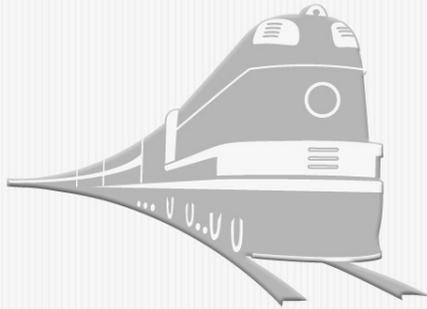


2007 BUSINESS LITIGATION EXPRESS



DESTINATION : INNOVATION

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2007 BUSINESS LITIGATION EXPRESS

Litigation as Business: Current Trends in the Management of the Law Department's Case Load

John R. Landis, Partner, Foley & Lardner LLP
Barry Powell, Starcom Media Vest Group, Inc.
Michael Pysno, RBC Dain Rauscher, Inc.
Douglas Stevens, Aon Corporation

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Goal of our Presentation

- » To identify methods of leveraging litigation management programs that are designed primarily to reduce costs into tools that improve litigation performance and results

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Topics we will address:

- » Electronic billing
- » Panel (or preferred) firms lists
- » Early case assessment programs

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Our Panelists

- » Barry L. Powell, Executive Vice President, General Counsel and Secretary, Starcom MediaVest Group, Inc.
- » Michael A. Pysno, Senior Associate General Counsel – Litigation, RBC Dain Rauscher, Inc.
- » Douglas R. Stevens, Associate General Counsel – Litigation, Aon Corporation

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Background

- » General factors driving implementation of litigation management programs
 - Primary factor: Pressure on law departments to control and reduce costs
 - Consistent management of large numbers of cases on a national and international scope
 - Advances in technology and communications capabilities

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Background

- » Popular methods undertaken by law departments in recent years
 - Electronic billing
 - Creation of panel (or preferred) firms lists – “convergence”
 - Early case assessment programs
 - Implementation of outside counsel guidelines
 - Alternative fee arrangements

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Electronic Billing

- » 15-20% of law departments now utilize
- » Prevailing reasoning and goals
 - Reduction of law department expenditures through close analysis of fees and costs charged by outside firms
 - » 5-15% savings
 - Reduction in manpower dedicated by law department to reviewing and negotiating
 - Payment efficiencies

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Electronic Billing

- » LEDES: Legal Electronic Data Exchange Standard
- » Providers
 - DataCert
 - Serengeti
 - CT Tymetrix
- » Challenges
 - Start-up time and cost (initial and on-going)
 - In-house expertise and resources
 - Outside counsel ability to implement

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Electronic Billing

- » Case study: Aon Corporation

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Electronic Billing

- » Evolution away from purely electronic invoices
 - Service providers include added matter management features
 - Increase “visibility” of outside counsel’s performance

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Electronic Billing

- » Opportunities to leverage “cold, hard data” into improved litigation performance
 - Improved reporting from outside counsel to law department
 - Enhanced review of staffing
 - Pleading or document storage tool
 - Functional equivalent of extranets

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Electronic Billing

- » Opportunities to leverage “cold, hard data” into improved litigation performance
 - Identification of cases that may be ripe for Alternative Dispute Resolution (ADR) or settlement
 - Guidance regarding risk management
 - Guidance on future matters and allocation of resources

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Panel Firms Programs

- » Recent surveys indicate approximately 25% of law departments have implemented
- » Expansion beyond insurance defense panels
- » Particularly prevalent in large corporations with heavy litigation case loads

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Panel Firms Programs

- » Prevailing reasoning and goals
 - Reduction of costs
 - Increased efficiency
 - Improvement of institutional knowledge among smaller set of outside counsel
 - Favorable fee arrangements
 - Reduction of oversight burden on law department
 - Creation of strategic partnerships with outside counsel

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Panel Firms Programs

- » Challenges
 - Assembling the approved list
 - Addressing law department political considerations
 - Representation needs that are not met by panel firms

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Panel Firms Programs

- » Opportunities to improve litigation performance
 - Improvement in understanding of business operations and business personnel
 - Enhanced responsiveness
 - Understanding law department expectations
 - Sharing of experiences between panel firms participants

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Panel Firms Programs

- » Opportunities to improve litigation performance
 - Regular evaluations of panel firms
 - Continued panel participation provides additional motivation to outside counsel

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Panel Firms Programs

- » Questions concerning benefits of the programs
 - Measurable gains in litigation performance?
 - Is formalized process and list necessary to achieve goals or benefits?
 - Do strategic partnerships materialize and provide value?

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Early Case Assessment

- » Definition
 - Implementation of a formal litigation analysis and management protocol that provides for the assembly and review of appropriate information on an expedited basis (30-90 days) in order to provide an assessment of the case and the optimal method of proceeding

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Early Case Assessment

- » Prevailing reasoning and goals
 - Approaching litigation as a business question rather than a legal dilemma
 - Reduction of law department expenditures through an early and meaningful review of risk exposure and likely costs of litigation
 - » Cost-savings through resolution of appropriate cases
 - Developments in litigation process
 - » e-Discovery (Federal Rules of Civil Procedure)
 - » Fast track cases (e.g., employment and IP)
 - » ADR and mediation programs

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Early Case Assessment

- » Formulation of the program
 - Fluid process vs. flow-chart analysis
 - Completion of assessment in 30 to 90 days
 - Assessment to be performed by in-house counsel or outside counsel?

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Early Case Assessment

- » Formulation of the program
 - Primary steps include
 - » An internal “investigation” of the facts
 - Appropriate scope of “investigation”
 - Document collection and review
 - Interviews of witnesses
 - Analysis of prevailing law
 - Factual chronology and risk assessment

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Early Case Assessment

- » Formulation of the program
 - Primary steps include
 - » Evaluation of settlement value
 - » Resolution strategies, including ADR
 - » Preparation of budget
 - Alternative fee opportunities
 - » Set at stages of litigation
 - » Repetitive cases
 - » Regular counsel

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Early Case Assessment

- » Benefits of early case management
 - Detailed understanding of the facts at a very early stage
 - Substantial evaluation of the merits
 - Understanding strengths and weaknesses permits well-reasoned decisions regarding each step of the case
 - Strategic advantage: understanding the facts better than the opposing party and counsel
 - Permits setting of rational goals and definition of success

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Early Case Assessment

- » Challenges to meaningful success of a formal program
 - Substantial dedication of time and effort early in case
 - Lack of resources to gather information
 - » Resistance by business personnel
 - Fees and costs up front
 - » Resistance by management

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