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

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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

Topics we will address:

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

» Barry L. Powell, Executive Vice President, General Counsel and Secretary, Starcom MediaVest Group, Inc.
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» Douglas R. Stevens, Associate General Counsel – Litigation, Aon Corporation

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
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

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
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

Electronic Billing

» Case study: Aon Corporation
Electronic Billing

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

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
**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

**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
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

Panel Firms Programs

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

Panel Firms Programs

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

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
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

» 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?
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

» 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
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

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