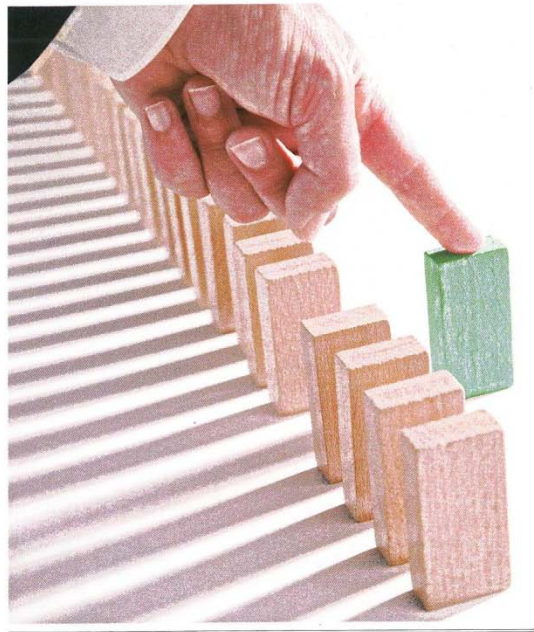


Legally Speaking | BY DOMENICK C. DICICCO JR., J.D., M.B.A.

LITIGATION MANAGEMENT

Separate Yourself from the Crowd Using Three Strategies



In today's demanding and competitive insurance marketplace, one of the skills that can separate the high-performing insurance company from its competitors is litigation management. This skill is vital to delivering the value-added proposition that a top-notch claim organization should deliver to its clients. This article will discuss the three components required to deliver world-class litigation management.

Selecting Effective Counsel

This is one of the most challenging areas of good litigation management and one that is driven less by objective measurement and more by effective marketing of law firms. It is very difficult — but not impossible — to measure a counsel's effectiveness. This challenge is of such importance that those who get it right have a tremendous competitive advantage.

The fact is that while counsel can be measured by objective means, few companies do so in any meaningful way. As a result, the selection of counsel is based on the principles of risk aversion and career protection. For the claim professional, this means the main driver for counsel selection is the desire to avoid being second-guessed by a supervisor should case's outcome end negatively. This driver inevitably leads to a claim professional

selecting a "name-brand" firm and, if the case is large enough, the name-brand partner from the name-brand firm. Thus, the claim professional is protected from second-guessing if a bad outcome occurs, thus minimizing the risk to his career.

At first glance, this does not appear to be a bad strategy. The name-brand firms tend to earn that position through good results. However, a deeper analysis reveals that this strategy is average at best. More likely, it wastes millions of dollars with no real accountability for the results. Any audit of litigated matter will reveal what many veterans of litigation have known for a long time: millions of dollars in legal fees are wasted on matters where 96 to 98 percent of the matters resolve for an amount any seasoned claim professional could have predicted at the start of the case. One must question the value the policyholder received for such expenditures.

The most effective counsel is one who understands your definition of success for a particular case and gets you there quickly. Here, the adage of what gets measured, gets done is applicable. If we manage litigation with a clear definition of success, the outside attorney and the claim professional will know how to proceed in the most efficient manner. If we manage litigation with a nebulous definition of success or, far too common, no definition of success, the attorney may engage in many activities that do not add value and are done, at best, to hedge against second-guessing or, at worst, to churn the file.

Furthermore, starting the management of a piece of litigation with a clear definition of success provides the opportunity to measure the performance of the attorney in a meaningful manner. It is only by doing so that we can decide who is the most effective and efficient counsel.

Delivering Customer Service

In this area, as in most, perception is reality. If the customer is kept fully informed of the case in a clear and frank

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manner, high customer service marks will follow. The key is to fully involve the client in strategy sessions as well as major tactical sessions. While the customer will let you know how much involvement they desire, I have never heard of a client being dissatisfied because they were too engaged or too informed about a case.

In addition to gaining insights from the client, the full engagement of the three stakeholders — client, insurer, and attorney — will foster a joint ownership and effort that will result in the client feeling that they received excellent customer service. Communication here must be clear and candid. It is inevitably the fuzzy, non-decisive communication that leads to a feeling of being “kept in the dark,” or surprised by the outcome of a case. Joint, clear, and frank communication is required if your organization is to deliver world-class customer service.

It is also imperative that the claim professional adds value to the triad. While the final decision about what to do in this triad rests with the client, the final deci-

Formula for Success

Litigation management excellence is comprised of three components:

- ▶ Selecting the most effective counsel based upon objective metrics.
- ▶ Providing outstanding customer service from both the claim professional and the attorney.
- ▶ Managing the litigation efficiently and effectively.

To accomplish this, you must create a culture that empowers the claim professional to deploy their experience in concert with the attorney and the client. Stated another way, empower your professionals to be professionals.



sion on what course to recommend rests with the attorney. However, this is not an excuse for the claim professional to be a wallflower. The proposed strategy of the case as well as the tactics to be deployed to drive that strategy should be the product

of the triad. When litigation management is consigned completely to the attorney, as is too often the case, the vast experience of the claim professional — as well as the client's fully informed opinion — are lost.

If the file is relegated to the attorney, then the claim professional adds no value to the process.

Assuring Efficiency And Efficacy

Claim professionals have the unique perspective in the triad of having the experience of managing hundreds of litigated matters. With this experience comes the unique perspective of:

- ▶ The value of such cases.
- ▶ Exposure to multiple jurisdictions.
- ▶ Knowledge of the plaintiff's bar.
- ▶ Experience in litigating similar cases.
- ▶ Understanding the costs and risk of litigation.
- ▶ Intimate knowledge of the insured's needs and desires.

Such knowledge is often discarded or underutilized in the triad relationship. This is usually the result of two factors, which I term the “yields.” First, the claim professional is often not an attorney. Despite their vast experience, they yield or,

more often, do not even participate in a meaningful way in the management of the litigation. The second “yield” is that, even if the claim professional is an attorney, their litigation experience is non-existent or limited. Thus, they perceive

their value as being subordinate to that of the attorney.

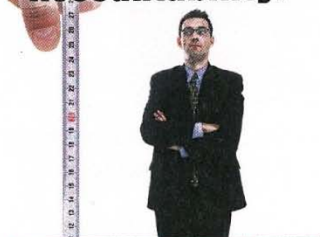
To overcome the yields, a culture of professionalism, continuous training, and empowerment must be nurtured in the organization. Too many organizations

marginalize the value of their claim professionals in litigated matters. I have seen too many instances where claim management and other executives marginalize their claim professionals in deference to the outside attorneys. To do so creates an organization doomed to poor performance or, at best, mediocrity.

Additionally, such a model fails to distinguish the value proposition of your claim organization from that of your competitors. The contrary model, where the claim professional is empowered in the management of litigation, highlights your value proposition and creates competitive advantage for your claim organization. ■

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