The 2023 CLM

Litigation Management Study

Report of Findings

CLM

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SUITE 200 SOLUTIONS

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Introduction

Thank You to Our Steering Committee and Participants

We thank each of the more than 90 claim and litigation executives who gave their valuable time to answer the many questions associated with this comprehensive look at our industry. Without their participation, this Study would not have been possible.

We also wish to thank the 45 Steering Committee members who contributed questions and guided the general focus of this Study. Their involvement helped to keep this Study relevant for all participants in the insurance defense community, including claims and litigation leaders, defense counsel, and the technology and service providers who support them.

The dedication of both participants and Steering Committee members reflects their commitment to our industry, and to their interest in promoting and furthering the highest standards of claims and litigation management. We thank them very much.

Thank You to Our Sponsors

We also want to thank each of the ten sponsors who made this Study possible. Without their underwriting support, the effort and time required to perform a Study like this is simply not possible.

Our sponsors recognize the importance of understanding emerging trends in the litigation management field, and each is a thought-leader in their respective litigation-oriented fields. The sponsors of this Study are:

CaseGlide
Charlee.AI
Consilio
Cruser, Mitchell
Foundation AI
McAngus Goudelock & Courie, LLC / MGC Law
Milliman Datalytics-Defense
Rebar Kelly
Ringler
Wolters Kluwer ELM Solutions

More information about each sponsor, and a link to their organizations, can be found at the end of this Report.

About the 2023 CLM National Litigation Management Study

This Study was commissioned by the Claims and Litigation Management Alliance (CLM) and conducted by Suite 200 Solutions.

This is the fifth Litigation Management Study commissioned by the CLM. The first was performed in 2011, followed by studies in 2015, 2019, 2020 (Defense Counsel), and this current 2023 Study.

Each of these initiatives were designed to capture the "State of the Union" in the litigation management industry — exploring how litigation executives are deploying resources, thinking about law firm performance, using staff counsel operations, addressing cost and quality issues, and facing new industry challenges.

We believe the information shared in this Report can help to facilitate improved communication and working relationships between litigation executives and the defense firms with whom they partner. We know many attorneys, especially newer or younger attorneys, feel that they would benefit from knowing more about the claims organizations with which they work.

How litigation executives organize their litigation resources, how they define their litigation objectives, and what they want most from counsel, are several examples of data elements that are critically important to aligning needs and expectations between counsel and their principals in the tri-partite relationship.

Where possible, we have compared this year's responses to prior Studies. However, given the relatively confined data set, we caution against drawing too many conclusions about then-to-now trends.

We encourage readers to use the Study for the primary purpose for which it was intended — as a framework and foundation on which all members of the litigation management industry – including claims organizations, litigation vendors, and law firms — can collaborate and exchange ideas about how to promote the highest standards and best practices in our industry.

Questions about this Report may be directed to Taylor Smith, President, Suite 200 Solutions, at taylor.smith@suite200solutions.com.

Methodology

This 2023 Study was conducted in a similar fashion to the prior four CLM Litigation Management Studies.

Participants completed a 160-question survey hosted presented on SurveyMonkey.com. Almost all participants were senior claim or litigation officers in their respective organizations; several senior officers delegated the completion of the survey to those with access to key data within their organizations.

Many of the survey questions were identical to prior surveys so that then-to-now comparisons could be made. However, a significant number of questions were new for 2023, and were submitted by a Steering Committee of 45 industry leaders. These questions were designed to flush out several topical issues being faced or discussed in our community today.

Not all participants answered all questions. Some questions were inapplicable to a respondent's own organization. In other cases, participants simply didn't know the answer and chose to leave the question blank.

However, participation was very strong. A total of 92 executives answered all or some of the questions and the lowest participation on any single question was 89 percent of that participant pool.

All percentages in this Report were calculated on the number of respondents answering a specific question, not the entire participant pool.

Many of the questions were presented in a "forced binary" style. That is, participants were frequently presented with only two choices, even though a proper answer might have been a third choice of "it depends." As frustrating as it is for survey takers to answer such questions, this style provides a much better sense for which direction a participant (and in the aggregate, the industry) is "leaning" on a particular question or issue.

Responses to the few "open text" questions have been summarized in list form. In some cases, identical answers have been consolidated or merged.

Please ask us if you have any questions about the methodology we have used in presenting these findings.

Steering Committee

This is a Study of the industry, by the industry. As such, our Steering Committee members reviewed each question and added additional ones.

One of our objectives was to help readers identify how and what their industry colleagues feel about critical issues that underpin the relationships between all parties in the litigation ecosystem (claims organizations, vendors, law firms, staff counsel).

A second objective was to help each of these constituencies identify opportunities that are helpful to their own practices. A third was simply to provide a framework of data points that all members of the industry can discuss and explore together.

The 2023 CLM Study's Steering Committee members are:

- Rob Baker, VP, Claims Litigation, Encova
- Anna Barrett, AVP, Manager, Legal Resource Control Unit, Cincinnati Insurance company
- Larry Beemer, VP, Casualty Claims, HCC Casualty Insurance Services
- Mike Bondura, SVP, Chief Claim Officer, Berkley MidAtlantic Group
- Barbara Brown, VP, Claims Operations, Grange Insurance
- Ken, Bunn, VP, Claims, Builders Mutual
- Chris Butler, Head of Claims, Bowhead Specialty Underwriters, Inc.
- Ken Carter, VP, Claims Operations, Merchants Insurance
- Rose Charles, SVP, Head of GRS Casualty, Auto and Environmental Claims, Sompo International
- Andre Cinco, Quality Assurance Litigation Manager, Employers
- Garth Crow, EVP, Chief Claims Officer, FCCI Insurance
- Beth Diamond, Group Head of Claims, Beazley Insurance
- Kerry Ebersole, AVP, Litigation Management Team Leader, USLI
- Jim Everett, Chief Claims Officer, Everett Cash Mutual
- Brandon Fahey, AVP, Claims, Continental Western Group
- Timothy Ferguson, Director, Claims Litigation, Tower Hill Insurance
- Craig Freeberg, AVP, Large Loss and Litigation, Pure Insurance
- Tim Gaffigan, Director, Third Party Litigation and Programs, CUNA Mutual
- Chris Greene, SVP, Chief Claims Officer & General Counsel, Canal Insurance
- Sue Gryb, VP, Technical Claims, Mapfre USA
- Mary Haefer, Chief Claims Officer, Property and Casualty, CapSpecialty
- Melissa Hill, SVP, Head of Workers Compensation Claims, Sompo International
- Steve Hunckler, Chief Claims Operations Officer, State Compensation Insurance Fund
- Anna Joslin, Vice President, Claims, Energy Insurance
- Max Koonce, Chief Claim Officer, Sedgwick
- Jamie Loiacono, Vice President, Claims, Acuity Insurance
- Matt McColley, Vice President, Claims and Operations, KW Specialty Insurance
- John McGann, Head of Litigation Management and Vendor Management, AXA / XL / Catlin
- Traci McGuire, Chief Claims Officer, AmeriTrust Group Inc.

- Kevin Mohr, AVP, National Claims Litigation, Hanover Insurance
- Matt Morrison, Enterprise Specialty Claims Leader, American Family Insurance
- Ron Morrison, Divisional SVP, Great American Insurance Group
- Erin Parker, VP, Claims Litigation and Examination, Erie Insurance
- Lora Picco, VP, Claims Operations, EMC Insurance
- Linette Ranieri, SVP, Chief Claims Officer, Berkley Life Sciences
- Scott Schafer, VP, Strategic Partner Management and Litigation Management Operations, Gallagher Bassett
- Nigel Shepherd, SVP, Chief Claims Officer, Kingstone Insurance Company
- Jan Shore, Casualty Claims Technical Team Consultant, Nationwide Insurance
- Tony Smarrelli, SVP, Claims, Assurance America
- Rob Sturm, SVP, AGC, Chief Litigation Officer, CSAA Insurance Group
- Jenny Szczepanek, Casualty/Medical Claim Process Director, Litigation & Risk, Liberty Insurance
- Jeff Vanderpool, Executive Vice President, Cypress Insurance
- Dan Winkler, Leader - Claims Legal, Westfield Insurance
- Tracy Yaun, Director of Liability Claims, Central Insurance Companies
- Michael Zeoli, VP, Litigation and Vendor Management, IAT Insurance Group

Study Participants

More than 90 separate organizations participated in this Study. We are deeply indebted to them for their participation. They included:

Acadia Insurance Company
Acuity
AF Group
AFICS
Align Claims Services, Inc.
Allianz Global Corporate & Specialty
American Global, LLC
Amerisure Insurance Company
AmeriTrust Group, Inc.
Amica Mutual Insurance
Arrowpoint
AssuranceAmerica
AXA XL
AXIS
Badger Mutual
Beazley
Berkley Custom Insurance Managers
Berkley Industrial Comp
Berkley Life Sciences & Berkley Technology Underwriters
Berkley Mid-Atlantic Group
BerkleyNet
BITCO Insurance Companies
Builders Mutual Insurance Comp
Canal Insurance Company
CapSpecialty
CatalinaRe
Celina Insurance Group
Central Mutual Insurance Company
Chubb
Cincinnati Insurance Company
Citizens Property Insurance Co
Continental Western Group
CSAA Insurance Group
CUNA Mutual
Cypress Property & Casualty Insurance Company
ECM Insurance Group
EMC Insurance
EMPLOYERS Insurance Group
Encova Insurance
Energy Insurance Mutual
Erie Insurance Group
FCCI
Florida Peninsula Ins Co
Gallagher Bassett
Grange Insurance
Great American Insurance
Great Northwest Insurance Company
Hanover
Healthcare Risk Advisors, A Doctors Company
IAT Insurance Group, Inc.
IMT Insurance
Indiana Farm Bureau Insurance
Inspirien Insurance Company
Kingstone Insurance
KW Specialty Insurance Company
LAMMICO
Liberty Mutual Insurance Company
Lititz Mutual Insurance Company
Lloyds
MAPFRE Insurance
Markel Surety
Mennonite Mutual Insurance Company
Merchants Insurance Group
Mountain West Farm Bureau
Nationwide Insurance
Pekin Insurance
Pharmacists Mutual Insurance Company
PMA Insurance

Preferred Mutual Insurance Company
Primma LLC
Prudential
RiverStone Claims Management LLC
Sedgwick
Selective Insurance
Shelter Insurance Companies
Skyward Specialty Insurance Group
State Compensation Insurance Fund
Synchrous Risk Management
Texas Association of School Boards
TMHCC
Tower Hill Insurance Group
UFG Insurance
United Educators
USLI
Westfield Insurance
Zenith Insurance Co.

Key Findings

This Report has many data points, the majority of which are more interesting when seen in context with one another. While we encourage readers to read all of them, we have highlighted a few data points here that we believe to be particularly interesting. Unless otherwise noted, all comparison timeframes are versus three years ago.

Pressures and Trends

Inventory Is up — Litigation inventory has increased for 48 percent of the participants and decreased for 35 percent. Almost half said they have greater inventory.

Costs per file are up – 76 percent of participants say that litigation costs per file have increased. This is a 50 percent increase in the number of people who reported this in 2019, and a 75 percent increase in the percentage of people who said this in 2015.

Finding qualified staff is more difficult – Almost seven of 10 executives (67 percent) say that it is more difficult to find qualified staff to handle litigated files.

Policy limit demands are up – 72 percent of respondents said that policy limit demands have increased.

Social inflation is slowing settlements – More than half (64 percent) say that social inflation is causing later settlements.

Law firms are experiencing cyber incidents – One third (34 percent) of participants said that they have experienced at least one cyber event with their law firms in the past 12 months.

Litigation Program Visibility and Function

Litigation program CEO visibility may be decreasing – The percentage of respondents who said that the effectiveness of their litigation program has been discussed with their CEO in the past 12 months has decreased from 77 percent in 2015 to 60 percent in 2023. This is a 20 percent decrease in CEO visibility.

Litigation program visibility with senior management may be decreasing – 60 percent of participants said that litigation management effectiveness is getting more attention from their organization's senior management. However, this percentage was 75 percent in both 2015 and 2019. Twenty percent fewer respondents said that litigation management is getting more attention.

Litigation teams play a strong role in specific case assignments – 46 percent of organizations reported that the decision about which attorney should receive a file assignment is up to the claim professional. However, in almost 55 percent of organizations, the litigation management team either directs the assignment outright, or consults with the claim professional at the time of assignment.

The litigation management function is less decentralized – The percentage or organizations reporting a decentralized litigation management function decreased from 30 percent in 2019 to 17 percent in 2023.

Outside Law Firm Relationships

Overall relationship strength with outside firms is about the same – About half (48 percent) say that they are stronger, and 44 percent say they are about the same. These numbers are similar to 2019's numbers, but well below 2015, when 70 percent said that relationships were stronger.

Fewer say that firms are "doing better" when it comes to understanding needs — 38 percent said that firms are doing better when it comes to understanding their needs. Sixty percent said this in 2019 and 70 percent said this in 2015.

Fewer believe that firms are "doing better" at creating value – 30 percent of participants said that firms are doing better when it comes to creating value for their organizations. 48 percent said this in 2019 and 58 percent said this in 2015.

Fewer think that firms are "doing better" at complying with billing guidelines – 36 percent of respondents said that their firms are doing better at complying with billing guidelines. In 2019 56 percent said this; in 2015 70 percent said this.

More companies are using e-billing software and third-party auditors – The percentage of organizations who reported using e-billing software increased from 65 percent in 2019 to 69 percent in 2023. The percentage who said they use third-party auditing services increased from 33 percent in 2019 to 43 percent in 2023.

Core Litigation Management Beliefs

Spending more money on the defense of a case does not reduce indemnity costs — 81 percent said this in 2023. 79 percent said this in 2019 and 84 percent in 2015.

Higher compensation to attorneys does not translate to better attorneys or a better outcome – 83 percent of respondents said this in 2023. In 2019, 84 percent said this and in 2015 92 percent believed this.

A majority of litigated claims settle later in the process than is necessary – 87 percent of participants believe this. That percentage has increased from 2019, when 80 percent said this.

Litigation Expenses and Vendor Management

Non-legal fee litigation costs continue comprise 20 percent of total legal spend – participants estimated that 21 percent of their total legal spend is spent on litigation support, experts, e-discovery and other litigation expenses. This is identical to 2019.

Support for exclusive single-provider panels seems to be decreasing – The percentage of respondents who prefer exclusive relationships with one provider in a service category seems be decreasing. Nine percent of respondents prefer this approach in 2023, compared to 17 percent in 2019 and 21 percent in 2015.

Average panel size in multiple service categories is not changing significantly — The average panel size in records retrieval remained constant at 2.0 provider; court reporting average panel size increased from 1.7 to 3.0; mediator panels increased from 5.0 to 28.0; and structured settlement providers decreased from 2.1 to 2.0.

Metrics, Analytics, and Measurement

Current metrics seem more helpful than not helpful but remain challenging — participants ranked the overall helpfulness of their current metrics as a 56 out of 100. The score they assigned in 2019 was 55.

Participants seem more comfortable measuring law firm expense performance than law firm outcome performance — Respondents ranked their ability to measure expense performance as a 58 out 100 and their ability to measure law firm outcome performance as a 53 out 100.

Organizations struggle to measure law firm diversity — participants ranked their organizations' ability to measure law firm diversity and the diversity of the attorneys working on their files as a 29 out 100. Only 27 percent said that they measure this at all.

Organizations are challenged at measuring mediator performance — participants ranked their ability to measure the performance and effectiveness of specific mediators as a 34 out 100.

Participant Demographics

As readers review and evaluate the opinions, practices, and predictions outlined in this Report, it is important to understand the demographics of the organizations that participated in this Study.

This section of the Report identifies key attributes of the companies who participated.

Number of Organizations Participating in this Study			
Study Year:	**2015**	**2019**	**2023**
Number of Participants	76	77	**92**

Our participant pool in 2023 was larger than in prior years. Participants represented a wide range of organizations, differing in size, type of litigation, and resources.

Volume of outside legal fees

The 2023 pool was representative of larger organizations as well. As the chart below shows, the percentage of participants was higher in the following annual legal spend bands:

- $20-75MM
- $75MM-$300MM
- >$750MM

There was a smaller percentage of organizations with less than $20MM in annual legal spend.

Annual Legal Spend of Participating Organizations			
Study Year:	**2015**	**2019**	**2023**
Less than $20MM	56%	61%	**49%**
$20MM - $75MM	28%	19%	**30%**
$75MM - $300MM	16%	10%	**15%**
$300MM - $750MM	7%	6%	**0%**
Greater than $750MM	N/A	4%	**6%**

Litigated file inventory

How many "pending" (open) litigated cases do you consider to be in your current litigation inventory?	
Study Year:	2023
Average	6,850
Median	1,500

The average number of open litigated files (defined broadly as including those with represented claimants) being managed by each of the participants was 6,850. The median number was 1,500. This reflected the fact that, while quite a few of the organizations are exceptionally large, there were many, smaller, organizations that participated as well.

Line of business concentration

Does one line of business contribute to more than 50 percent of your annual outside legal spend?	
Study Year:	2023
YES	66%
NO	34%

As with prior studies, more than half of the legal spend for approximately two thirds of the participants is driven by one line of business. Almost without exception, that line of business drives more than 50 percent of both legal spend, and the number of litigated files.

The primary lines of business identified included:

- General Liability (29 percent)
- Auto (24 percent)
- Professional Liability (15 percent)
- Workers Compensation (8 percent)
- Property (10 percent)

Commercial vs. personal lines

We asked each organization to identify the percentage of their outside counsel legal spend they attribute to commercial lines and to personal lines. We then averaged those reported figures. The average amount of spend attributed to commercial lines was 80 percent, with 20 percent attributed to personal lines.

A number of participants maintain staff counsel operations and almost all of those were personal lines carriers. As might be expected, for that subset of participants, with staff counsel, the attributed outside legal spend percentages were reversed, with 80 percent personal lines and 20 percent commercial.

These percentages were for outside counsel legal spend only and not for staff counsel costs.

Volume of outside counsel assignments

Approximately how many new case assignments did your organization make to outside law firms in the past 12 months?	
Study Year:	**2023**
Average	**3,508**
Median	**600**

On average, participants assign approximately 3,500 new cases to outside counsel each year. Given that many smaller organizations participated in the Study, the median figure was 600 new assignments.

The chart below shows how many separate panel law firms had cases assigned to them. A full 52 percent of the respondents made their assignments to 45 law firms or fewer.

How many separate panel law firms do you estimate your organization assigned cases to in the last 12 months?	
Study Year:	**2023**
Less than 20 firms	**27%**
20-45 firms	**25%**
45-75 firms	**12%**
75-150 firms	**16%**
150-300 firms	**16%**
300-500 firms	**1%**
More than 500 firms	**2%**

Litigation Management Function and Philosophy

Functional organization

We asked respondents to explain how their company organizes the litigation management function – which we defined as making macro-level decisions about the selection and management of approved law firm panels, selection and management of litigation vendors, oversight of legal billing operations, production and analysis of litigation metrics, creation, and management of litigation guidelines for billing and general litigation processes.

We defined the function as separate from the handling of litigated files.

How the Litigation Management Function is Organized		
Study Year:	2019	2023
Dedicated Unit	27%	**34%**
Unit with Other Functions	34%	**40%**
Decentralized	30%	**17%**
No such function	10%	**10%**

Study results suggest that more organizations have centralized this function in the past four years. Specifically, 74 percent respondents said that the litigation management function is housed in its own department or within a larger department without areas of focus.

Only 17 percent reported that litigation management is decentralized. The percentage of organizations with no litigation management function remained at 10 percent.

Staffing changes

When it comes to employee counts related to the litigation management function (not file management), participants reported less growth than in prior studies.

Change in Employee Count in the Litigation Management Unit or Department Versus Three Years Ago			
Study Year:	2015	2019	2023
More Employees	52%	49%	**40%**
Fewer Employees	6%	17%	**10%**
Same Number of Employees	42%	32%	**49%**

Four of 10 organizations (40 percent) reported more litigation management (function) employees than three years ago. However, this percentage was less than 4 years ago and much less than eight years ago.

Do you anticipate that you will be adding to this staff count in the next 12 months?			
Study Year:	2015	2019	2023
Yes	42%	33%	34%
No	58%	67%	66%

A third (34 percent) of participants predict adding more staff to the litigation management function in the next 12 months. This figure is essentially unchanged from four years ago.

Directing counsel assignments

One emerging area of functionality for litigation management departments is the provision of assistance (or involvement) in the selection of counsel on a file-specific basis. This is the first time we have asked this question and we will be interested to see how this function develops over time.

About half (46 percent) of organizations leave it up to the claims professional to pick the specific attorney to handle the case. However, we note that for 55 percent of the participants, the litigation management team either directs the assignment outright, or consults with the claim professional at the time of assignment.

Does your litigation management team direct assignments to counsel or assist the claims professional to ensure that the right firm or attorney is assigned to the case?	
Study Year:	2023
Yes - our lit mgmnt team directs the assignment and decides which attorney will be assigned	28%
Sort of - out lit mgmnt team consults with the claim professional during the assignment	27%
No - we leave it up to the claims professional to assign the file	46%

Titles

The importance of an organizational function can sometimes be estimated by the titles assigned to the executives who lead it. We asked participants, "What is the title of the person you consider to be in charge of the Litigation Management Function" in your organization?

We believe that the importance ascribed to litigation management by these organizations is reflected in these titles, the majority of which are company officer (AVP, VP, SVP, EVP) level, with additional Director, Management, and Chief Claim Officer designations. Identical or similar answers have been combined.

AVP Claims (numerous)

AVP Corporate Litigation Director

AVP Liability Claims

AVP Litigation Management and Operations

AVP National Claims Litigation

Chief Claims Officer (numerous)

Claims Counsel

Claims Director

Claims Executive

Claims Litigation Management Supervisor

Claims Litigation Manager

Claims Manager

Complex Claims Specialist

Compliance Manager

Director of Claims

Director of Claims Legal

Director of Claims Litigation

Director of Legal Technical Billing

Director of Litigation

Director of Litigation and Special Investigations Unit

Director of Litigation Management

Divisional Senior VP Claims Practices

EVP, Corporate Claims

EVP, Operations

EVP, Senior Director, Surety Claims

Group Head of Claims

Head of Continuous Improvement

Head of Legal Services - Claims

Head of Litigation and Vendor Management

Leader - Claims Legal Support Services

Legal Spend Manager

Litigation Management Team Leader

Litigation Manager

Manager Litigation

MCU Manager

QA Litigation Manager

Quality and Training Manager

Senior Corporate Casualty Claim Manager

Senior Litigation Manager

Senior Manager Casualty Claims

SVP, Chief Litigation Officer

SVP, Claims

SVP, Claims and Litigation

Team / Claim Manager

Vice President

Vice President Claims and Risk Management

Vice President Claims Operations

Vice President, Claims

Vice President, Claims

Vice President, Legal and Operations Lead

Vice President, Litigation Management Services

VP Claims (numerous)

VP Claims & Operations

VP Claims and General Counsel

VP Claims Counsel

VP Claims General Counsel

VP Claims Legal

VP Claims Litigation

VP Corporate Claims

VP Litigation Management

VP Technical Claims

Litigation program visibility

Historically, the effectiveness of litigation management programs within organizations has been highly visible. For an increasing number of claims organizations, the amount spent on legal fees alone can easily dwarf the entire costs of maintaining a claims department.

Program Visibility Has the "effectiveness" of your litigation program been raised by or discussed with your organization's CEO in the past 12 months?			
Study Year:	2015	2019	2023
Yes	77%	71%	60%
No	23%	29%	40%

One measure of visibility is whether such effectiveness has been raised by or discussed with the organization's CEO in the past 12 months. We saw this number decrease in 2023, down significantly from both 2015 and 2019. We think this is a material change.

In a similar vein, we asked whether, when compared to three years ago, "litigation management effectiveness" was getting more or less attention from the organization's senior management.

Broadly stated, do you believe that, when compared to three years ago, "litigation management effectiveness" is getting more or less attention from your organization's senior management?			
Study Year:	**2015**	**2019**	**2023**
More attention	75%	75%	**59%**
Less attention	0%	2%	**4%**
About the same	25%	23%	**37%**

The percentage of respondents who reported more senior management attention decreased as well, to less than 60 percent. This is a significant drop from both 2015 and 2019 levels, and we think this is a material change.

While we are unsure as to the reasons for this change, we believe this is an excellent topic for discussion for our litigation management community's leadership.

Core litigation management beliefs

As in prior studies, we wanted to capture some of the core philosophical beliefs held by the litigation and claim executives who participated. We do this so that their peers can compare their own philosophies to what is reported, but also with the idea that law firms and litigation service providers read these Studies as well.

We believe that it is immensely helpful, particularly for younger and newer defense attorneys, to understand these core beliefs. They serve as a foundational framework to being able to understand better the core needs of these executives and their organizations.

Specifically, we focused on three core questions:

1. Does spending more money on the defense of a lawsuit generally reduce the indemnity costs in that lawsuit?
2. Does paying higher compensation to law firms generally translate to better attorneys and a better result?
3. Do you feel that a majority of litigated claims settle later in the process than is necessary?

CORE PHILOSOPHY QUESTION Do you believe that spending more money on the defense of a lawsuit reduces the indemnity (verdict, settlement, loss costs) costs in that lawsuit?			
Study Year:	**2015**	**2019**	**2023**
Yes	16%	21%	**19%**
No	84%	79%	**81%**

This core philosophy has not changed significantly in the past eight years. More than 8 of 10 participants (81 percent) do not believe that spending more defense dollars on a case has a positive impact on indemnity outcome.

CORE PHILOSOPHY QUESTION Do you believe that highly hourly rates, and higher compensation to law firms generally, usually translates to better attorneys and to a better outcome?			
Study Year:	**2015**	**2019**	**2023**
Yes	8%	16%	**17%**
No	92%	84%	**83%**

Similarly, 83 percent do not equate higher legal fees with better attorneys, or with a better outcome.

CORE PHILOSOPHY QUESTION Do you feel that a majority of litigated claims settle later in the process than is necessary?		
Study Year:	**2019**	**2023**
Yes	80%	**87%**
No	20%	**13%**

Lastly, more participants than ever before (87 percent) feel that a majority of litigated claims settle "later in the process than is necessary." 2023 figures would suggest that they feel this way even more strongly than four years ago.

Given the paramount importance of cycle time and case duration in almost all litigation management organizations, we feel it is noteworthy that so many executives feel this way.

If you believe that a majority of litigated claims settle later in the process than necessary, please identify the statement that resonates with you the most.	
Study Year:	**2023**
Defense counsel - I feel defense counsel are the primary reason	**4%**
Plaintiff counsel - I feel plaintiff counsel are the primary reason	**28%**
Claims professional - I feel our claims professionals are the primary reason	**3%**
Combination -- the reasons for late settlements are complex. Everyone bears responsibility.	**65%**

As the chart above reflects, executives acknowledge that the reasons for delayed settlement are complex and are perhaps systemic. Still, we note that 28 percent identify plaintiff counsel as the primary reason for later settlements and seven percent ascribe the problem to either defense counsel or to claims professionals.

ABOUT THE USE OF LAW FIRMS

Use of attorney and firm panels

The use of pre-approved panels of attorneys and law firms remains the norm in our industry. This will be a surprise to no one.

However, the percentage of participants who reported using panels declined slightly in 2023. Specifically, 91 percent said they use panels, compared to 96 percent in each of the two prior studies.

We believe that this changed is explained by the 2023 participation of a number of executives who lead highly specialized claims organizations. Specifically, a number of these organizations write highly complex exposures, and maintain litigation portfolios for policyholders and customers with very high retentions. As such, they are using insured-select counsel whom they do not consider to be part of their "own" panel.

Do you maintain a panel of "approved" law firms or attorneys to handle your non-coverage, claim-related litigation?			
Study Year:	2015	2019	2023
Yes	96%	96%	**91%**
No	4%	4%	**9%**

More than half the organizations with panels (54 percent) reported that they maintain multiple panels, organized by line of business. This is a slight increase from 51 percent in 2019. The remainder, 46 percent, maintain a single panel.

Panel size

Number of Law Firms on Approved Panel(s)				
Study Year:	2011	2015	2019	2023
< 20	5%	16%	19%	**20%**
20-45	19%	21%	22%	**22%**
45-75	5%	15%	12%	**7%**
75-150	36%	16%	16%	**22%**
150-300	14%	18%	18%	**16%**
300-500	12%	8%	6%	**7%**
> 500	10%	5%	6%	**5%**

For some of the questions in the 2023 survey we now have data going back more than a decade. The number of firms on approved panels is one of those data points.

Changes to panel size over the past 7 years have been nominal. Roughly half (49 percent) of respondents maintain fewer than 75 firms, with the other half (51 percent) maintaining more than 75 firms. Only 5 percent maintain panels of more than 500 firms, a number consistent with the 2015 and 2019 Studies.

Panel size changes

The percentage of organizations that reported a smaller panel size than three years was only half of what it was in 2019, suggesting that panel consolidation may not have been a focus during the past three years.

Is the number of firms currently on your panel(s) more or less than three years ago?			
Study Year:	2015	2019	2023
More	29%	22%	33%
Less	36%	39%	20%
About the Same	35%	38%	47%

Specifically, only one in five (20 percent) reported a smaller panel when compared to three years ago. In both 2019 and 2015, that number of executives reporting smaller panels was nearly double that.

However, when respondents were asked how many firms they added and removed over the past year, they indicated they'd removed more firms from panels than they added. On average, participants removed 8 firms and added 6 in the past year.

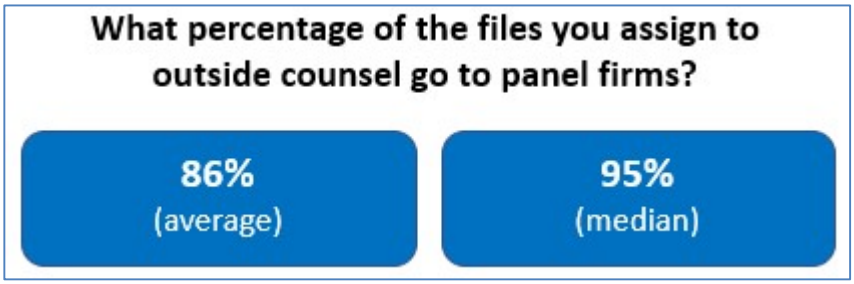
In the aggregate, this group of roughly 90 organizations reported taking 637 firms off their panels and added 516 firms to them — a net change of roughly 19 percent. In 2019, the same question produced a similar net change result (20 percent).

Firm vs. attorney retention

Do you maintain your panels of approved legal providers at the firm level or the attorney level?	
Study Year:	2023
Firm Level --- the entire firm is put on the list	45%
Attorney Level - only certain attorneys at a firm	55%

More than half (55 percent) said that they construct their panels at the attorney level. In other words, only certain attorneys from a firm are added to the panel. The remainder (45 percent) add the entire firm.

These results reflected no significant change from 2019. This philosophical approach is further explored in other questions we asked about firm vs. individual attorney performance (see below).



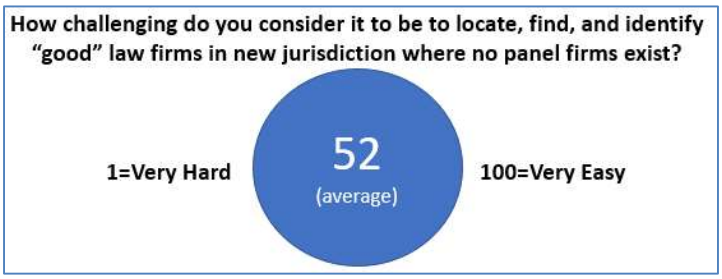
Claims organizations assign litigated files in a complex environment and for a variety of reasons must frequently assign files to non-panel firms. This may because the insured has a role in the selection, or there may be Cumis or Peppers (or a similar type) of counsel required.

As in prior studies, we are curious as to what percentage of assigned files actually go to panel attorneys, and how that translates to the percentage of legal fees paid by respondents.

On average, participants reported that 86 percent of their file assignments are going to panel attorneys or firms, and that 84 percent of their fees are paid to panel firms. These high numbers have remained relatively unchanged over multiple studies and reinforce the importance of strong panel management (or, for law firms, of being on panel).

Finding new firms

We were interested in knowing how easy it is for litigation executives to find "good" law firms in jurisdictions where they don't have panel firms.



The answers suggested that it is not as easy as it could be. Respondents answered with an average score of 52 out of 100, suggesting that it is slightly easier, but not by much. Since participants scored this activity as a "56" in 2019, it may have become slightly harder.

Go-To attorneys

The vast preponderance (95 percent) of litigation leaders report having "go-to" attorneys that they turn to on troublesome or difficult cases.

Do you have "go-to" lawyers or firms whom you turn to when you are "really in trouble" on a case?			
Study Year:	2015	2019	2023
Yes	99%	93%	95%
No	1%	7%	5%

We were interested on the relationship between being a "go-to" firm and the litigation executive's perception of legal fee compliance.

This year's findings suggest that being a "go-to" firm is perceived as more valuable than ever before.

When you turn to these "go-to" attorneys or firms, how important are their fees to you?			
Study Year:	2015	2019	2023
Money is no object	4%	3%	6%
Within limits, money is not as important	62%	60%	67%
They have to operate within the same guidelines as all our firms	33%	37%	27%

The percentage of participants who say that "money is no object" has doubled since 2019. The number of executives who say that "go-to" firms must operate within the same guidelines as everyone else decreased by 27 percent from 2019. More than 7 out of 10 organizations say that money is not as important when using "go-to" firms.

Retention of firm vs. attorney

As in prior years, most claims and litigation executives (74 percent) operate under the philosophy that they are hiring the attorney and not the firm.

Is it your Company's philosophy that you are hiring the firm or the specific attorney?			
Study Year:	2015	2019	2023
The firm	16%	16%	26%
The specific attorney	84%	84%	74%

However, 2023 findings show a significant increase in the number of executives who say that they are hiring the firm. The percentage who say they hire the firm increased by 62 percent, from 16 percent to 26 percent of the participant pool. Time will tell if this is a notable change and possibly reflective of a change in counsel retention philosophy.

Adding and removing panel firms

We asked respondents to help us understand the primary criteria or factors that matter to them when considering adding a firm to their approved panel. Defense counsel may find these criteria to be especially relevant.

We note that a low hourly rate ranked as number 6 out of 7 in 2023. It ranked as 5 out of 7 in 2019. Published ranking services have consistently ranked as the least important criteria.

Primary Criteria for Adding Firms to a Panel	Weighted Ranking	
Study Year:	2019	2023
Prior performance for the company	2.55	2.42
Reputation in the industry	1.96	2.17
Verdict results	1.93	1.93
Responses to a Request for Propsal	1.54	1.93
Assessment of peers and colleagues	1.97	1.91
Lowest hourly rate	1.67	1.45
Martindale Hubbell or other service rating	1.50	1.22

Firms hoping to be able to convince just one person to add them to a panel have a chance at doing that with roughly one third of companies. However, more than half of participants (53 percent) reported that these decisions are made by teams – an increase over the 40 percent who said this in 2019.

Procurement continues to play a very small role in such decisions.

What statement best describes who is the ultimate authority on whether a firm is added or removed from a panel?	
Study Year:	2023
This decision is generally made by one person in charge of litigation	34%
This decision is generally made by a "team" within the litigation dept.	53%
This decision is generally made in the field or at the branch level	11%
This decision is generally made by our procurement department	2%

Roughly one in 10 companies still grants this discretion to the field or branch – a figure identical to 2019 results.

Friction points with counsel

In 2019, we were amused to see both over-reporting and under-reporting show up on the Top-3 list of friction points with counsel. Clearly that is a difficult needle to thread for many attorneys.

What are the three most important recurring friction points in your relationships with counsel?	Weighted Ranking	
Study Year:	2019	2023
Strategy - not showing strategic focus	2.35	2.35
Under-reporting	2.24	2.18
Billing	1.80	2.17
Cycle time - not moving cases fast enough	N/A	1.89
Budgeting - inaccurate cost predictions	1.63	1.81
Exposure analysis - inaccurate exposure predictions	N/A	1.68
Over-reporting	2.17	1.20

In 2023, attorney over-reporting has apparently been corrected, but under-reporting ranks number two again. Failure to show strategic focus continues to hold the top spot, and billing issues moved up on the list, from fourth on the list in 2019 to third on the list.

Competitive legal environment

Compared to three years ago, what is your perceiption of the competive environment your law firms are operating within? Is it...			
Study Year:	2015	2019	2023
More competitive	84%	62%	61%
Less competitive	4%	8%	9%
About the same	12%	30%	30%

Legal services buyers continue to appreciate that the environment in which insurance defense firms operate is competitive. 2023 results were essentially identical to 2019 results. Both the 2019 and 2023 results reflect a less competitive environment, at least in the eyes of the buyer, than 2015.

BILLING AND BUDGETING

Are firms better at billing?

Billing guideline compliance has been a critical component in the relationship between law firms and clients (principals in the tri-partite relationship for more than two decades now. To that end, we asked respondents to answer the following question: **"When it comes to complying with your billing guidelines, compared to three years ago, how do you feel your law firms are doing?"**

While 2023 results reflect a six-fold increase in the percentage of executives who feel that firms are doing worse at billing compliance, those that feel this way are still in a very small minority.

When it comes to complying with your billing guidelines, compared to three years ago, how do you feel your law firms are doing?			
Study Year:	2015	2019	2023
Better	70%	56%	36%
Worse	0%	1%	6%
About the same	30%	43%	58%

Still, the number of participants who feel that firms are doing better has tailed off, from 56 percent to 36 percent.

Possibly, there is simply less improvement to be realized in the process. Nonetheless, we think this is a notable change and something for firms to reflect on.

Use of software and legal bill review outsourcing

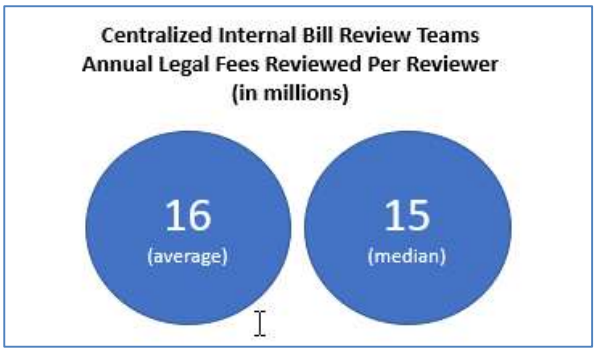
In thinking about billing issues generally, we highlight these additional data points from the 2023 Study:

- **The percentage of respondents who reported using legal invoice review software to review the legal invoices they receive increased from 65 percent in 2019 to 69 percent in 2023**. We believe this number, however, is a bit skewed low because many organizations using outside third-party resources do not consider themselves to be using "software" per se, even though the third-party reviewers obviously rely on it extensively.

- **The percentage of respondents who use third-party invoice review experts to review legal invoices increased from 33 percent in 2019 to 43 percent in 2023**. (We defined "third-party" as a company or consultant not employed by the organization.) This is a 30 percent increase in three years.

Centralized invoice review teams

29 percent of the organizations surveyed reported that they main a centralized bill review unit of internal invoice review experts. This number is down from 37 percent in 2019.



Invoice Adjustment Levels

In 2019, the average post-appeal adjustment rate reported on legal invoices from panel firms was 6 percent. The median figure was 5 percent. For non-panel firms, these figures were reported to be both an average and median rate of 8 percent.

We changed the format of the question in 2023 so direct comparisons to prior years are challenging. However, the results suggest that adjustment rates may be rising.

Post-appeal, annual adjustments to legal invoices submitted by PANEL counsel.	
	2023
1-3 percent	41%
4-6 percent	39%
7-9 percent	14%
> 10 percent	6%

Post-appeal, annual adjustments to legal invoices submitted by NON-PANEL counsel.	
	2023
1-3 percent	29%
4-6 percent	18%
7-9 percent	31%
> 10 percent	22%

We noted that a full 20 percent reported adjustment rates of more than 7 percent for panel counsel. We also noted that more than half of respondents (53 percent) reported adjustments of more than 7 percent for non-panel counsel.

We were particularly interested in who is considered to be the primary arbiter of whether an adjustment to a legal invoice should be made.

Who do you consider to be the primary artiter of whether an adjustment to a legal invoice should be made? i.e., who is the ultimate "decision-maker" when it comes to invoice adjustments?		
Study Year:	2019	2023
The claims professional assigned to the claim	44%	49%
Our own internal dedicated invoice review experts	15%	8%
Our third-party legal invoice auditing service	14%	10%
The assigned claims professional AND our own internal invoice experts	18%	18%
Other (various combinations of the choices above)	9%	15%

Almost half (49 percent) identified the claims professional as the primary decision maker on invoice adjustments. Collaborative processes, usually involving the assigned claims professional, are how roughly 33 percent of the organizations decide. Internal invoice review teams and third-party auditors make the decision in roughly 18 percent of the organizations.

Frequency of changes to billing guidelines

Companies do not make changes to billing guidelines frequently. The vast majority (69 percent) make material changes approximately every three years. Only one in ten organizations (11 percent) make changes annually.

How often do you make material changes to your legal billing guidelines?	
Study Year:	2023
Frequently (every 6 mos)	0%
Annually - once a year	11%
Bi-Annually - every two years	20%
Infrequently - every three years	69%

Pandemic related changes to billing guidelines

We asked participants whether their organization had made any changes to billing guidelines which they would consider pandemic related, such as adding virtual participation requirements, changing requirements for travel time, and so forth.

81 percent reported that they had made no such formal changes. Of the 19 percent who reported making changes, the following table contains some of the examples provided:

Pandemic Related Changes to Billing Guidelines	
we look to complete virtual depositions when appropriate now more than in the past.	necessity for travel/appearances and more specific budgeting guidance
Primary change was implementation of billing management software	Request remote attendance when appropriate.
We changed guidelines to only allow firms to charge 50% of time for travel.	virtual participation allowed for ADR events and depositions, with some exceptions
We expect virtual appearances when practical.	We've changed our tolerance for late billing - we shortened the time allowed.
Yes - changes in travel approvals, reimbursable travel etc.	yes - re: depositions and mediations --virtual attendance/participation is acceptable and should be considered where appropriate but not mandated.
Yes more virtual efficiency added	yes- virtual depositions and appearances when necessary
Yes, and more ESG related than pandemic related.	Yes. Mandate use of remote digital depositions whenever possible
Yes. Virtual participation at depositions, mediations, and hearings more encouraged.	

Compliance vs. reasonableness

Most companies review legal invoices not only for adherence to defined violations of the billing guidelines, but also for reasonableness of the time spent, and in fact the reasonableness of having performed the legal activity in the first place.

Are legal invoices reviewed only with respect to billing guideline compliance or are they also review for "reasonableness"?		
Study Year:	**2019**	**2023**
Compliance Only -- we look only for hard, defined violations of our billing guidelines	3%	**13%**
Reasonableness -- we look at both compliance AND reasonableness (i.e., at the reasonableness of time spent or whether it was reasonable to have performed the activity in the first place)	97%	**87%**

The percentage of respondents reviewing for reasonableness dropped from 97 percent in 2019 to 87 percent in 2023.

Prompt pay discounts

The number of organizations who ask their panel firms to provide a prompt pay discount of some type continues to decline. In 2023, only 18 percent reported that they have such a program. That figure was 24 percent in 2019.

Billable increments

Changes to required minimum billable increments are of great interest to defense attorneys. The introduction of the three-minute billable increment by a large claims organization a number of years ago led some to predict that this would become the norm. That does not appear to have been the case.

What is the lowest billable increment required in your billing guidelines for attorneys?		
Study Year:	**2019**	**2023**
.05 (3 minutes)	8%	**2%**
.1 (6 minutes)	77%	**77%**
.25 (15 minutes)	5%	**13%**
.5 (30 minutes)	N/A	**1%**
Other	5%	**N/A**
Our billing guidelines do not address this	6%	**6%**

The vast majority (77 percent) of billing guidelines mandate a minimum billable increment of .1 (6 minutes). The three-minute increment in our 2023 pool in fact dropped to 2 percent of participants, but we viewed this to be reflective of the absence in our pool this year of one large organization that requires three-minute billing increments.

The larger take-away from this, is that the three-minute increment does not seem to have taken hold and does not appear to be expanding. Almost eight of ten companies still use the six-minute increment.

Would you see a value in having a lower billable increment than you currently utilize with your firms?		
Study Year:	**2019**	**2023**
YES	17%	**17%**
NO	83%	**83%**

Having said that, we can report that roughly one out of 6 respondents (17 percent) would see value in a lower billable increment than they currently use. (That 17 percent figure is identical to 2019 Study results.)

Satisfaction with current billing guidelines

On the whole, participants seem to be quite satisfied with their current billing guidelines. They reported an average satisfaction level of 75 out of 100.

Openness to an industry-standard set of guidelines

In principle, would you be open to an industry led organization that establishes one common set of billing guidelines across the insurance defense industry?	
Study Year:	**2023**
No - we need the ability to have our own unique guidelines	**24%**
Yes - if it makes it easier for law firms it takes friction out of the process	**19%**
Maybe - I'm open to the concept, but the devil is in the details	**56%**

Law firms expend significant cost and time keeping track of each client's different billing guidelines. Many law firms say that this is a hardship for their firms. We asked participants if, in principle, they would be open to an industry-led organization that establishes one common set of billing guidelines across the insurance industry.

In the hypothetical we described, each user of these guidelines could have unique billing rates, but general policies around which activities would be paid for, and authority requirements for certain activities, would be set as a common industry standard.

Participants' responses were surprisingly (to us) open to the idea. While one quarter of executives (24 percent) said, no to the idea outright, the remaining 76 percent expressed generally openness to the idea, subject to how it would actually work. One out of five (19 percent) like the idea because it would be easier for law firms and remove friction from the entire process.

Use of budgets

Do you generally have fee and expense budgets in place on litigated files?	
Study Year:	2023
Yes	82%
No	11%
Only on certain, high-exposure, files	7%

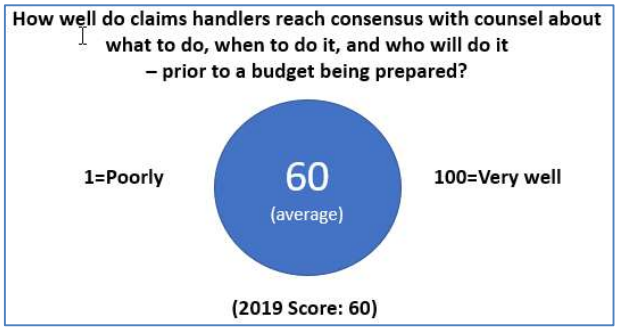
Roughly eight of 10 respondents (82 percent) say that "they generally have fee and expense budgets in place on litigated files." One in 10 organizations (11 percent) do not generally use budgets.

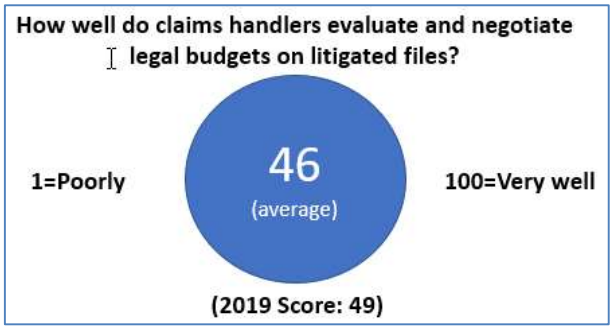
In terms of who initiatives the original budget, a full 95 percent of those organizations that use them require their law firms to propose a budget to them. Only 5 percent of the organizations polled initiate the original budget numbers themselves.

Claims handler budget engagement

Budgets are, of course, only as good as the people using them. Participants' responses seem to suggest there is room for improvement when it comes to their claims handlers' participation in the budgeting process. We asked this question two ways, as indicated below.

Their answers suggest they do feel there is consensus building when it comes to plan and task development, but less strong evaluation and negotiation around the budgets themselves.

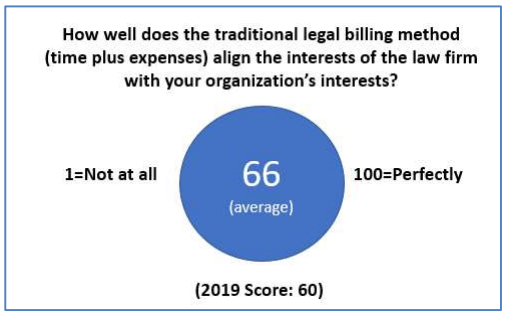




Hourly vs alternative billing models

We were curious whether respondents feel the hourly billing model aligns the interests of the law firm and the claims organization?

Respondents scored this model as a 66 out of 100, a six-point gain from 2019.



The number of responding organizations who use alternative fee arrangements (AFAs) dropped slightly from 2019, from 51 percent to 43 percent.

Does your organization currently use "alternative fee arrangements" with counsel?		
Study Year:	2019	2023
Yes	51%	43%
No	49%	57%

When compared to prior Studies, 2023 figures suggest that AFA usage is not on the rise. Only one in eight participants reported an increase compared to three years ago, the lowest figure we have seen in the past eight years.

Compared to three years ago, is your organization using "alternative fee arrangements" more, less, or about the same?			
Study Year:	2015	2019	2023
More	24%	21%	12%
Less	5%	10%	9%
About the same	71%	69%	79%

Predictions in the use of AFAs "over the next five" years have been remarkably consistent in each of the last three studies.

Over the next five years, do you believe your organization's use of "alternative fee arrangements" will be more, less, or about the same?			
Study Year:	2015	2019	2023
More	29%	29%	**27%**
Less	4%	2%	**4%**
About the same	67%	69%	**69%**

Participants reported that it remains exceptionally rare that law firms will propose an alternative fee arrangement to them.

How common is it for law firms to propose an alternative fee arrangement for you to consider?		
Study Year:	2019	2023
Very rare	77%	**82%**
Sometimes they will	21%	**15%**
Pretty frequent	2%	**4%**

We were curious as to how executives react when law firms propose alternative fee arrangements. In 2019 we made note of the fact that almost half of the participating executives said they were "impressed" and had positive reactions when counsel proposed AFAs.

Please describe your reaction when firms propose new ways of charging for their services.		
Study Year:	2019	2023
Negative	2%	**9%**
Neutral	52%	**58%**
Positive	47%	**33%**

That reaction seems to have cooled in 2023, and in fact the number of respondents who reported a negative response grew from 2 percent to 9 percent.

There remains something elusive about AFAs. Despite the lack of growth in their use, a significant number (28 percent) of executives wish there were more AFAs being used in their companies.

Please describe your general sentiment about how widely AFAs are used in your organization, across your policyholder litigation.		
Study Year:	2019	2023
Frustrated - I wish there were more	19%	**28%**
Neutral - it's not a game changer either way	66%	**66%**
Happy -- it's not broken. Things are good as they are	16%	**5%**

GENERAL FIRM PERFORMANCE

Perceived strength of relationships

The strength of relationships between counsel and claims organizations ebbs and flows. The ability to look back over three points of time in the past eight years illustrates this.

Overall, when compared to three years ago, do you feel that your Company's relationships with its law firms are stronger, weaker, or about the same?			
Study Year:	**2015**	**2019**	**2023**
Stronger	71%	54%	**48%**
Weaker	3%	6%	**9%**
About the same	26%	40%	**44%**

Compared to 2015, significantly fewer executives feel that relationships are stronger. More executives (approximately one third more) also reported that relationships are weaker. While 2023 numbers are significantly lower than 2015, they are not dissimilar from 2019.

Understanding needs

When it comes the more general question of whether firms are "understanding their needs," 2023 participants, again, had slightly less positive feedback. The percentage of organizations who feel that firms are "doing better" tailed off significantly from 2019. The percentage of those who feel firms are "doing worse" went up.

Compared to three years ago, how good a job are your panel firms doing in terms of "understanding your needs" ?			
Study Year:	**2015**	**2019**	**2023**
Doing better	70%	60%	**38%**
Doing worse	3%	2%	**8%**
Doing about the same	26%	38%	**55%**

Creating value

When participants were asked how firms are doing now when it comes to "creating value for your organization," results were again slightly less positive than 2019. The percentage of executives who said that firms are "doing better" dropped from roughly half (48 percent) to less than a third (30 percent).

Compared to three years ago, how are outside firms doing when it comes to "creating value" for your organization (defined as you wish).			
Study Year:	2015	2019	2023
Doing better	58%	48%	**30%**
Doing worse	3%	5%	**4%**
Doing about the same	39%	48%	**66%**

Any one of these three data points (relationship strength, understanding needs, creating value) might fluctuate from survey to survey. While we caution against reading too much into this, the combined declines in all three questions are worth thinking about and discussing.

Ability to describe firm distinction

We also asked respondents to identify how good a job law firms do in describing their own (the firm's) value and to competitively distinguish their firm from other firms.

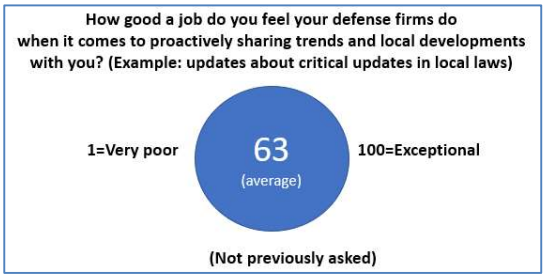
The somewhat lukewarm, middle of the road, score of 48 out 100 is not new. Participants scored this law firm ability at a 51 out 100 in 2019. It remains difficult for claim and litigation executives to distinguish between law firms based on the firms' description of their value, and, in our view, it remains a tremendous opportunity for firms.

Non-billing guideline compliance

We thought it was important to ask about compliance with non-billing guidelines. These are guidelines that speak to process, protocol, authority, and reporting timeframes. Overall, most participants feel that law firm are doing this "about the same," though there was a decrease in those "doing better."

When it comes to complying with your file handling, reporting, and process (i.e., non-billing) guidelines, compared to three years ago, how do you feel your law firms are doing?		
Study Year:	**2019**	**2023**
Better	44%	**25%**
Worse	2%	**5%**
About the same	55%	**70%**

One of the value-added services all law firms can provide is the proactive sharing of information about trends and local developments. Claim and litigation executives value this because it makes their entire organization smarter and stronger.



2023 participants scored the job their firms are doing in this respect at a very respectable 63 out of 100.

Conflict waivers

There has been a perception that firms are asking for more conflict waivers in recent years. We asked participants to comment on this.

Compared to three years ago, do you feel that your Company receives more, fewer, or about the same number of requests for conflicts waivers from law firms?	
Study Year:	**2023**
More	**8%**
Fewer	**4%**
About the same	**88%**

The data suggest that most (88 percent) are not seeing this increase. In a related question, we took note of the fact that almost half of these organizations (49 percent) said that they do not have a documented process for responding to conflict waivers from counsel.

However, when there is such a waiver request, the roles with the authority to grant the waiver are as outlined in the chart below.

Who has the authority to grant a conflict waiver?	
Study Year:	2023
Litigation Management Leader	52%
Legal Department	22%
Claim Executive	18%
Claims Professional	9%

Do firms ask for enough data?

Almost nine out of 10 participants (89 percent) said they will share performance data they have about a firm with that firm if asked.

If a firm asks for the performance results you have about their performance will you share that information with them?		
Study Year:	2019	2023
Yes	92%	89%
No	8%	11%

However, in response to whether they feel law firms ask for such information "enough," the answer was overwhelmingly no. A full 86 percent said that firms don't ask enough. This was a decline from 2019, when almost every executive said that.

In your view, do firms ask for this information enough?		
Study Year:	2019	2023
Yes	4%	14%
No	96%	86%

Communicating about Performance

Very few (15 percent) participants said their organization has a formal process for sharing out performance data with firms.

Does your organization have a formal process for sharing with a firm your organization's assessment of the firm's performance?	
Study Year:	**2023**
Yes	**15%**
Sort of - but it's very informal	**40%**
No	**45%**

Some (40 percent) reported that they have semi-formal processes for doing this, and 45 percent said they have no formal process at all.

The following chart reflects answers to a question about how often performance data is shared out. The vast majority do this on an "as needed" basis.

What choice best reflects how often you communicate your assessment of a firm's performance with that firm (either written or verbal communication)?		
Study Year:	**2019**	**2023**
As needed	57%	**68%**
Quarterly	6%	**6%**
Twice a year	4%	**1%**
Annually	9%	**21%**
Every two years	4%	**4%**
Never	8%	**N/A**
Other	13%	**N/A**

Is high performance associated with the firm or attorney?

Thinking very broadly, is it more common that you associate high performance with the attorney or with the firm?		
Study Year:	**2019**	**2023**
Attorney - I usually think more about the attorney as being high performing, not the firm itself	93%	**91%**
Firm - I usually think more about firms as being high performing, not just individual attorneys	7%	**9%**

Just as most executives prefer to "hire the attorney" and not the firm, we asked, "**Thinking very broadly, is it more common that you associate high performance with the attorney or the firm?**" Only 9 percent think of the firm first. 91 percent associate high performance with the attorney.

Ability to close files

We were acutely interested in whether claims and litigation executives believe that some individual attorneys are better at closing files and resolving litigation than others. In 2019, this was the only question of 160 questions that received a unanimous response (of "yes").

While the percentages changed just slightly in 2023, it is clear that almost everyone (97 percent) feels that some attorneys are just better at file closure than others.

Do you believe that some individual attorneys are better at closing files (resolving litigation) than others?		
Study Year:	2019	2023
Yes	100%	97%
No	0%	3%

The more interesting question is why. Is it a skill you're born with? Is it a skill that can be taught? Or does it have less to do with skill, and more to do with processes that firms employ at the right time? The chart below summarizes the responses. Roughly one third of the participants (32 percent) believe it's process. In 2019, 43 percent felt this way.

If yes, which of these statements resonates most with you in terms of WHY some attorneys are better at closing files?		
Study Year:	2019	2023
It is an innate skill that some attorneys have. It can't be taught.	10%	4%
It is a skill that some attorneys have. It can be innate or taught	47%	64%
It is really not about individual skill. It is more about processes that their firms use to take the right action at the right time	43%	32%

Should firms present their own metrics?

It remains rare that firms present metrics about their own firm to these executives. However, it's less rare. In 2019, 90 percent of respondents said it was very rare; in 2023 this percentage dropped to 84 percent. The percentages for both "sometimes" and "pretty frequently" increased.

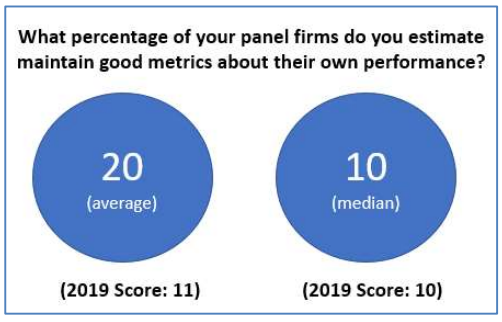
How frequently do your panel firms and attorneys present to you metrics that they maintain about their own, or their Firm's, performance? (i.e., cycle time, average costs, average settlement, etc.)		
Study Year:	**2019**	**2023**
Very rarely	90%	**84%**
Sometimes	9%	**12%**
Pretty frequently	2%	**4%**

Of greater interest (to us) is how executives respond when firms present metrics about themselves. Are they skeptical of the data? Are they impressed that firms seem to be tracking the same types of metrics they track? Can it hurt a firm to present metrics?

Generally, what is your reaction when firms and attorneys want to show you their own metrics?		
Study Year:	**2019**	**2023**
Skeptical - I don't really trust their data and would prefer to rely on my own	5%	**7%**
Neutral - neither positive nor negative	31%	**31%**
Impressed - It's impressive when firms start to measure what we measure. It helps our relationship a lot.	64%	**62%**

The numbers in 2023 are almost identical to those in 2019. The majority (62 percent) are impressed when a firm does this. 31 percent are neutral on the idea; Only a very small percentage (7 percent) are skeptical about the data.

We asked executives to estimate the percentage of their firms that they believe maintain good metrics about their own performance. Their answers suggest improvement over 2019. Average scores jumped from 11 percent in 2019 to 20 percent in 2023.



STAFF COUNSEL

One fifth (20 percent) of the responding organizations reported that they maintain a staff counsel operation. We defined Staff Counsel Operations carefully, including only policyholder litigation and defense of the insurance company in first party litigation. We excluded law departments, coverage counsel, and claims technical counsel.

We have summarized several data points about these staff counsel operations below. When possible, we have provided a comparison to prior Study data.

Given the relatively small data set we caution against making sweeping industry correlations. However, several the participating organizations were quite large, and we find the data points to be informative.

We have allowed many of the charts and figures to speak for themselves and have added less commentary to this section.

Reporting to Claims or Legal

Our results across this and the prior two studies remain remarkably similar. The industry appears to be about 50 / 50 as to whether staff counsel report up through the claims organization or through legal.

To whom does the staff counsel operation ultimately report?			
Study Year:	**2015**	**2019**	**2023**
Legal Department	50%	47%	**50%**
Claims Department	50%	54%	**50%**

Staff Counsel – Staff Ratios and Caseloads

Core data points for staff counsel participants		
Study Year:	**2019**	**2023**
Average number of attorneys	94	**68**
Average number of non-attorneys for each attorney	0.3	**0.6**
Median number of non-attorneys for each attorney	0.3	**0.4**
Average low-end of caseload for staff attorneys (in files)	N/A	**53**
Average high-end of caseload for staff attorneys (in files)	N/A	**94**

For this smaller group of participants (but with several very large staff counsel operations), caseload averages ranged from 53-94 files. The average ratio of non-attorneys to attorneys was .6:1; the median ratio was .4: 1.

Right of First Refusal

Staff counsel has right of first refusal in 42 percent of the organizations who reported a staff counsel operation.

Who makes the decision about whether a case goes to staff counsel?		
Study Year:	**2019**	**2023**
Claims	46%	**58%**
Staff counsel	54%	**42%**

Changes in use of staff counsel

47 percent of the respondents (with staff counsel) said the percentage of files being assigned to staff counsel is higher.

Compared to three years ago, do you believe that the percentage of files being assigned to staff counsel is higher, lower, or about the same?		
Study Year:	**2019**	**2023**
Higher	69%	**47%**
Lower	30%	**21%**
About the same	0%	**32%**

Settlement authority with staff counsel

94 percent of the organizations with staff counsel leave settlement authority in the hands of the claims professional when cases are assigned to staff counsel.

Who possesses settlement authority when staff counsel is assigned a case?	
Study Year:	**2023**
Claims	**94%**
Staff counsel	**6%**

For 94 percent of the respondents with staff counsel, claim handlers work with staff counsel in very much the same way they work with outside counsel.

Does your litigated claim handler collaborate with, strategize with, and supervise staff counsel in the same fasion they do with outside counsel?	
Study Year:	**2023**
Yes	**94%**
No	**0%**
Sort of -- our claims professionals still do this, but less when staff counsel is used	**6%**

Efficiency and outcomes

89 percent of those with staff counsel operations believe that their staff counsel is more efficient in terms of costs than outside counsel.

Broadly speaking, do you believe the use of staff counsel is more efficient in terms of cost per case than the use of outside counsel? (Think only of costs to handle the case.)			
Study Year:	**2015**	**2019**	**2023**
Yes - staff counsel is more efficient	90%	85%	**89%**
No - staff counsel is not more efficient	10%	15%	**11%**

When it comes to indemnity results (case outcomes), 40 percent of these respondents (those with staff counsel operations) feel that outside counsel gets better results than staff counsel.

Broadly speaking, do you believe that your outside counsel obtain better case results (i.e., settlement amounts, verdicts, indemnity paid) than staff counsel? (Please ignore costs)			
Study Year:	**2015**	**2019**	**2023**
Yes - outside counsel obtains better outcomes	7%	8%	**40%**
No - outside counsel does not obtain better outcomes	83%	92%	**60%**

Of the organizations with staff counsel who will allow staff counsel to try cases, half will sometimes associate outside counsel to chair. Half never do.

If you use staff counsel for trials, do you assign co-chair outside attorneys to monitor?	
Study Year:	2023
Always	0%
Sometimes	50%
Never	50%

Slightly more than half (56 percent) maintain performance scorecards for their staff counsel attorneys.

Do you maintain performance scorecards for the attorneys in the staff counsel operation?			
Study Year:	2015	2019	2023
Yes	56%	62%	56%
No	44%	38%	44%

Process and Vendor Requirements

We also asked several questions about how staff counsel might be treated differently than outside counsel. Roughly 44 percent of these organizations require staff counsel to track time. More than eight out of 10 (83 percent) require their staff counsel to follow the same guidelines as outside counsel.

Additional core data points for staff counsel participants			
Study Year:	2015	2019	2023
Percentage of respondents that require staff counsel to track their time	42%	53%	44%
Staff counsel must follow the same reporting guidelines as outside counsel	79%	85%	83%

Measuring Staff vs. Outside Counsel Performance

Which do you feel you measure better: outside counsel or staff counsel performance?	
Study Year:	2023
Outside counsel - we measure outside counsel better than staff counsel	11%
Staff counsel - we measure staff counsel better than outside counsel	39%
Both -- we measure both equally well	50%

LITIGATION PROGRAMS AND VENDORS

Non-Legal Costs

We tend to manage what we can measure. Over the prior three CLM studies we've conducted it became apparent that the management of non-attorney fee litigation costs is of great importance to the litigation and claim executives we surveyed.

1. Again, in this Study, we were interested in two core questions:

   To what extent do non-fee litigation costs contribute to overall litigation spend?

2. What litigation service components lend themselves to vendor management programs, and what new service areas are on the radar of litigation executives?

What percentage of your total litigation spend is spent on expenses (i.e., litigation support, experts, e-discovery, etc.)?		
Study Year:	**2019**	**2023**
Average response	21%	**21%**
Mean response	21%	**20%**

Respondents identified on average that 20 percent of their total costs related to litigation are spent on costs other than legal fees. This number was materially unchanged from 2019, when it was reported to be 21 percent.

Records retrieval programs

Anecdotally, we have been told by several organizations that what they expend on retrieving records in litigation is second only to expert costs. We asked whether respondents maintain a pre-approved panel of records retrieval companies (i.e., whether they mandate the use of one or more pre-approved record retrieval companies).

Records Retrieval Providers			
Study Year:	**2015**	**2019**	**2023**
Companies with pre-approved provider panel	38%	42%	**41%**
Avg. number of companies on panel	1.7	2.0	**2.0**
Mean number of companies on panel	N/A	2.0	**1.0**

Responses were remarkably similar to those in in 2015 and 2019. Four of 10 organizations (41 percent) said that they do. The only possible change we see is that possibly more organizations are moving to exclusive relationships; the mean number of companies reported to be on panel dropped from 2.0 to 1.0.

Court reporting programs

Anecdotally, we have been advised by several organizations that, after records retrieval costs, they spend the most on court reporting fees and expenses. We asked whether participants maintain a pre-approved panel of court reporting companies (i.e., do they mandate the use of one or more pre-approved court reporting companies?)

Court Reporting			
Study Year:	**2015**	**2019**	**2023**
Companies with pre-approved provider panel	57%	57%	**44%**
Avg. number of companies on panel	1.0	1.7	**3.0**
Mean number of companies on panel	N/A	1.0	**1.0**

Here we saw a change in the percentage of companies with a program, and a drop from 57 percent in 2015 and 2019 to 44 percent in 2023. We don't know whether this reflects a true industry reduction in the use of mandated programs, or whether this change was reflective of some of the different types of organizations represented in the 2023 data. However, we did take note of the fact that the average number of companies on panel rose to 3.0 from 1.7 in 2019.

Mediator programs

Whether for court-ordered or discretionary ADR sessions, mediators are used with increasing frequency on litigated matters. We asked whether participants maintain a pre-approved panel of mediators? i.e., do they mandate the use of one or more pre-approved mediation companies or networks).

Mediator and ADR Providers			
Study Year:	**2015**	**2019**	**2023**
Companies with pre-approved provider panel	23%	14%	**16%**
Avg. number of companies on panel	1.8	5.0	**28.0**
Mean number of companies on panel	N/A	5.0	**8.0**

Here we saw a slight, but non-material increase in panel utilization from 2019. 16 percent reported that they maintain such panels. The bigger change we saw related to the average number of companies on panel, which increased from 5.0 to 28.0. In analyzing the data we can see that several larger companies have created their own networks and that they have specifically identified regional companies to be part of their own network.

Because we view the role of mediators to be so critical to the resolution process, we asked participants how well they feel their organization tracks the performance and effectiveness of specific mediators.

Participants scored their organization's ability to do this at a rather poor 34 out of 100, reflecting a sense that they don't feel this is being done well. Given the impact that neutrals can have on earlier case resolution, and in fact overall case resolution, we view this specific area as a critical opportunity.

Jury consultants

Jury Consultants	
Study Year:	**2023**
Companies with pre-approved provider panel	**14%**

14 percent of study respondents said that they maintain a pre-approved provider panel of jury consultants. One third said their use of mock jury and other jury research projects is more than three years ago.

Is your organization's use of mock jury and other jury reseearch projects more or less than three years ago?	
Study Year:	**2023**
More	**33%**
Less	**6%**
About the same	**61%**

Expert programs

Because the use of experts in litigated cases is both expensive and critical to case outcomes, we were curious as to whether participants maintain panels of experts. We defined the question around the use of experts willing to give testimony, as opposed to internal review experts.

Experts (Pre-approved panel of experts who will give testimony)		
Study Year:	**2019**	**2023**
Companies with pre-approved provider panel	32%	**14%**

When we asked this question in 2019, we were surprised to see almost one third (32 percent) respond in the affirmative. In 2023, only 14 percent said that they maintain such panels.

We asked respondents to identify how strong they believe their measurement of experts' effectiveness is.

How strong do you believe your measurement of experts' effectiveness is?		
Study Year:	**2019**	**2023**
Very strong - we formally measure each expert	5%	**12%**
Moderately strong - we capture some information but it is mostly anecdotal	40%	**35%**
Not strong - I wish we had better measurement	55%	**54%**

In 2019, only 5 percent of study participants felt their processes for measuring expert effectiveness were strong. That number more than doubled in 2023; however, those that have strong processes still only represent roughly one in ten (12 percent).

E-Discovery programs

E-discovery remains a challenging but interesting area for litigation cost control. First, the actual costs related to e-discovery are difficult for many organizations to easily capture and track. Second, when they do incur costs, they can be substantial.

15 percent of the 2023 participants said that they maintain a pre-approved provider panel of e-discovery companies. This is percentage is less than the 21 percent reported in 2019 and the 19 percent reported in 2015.

E-Discovery Providers			
Study Year:	2015	2019	2023
Companies with pre-approved provider panel	19%	21%	**15%**

We asked participants whether they knew what their annual e-discovery spend is, and almost nine of 10 (86 percent) said that they did not. The high percentage of executives who do not know what their e-discovery spend is suggests that this is a difficult number to retrieve.

However, those participants who knew their spend reported significantly large dollars. The average e-discovery spend was $4.9MM annually, and the median annual e-discovery costs were reported at $200,000 annually.

Given the extent of the costs involved, however sporadically they are incurred, we view this entire area of focus to be an opportunity for organizations looking to add such focus to their litigation management program.

Structured settlement programs

The percentage of organizations reporting that they maintain formal structured settlement panels decreased in 2023; however, we do not see the change to be material. The percentage fell from 62 percent in 2019 to 57 percent in 2023. That change is more significant when compared to eight years ago, when the percentage was 72 percent.

Structured Settlement Providers			
Study Year:	2015	2019	2023
Companies with pre-approved provider panel	72%	62%	**57%**
Avg. number of companies on panel	1.3	2.1	**2.0**
Mean number of companies on panel	N/A	2.3	**2.0**

Other litigation support programs

As with prior studies, we asked whether participants maintain formal litigation vendor programs with other service types as well.

Comparing this pre-set list to 2019 provides a sense for which service types are growing and those that are not.

In the chart below the percentages identified do not refer to the percentage of organizations using those services; instead, the percentages refer to the number of times the programs were mentioned.

You can see, for example, that social media search has grown exponentially in the past three years. Trial and jury research programs have also expanded. Services like witness preparation and filing services have decreased substantially.

Additional Formal Litigation Vendor Programs (Listed by Frequency of Mentions NOT Percentage of Participation)		
Study Year:	**2019**	**2023**
Social Media Search	4%	**46%**
Investigators used during Litigation	33%	**32%**
Trial and Jury Research	5%	**12%**
Witness Preperation	14%	**4%**
Jury Investigation	19%	**4%**
Filing Services	25%	**1%**

We asked participants to mention any additional services we did not ask about. Among the additional services identified by respondents were:

- translation and interpretive services
- SIU and Fraud services
- construction and estimating consultants
- forensic accountants
- asset check providers

Use of Procurement Resources

We identified above that only 2 percent of respondents reported that they use procurement resources when working to add law firms and attorneys to their approved panels. This percentage was a decrease from the 7 percent reported in both 2015 and 2019.

However, when it comes to non-firm vendors, such as the litigation support service providers identified above, a full one quarter (25 percent) said that procurement resources assist in the selection.

The use of procurement department resources			
Study Year:	**2015**	**2019**	**2023**
Law Firms - we use procurement resources to assist in our selection	7%	7%	**2%**
Non Firm Vendors -- we use procurement resources to assist in our selection	13%	22%	**25%**

Preferred vs. exclusive vendor relationships

In fashioning their litigation support programs, litigation management executives have a choice between working with one exclusive vendor and maintaining a panel of several.

Do you think it's better to maintain litigation support programs with one exclusive provider or several preferred providers?			
Study Year:	**2015**	**2019**	**2023**
Exclusive -- this provides the best leverage	21%	17%	**9%**
Preferred - giving our firms a choice promotes competition	47%	50%	**53%**
It makes no difference	31%	11%	**18%**
It varies by program	N/A	22%	**20%**

Exclusivity can provide greater leverage, more consistency, and improved metrics. Having a preferred panel generates competition and gives law firms users more choice.

The 2023 percentage of participants who expressed a preference for going all in with a single exclusive provider relationship decreased. It was 21 percent in 2015, 17 percent in 2019, and 9 percent in 2023.

Similarly, the percentage of those who express a preference for a preferred relationship, in which law firms can choose between several service providers, has gone up in each of the last three studies.

Litigation Management Metrics

Measuring law firm performance

Do you formally measure your law firms' performance?			
Study Year:	2015	2019	2023
Yes	64%	69%	**53%**
No	36%	31%	**48%**

When it comes to formally measuring law firm performance, a smaller percentage of respondents than in any of our prior studies said that they do this. Slightly more than half (53 percent) responded in the affirmative.

In 2019, almost seven of 10 participants (69 percent) reported formal law firm performance measurement. We do not know the reason for this decrease in 2023, but we view it to be material and worth noting.

Would you describe your overall performance measurement as:			
Study Year:	2015	2019	2023
More objective than subjective	17%	18%	**16%**
More subjective than objective	38%	31%	**42%**
A good combination of objective and subjective	45%	51%	**41%**

In each of our studies, respondents have categorized the nature of their performance measurement as being more subjective than objective, and that was the case again in 2023. However, when compared to 2019, a higher percentage of participants selected “subjective,” and a lower percentage said that their measurement is a “good combination of objective and subjective.”

Normalizing Firm Outcome Data

We asked organizations who measure defense firm outcome performance (i.e., settlement values, indemnity payments) to share how they “normalize” results to obtain good (meaningful) law firm comparisons.

The following table provides some of the responses provided.

Examples of Criteria Used to "normalize" Law Firm Outcome Data	
Measured based upon our internal valuations.	We compare outcomes by territory and LOB on a yearly basis
We normalize by total cost of claim upon resolution.	While we do measure it, our critical mass makes it difficult to normalize. Big cases can easily skew data
We measure performance based upon outcome, not metrics. We certainly take into consideration the overall billings, and firm efficiencies, but it is the overall outcome of the case that matters most	We do not have a scientific methodology we use. We compare counsel's initial evaluation (injury type, valuation, jury verdict research, etc.) versus the final settlement amount and the costs and time it took to get the case from answer date to closed. No two cases are ever the same, so we use more of a gut test as we evaluate our counsel's performance.
Compared by LOB & venue	We use LOB and time to resolution
We group cases by state and LOB and typically evaluate them on a closed basis.	We compare LOB and jurisdiction
Group by LOB, reserve bracket at 90 days, and limit outliers.	We can normalize it in a variety of ways and will generally look at LOB and case type
compare to other firms in area by looking at cost to closure, indemnity amounts etc.	By LOB & state - initial evaluation submitted vs ultimate loss payment
cases are grouped by LOB, jurisdiction, age of plaintiff, defendant industry and injury severity	Measure by case type and LOB
LOB reserve recommendation vs settlement #	This is done on a case-by-case basis, with file notes in the claim file litigation section.
By LOB.	We use AI modeling based on claim system data
We normalize cases by removing large or complex files from the calculations, as well as reviewing the geographic area; otherwise, they all do the same work.	LOB & Jurisdiction
We only measure in jurisdictions where we also have staff counsel and we group by LOB and average paid (cases under $10K, under $50K	Reserve comparison vs settlement value
Our "measures" are not formal, but as a small company, results are socialized when either extreme is triggered.	we compare total incurred (and indemnity only) on closed files, along with duration and compare to similarly situated firms

Measuring Diversity

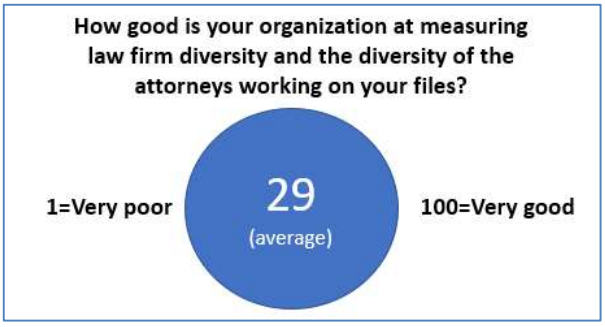
We asked for the first time whether participants measure the diversity of their law firms and about the diversity of the attorneys working on their files. We also asked participants to rank how well their organization measures this.

Essentially one in four (27 percent) said that they measure this.

Do you measure the diversity of your law firms and the diversity of the attorneys working on your files?	
Study Year:	2023
Yes	27%
No	73%

Those respondents who do measure it, ranked their organizations ability to do it as poor, giving it a score of 29 out of 100.

Given the relevance of this measurement to our industry as a whole and the importance of diversity to our community, we look forward to seeing how these scores will change in the future.



Internal claims handler performance

More than half (55 percent) of participants said they use metrics and analytics to measure litigation management performance of their internal claims professionals.

Do you capture and use metrics and analytics about the litigation management performance of internal claims handlers?	
Study Year:	2023
Yes	55%
No	45%

General value of current metrics

We asked several questions about the general "value" of the current metrics available to claim and litigation executives (relating to litigation management performance).

Specifically, we asked how good their believe their organizations are at measuring law firm performance when it comes to expenses (including fees and non-fee costs), and also when it comes to measuring law firm performance as it elates to outcomes (settlement values, verdicts, indemnity payments).

We asked these questions separately so as to not conflate expense management with outcome management.

Participants appear to feel that they are better at measuring expense performance (scored as a 58 out of 100) than outcome performance (53 out of 100).

In terms of measuring the overall performance of their litigation management programs, participants ranked the current analytics and metrics available to them as a 56 out 100. In 2019 they responded to this same question with a 55 out 100.

All three of these scores suggest that current metrics are more helpful than not helpful, but these are certainly not effusive endorsements for the strength of participants' metrics and analytics programs, or for the strength of their comfort levels with them.

In our view there remains significant room for improvement in our industry's use of metrics. We anticipate that the continued advancement in technologies that assist organizations in the structuring of data, the measurement of litigation outcomes, and counsel performance – will help organizations who wish to construct analytics and metrics that they find to be more helpful.

Most elusive metric

We asked the participants to identify a single metric that they wish they had better access to, but which they currently cannot obtain in their current environments.

We have identified the responses below in a free form list. (We have combined several identical or similar responses). Principal themes include return on investment for legal dollars spent, negotiation strategy and numbers, and plaintiff counsel metrics in various venues.

Return on legal expense investment	Time to first settlement attempt	Metrics on plaintiff counsel in various venues
defense costs v. indemnification per claim	Complete claimant level data in all cases.	cycle times, and outcomes of settlements within states compared to the larger results
focus of counsel on a particular stage of litigation on each case	Plaintiff fees of the total settlement	Cycle time (multiple mentions)
Defense reporting and early resolution strategies.	The impact key depositions had on the outcome of a case	ROI for defense fees paid
litigation outcome assessment	Claim level indemnity broken out by counsel (where counsel changes during suit life)	Trial Results by venue/judge/plaintiff attorneys
Time to ultimate incurred loss development	Individual information by attorney on case management	True cost per dollar of indemnity exposure resolved
Partner to Partner by case avg paid indemnity and expense	Negotiations on files in suit	Negotiation strategy/outcomes
industry comparations for settlement costs, legal expense cost, cycle time, workload, etc.	appropriate selection of counsel for the case/claim in question. how effective are we in selecting the right attorney for each case/claim in order to secure the best outcome.	Jurisdiction
More granular on type of case results	Cycle times v indemnity	settlement values
average cycle time and average cost per claim	Outcomes and outside counsel performance metrics	Actual savings generated by adjuster and their negotiation skills

Policyholder satisfaction compared to peer companies.	(Actual) Case duration. It's difficult to capture exactly when a case closes given data we collect.	Differential between defense counsel's evaluation of the case and the amount for which it was resolved.
Mediator performance	the ability to identify those claims that will generate a nuclear verdict	Initial evaluation to ultimate outcome

Pressures and Trends

Changes in litigation inventory

Change in Litigation Inventory (vs. 3 years ago)			
Study Year:	2015	2019	2023
Larger inventory	49%	43%	**48%**
Smaller inventory	36%	29%	**35%**
Same amount of inventory	11%	24%	**17%**

Roughly half of respondents (48 percent) reported that they have larger litigated file counts than three years ago. Approximately one third (35 percent) reported smaller inventories.

Changes in costs per file

Compared to three years ago, do you believe your average costs per litigated claims have increased, decreased, or stayed the same?			
Study Year:	2015	2019	2023
Increased	44%	50%	**76%**
Decreased	32%	17%	**6%**
Stayed the same	20%	28%	**15%**
I don't know	4%	5%	**3%**

Overwhelmingly (76 percent), participants believe that the average cost per litigated file has increased when compared to three years ago. When compared to 2019, this is a 50 percent increase in the number of participants who feel this way.

Finding qualified staff

Compared to three years ago, Is it harder, easier, or the same to find qualified, expert claim staff to handle litigated claims?			
Study Year:	2015	2019	2023
Harder	51%	61%	**67%**
Easier	9%	7%	**3%**
The same	40%	32%	**30%**

It remains difficult to find qualified staff to handle litigated claims. This is particularly important if the number of litigated files is larger, and if each file costs more. What does it mean if each file costs more? If the cases are higher value?

Litigation caseloads

We asked about file handler caseloads in the litigation environment for the first time in 2023. Participants reported an average low-end caseload as being 125 files, and an average high-end caseload as being 205.

Given that the number of files is increasing, the cost-per file is going up, and that finding more qualified staff remains difficult, it will be interesting to watch how these caseloads change in future studies.

What is an average typical low and high pending count of files being managed by claim professionals who manage litigated files? (Include all files if the pending is a combination of litigated and non-litigated)	
Study Year:	**2023**
Average (low and high end of range)	**125 - 205**
Median (low and high end of range)	**80 - 135**

Preferences for virtually conducted litigation activities

The pandemic had a huge influence on the way that many litigation-centric activities were conducted, both by claim professionals and counsel. We asked which of these activities participants believe lend themselves better to virtual environments and which they'd like to see conducted virtually (when appropriate) in the future.

Broadly stated, which activities do you believe lend themselves to virtual environments and that you'd like to see conducted virtually in the future?	
Study Year:	2023
Case conferences between claims handler and defense counsel	43%
Mediations	24%
Depositions	19%
Jury focus groups and mock trials	14%
Trials	0%

No one appears to be in favor of virtual trials.

Interestingly, most participants believe that, while virtual activities may have reduced litigation costs during the pandemic, they do not feel they reduced them by a valuable amount.

Overall, do you believe the move to so many virtual activities during the pandemic reduced litigation costs or increased them?	
Study Year:	2023
Reduced - it reduced litigation costs a lot!	14%
Reduced - it reduced costs but not by a valuable amount	59%
No effect - it really had no effect on overall costs	22%
Increased - our costs went up with virtual activities	4%

Only 14 percent correlate virtual activities with significant cost savings. More than a quarter of participants (26 percent) believe that virtual activities had no effect on overall costs, or in fact increased them.

Changes in policy limit demand volume

Do you feel the frequency of policy limit demands has increased for your organization in the past three years?	
Study Year:	2023
Yes	72%
No	17%
I don't know	11%

Policy limit demands are on the rise. More than seven of 10 participants (82 percent) believe this to be the case.

68 percent of participants said their organization has no systems for tracking the number of policy limit demands it receives.

Does your organization track the number of policy demands it receives? (percentages of those who know the answer to this)	
Study Year:	2023
Yes	32%
No	68%

Impact of social inflation on counsel selection

Has social inflation and the proliferation of nuclear verdicts changed how you add attorneys and firms to your panel(s)?	
Study Year:	2023
Yes -- it has affected how we approve panel membership	41%
No -- we look for the same attributes we always have	59%

We asked whether social inflation and the proliferation of nuclear verdicts has changed how organizations add attorneys and firms to their panels. More than 4 of 10 participants (41 percent) said yes. The remaining 59 percent said that it has not, and that they look for the same core attributes they always have.

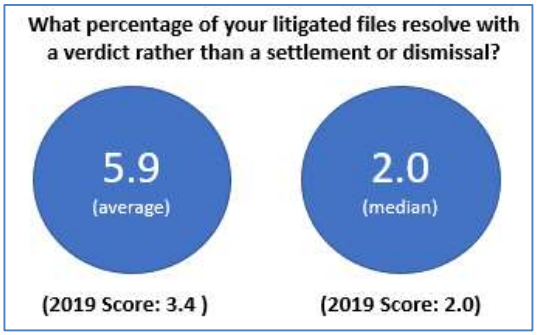
Impact of social inflation on settlement timing

Do you believe that, in general, social inflation is having an impact on when claims settle?	
Study Year:	2023
Yes - it's causing **earlier** settlements	8%
Yes - It's causing **later** settlements	64%
No - there is no impact on settlement timing	29%

Six of 10 participants (64 percent) believe that social inflation is causing later settlements. Eight percent believe that social inflation is causing early settlements.

Files that resolve with a verdict

Are more files resolving by verdict? For approximately 20 percent of the respondents, the answer is yes. The average percentage reported in 2023 rose to 5.9 percent, a significant jump from the 3.4 average percentage reported in 2019. However, the median percentage reported remained at two percent.



Compared to three years ago, is your percentage of litigated files that resolve by verdict higher, lower, or about the same?	
Study Year:	2023
Higher	21%
Lower	20%
About the same	59%

You can see from the chart above that for another 20 percent of the respondents, fewer files resolved by verdict.

Law firm cyber security

Cyber security (and in fact data security in general) remains an important topic in our community, given the nature of the information being maintained across litigation portfolios. We were curious as to how many participants had had law firms report cyber incidents to them.

Roughly one third (34 percent) of respondents said that they had had at least one event reported to them in the past 12 months. For those organizations with reported events, the average number of firms involved was 2.3, and the median answer was 1.0.

In the last 12 months, how many of your law firms brought to your attention that their firm had experienced a "cyber incident"? (data breach, hacking, ransomware, or other type)	
Study Year:	2023
Percentage of respondents with at least one event	34%
Average number of firms involved (for those with an event)	2.3
Median number of firms involved (for those with an event)	1.0

Third-party reporting

We asked whether third-party reporting requirements are becoming more complex. One quarter of the respondents did not know the answer to this question. When we removed those participants who did not know the answer, a full 39 percent said that, yes, third-party reporting requirements are more burdensome and more complex.

Do you perceive that litigation-related reporting requirements from third parties (reinsurers, excess carriers, regulators) are changing in any way? (Percentage of those that know).	
Study Year:	2023
No, they seem to be about the same as always	61%
Yes - they are more burdensome and complex	39%

Predicted use of staff vs. outside counsel

We reported above that almost half (49 percent) of the executives whose organizations use staff counsel predict that their organizations will be assigning a higher percentage of cases to staff counsel in the future.

We were curious what that prediction would look like if we included the entire data pool.

Over the next five years, do you believe that the claims industry as a whole will use more staff counsel resources or less?			
Study Year:	2015	2019	2023
More use	53%	31%	26%
Less use	0%	22%	26%
Will be about the same	47%	47%	47%

When all organizations are counted the prediction of greater staff counsel use drops to 26 percent. Another 26 percent predict that the industry as a whole will use staff counsel less.

You can see that, overall, the percentage of those who feel the industry's use of staff counsel will be "about the same" has remained constant over the past eight years.

TECHNOLOGY

In 2023, we asked several questions about participants' use of technology. None of these questions below relate to e-billing or legal invoice technologies, as that topic is addressed earlier in this Report.

Platforms for tracking litigation activity

Where do claims professionals track litigation activity, notes, plans, strategy and other core litigation activities?	
Within our claims system	83%
In a separate matter or case management system	4%
In our claims system AND a separate matter or case management system	12%
In paper files	0%

We were interested in what technologies and platforms claims organizations use to track litigation activity, notes, plans, strategy, and other core litigation activities.

In 2019, a full 89 percent of respondents identified their claims system as the core repository for this information. The question was rephrased slightly for 2023, and the results are as illustrated above.

A full one in six (16 percent) of executives reported that their organizations now maintain litigation information in a separate matter or case management system, or a combination of a separate matter/case management platform AND the claims system.

We predict that this percentage will increase significantly over the next few years, as the technological ability for software companies to integrate with, and exchange information to and from, claim management platforms, expands. As this capability expands, the primary concerns about maintaining multiple systems to house litigation information will disappear.

We further predict that the use of more specialized case and matter management environments will go a long way to providing the industry's litigation teams with analytics and metrics that they find to be more helpful than their current ones (see above). These specialized case and matter management environments are more specialized at capturing structured data points than more generic litigation-related screens within the leading claims systems. Time will tell.

Also, paper files appear now to be officially a thing of the past.

How organizations receive communications from counsel

What is the most common way your organization receives legal work product, status updates, and reports from counsel?	
Physical correspondence - scanned by the mailroom or delivered to the claims professional	2%
Email - our claims professionals manually associate emails and attachments with the proper claims file	73%
Email - our systems automatically associate emails and attachments with the proper claims file	17%
A shared work environment with counsel - counsel and our claims professionals work in a collaborative software	8%

Nine of 10 participants (90 percent) identified email as the most common way they receive litigated file communications. Only two percent reported receiving physical correspondence as the most common medium.

Importantly, a full 73 percent of those organizations still require their claims professional to match both the email and attachments to the proper claims file. This high percentage strikes us as an area of opportunity, given the challenges of finding qualified internal staff to manage litigated files, and just the sheer amount of time that could be freed up to do more strategic work. (We noted that 17 percent reported that their systems automate this matching of emails and attachments.)

We were interested to see that one in 12 participants (8 percent) reported using a shared, collaborative, work environment with counsel. As these shared environments become better at integrating with core claims system, we predict that this percentage will rise significantly.

Guidelines addressing preferred communication methodology

Does your organization maintain guidelines that dictate the preferred methodology for how claim professionals should communicate with counsel?	
Study Year:	2023
YES	66%
NO	34%

Two of three respondents (66 percent) reported that they maintain guidelines which dictate the preferred methodology for how claims professionals should communicate with counsel.

When claims professionals text with counsel, do you have systems to capture texts and associate them with the correct claims file?	
Yes	27%
No	73%

72 percent reported not having systems that capture texts between claims professionals and defense counsel.

Artificial intelligence

It does not seem possible to have a conversation without hearing the words artificial intelligence (AI) and machine learning. Both are important concepts that are influencing our industry now. We were curious how AI is making its way into the litigation arena.

35 percent of participants said that they are using AI software, which we defined very broadly to include machine learning, the use of bots, and features like the use of data analytics within decision engines. This 35 percent figure is a 46 percent increase from 2019, when 24 percent of survey respondents said they were using AI.

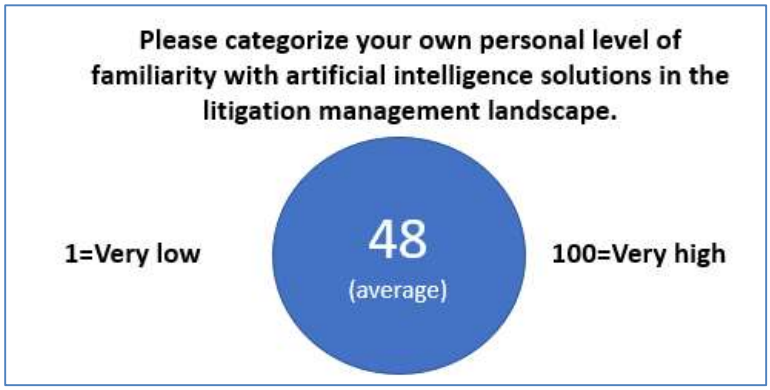
Please indicate the way(s) that AI is being used in your litigation operation	
Study Year:	2023
Bill audit	34%
Predictive modeling	24%
Routing, labeling, or naming incoming documents	11%
Case assignment (to counsel)	8%
Creating structured data from unstructured documents	8%
Identifying time-sensitive demands	5%
File audit	3%
Matter management	3%
Decision-trees	3%

As the chart above show, the greatest percentage of executives (34 percent) said that AI is being used in their bill audit function. The second highest use is for "predictive modeling," but we did not delve into the predictive modeling applications in which it is being used. All other AI applications had low penetration (11 percent of the respondents or less).

Importantly, 34 percent of Study participants said they have plans to incorporate more AI into their litigation program in the next 18 months, so it will be interesting to see what the next survey brings.

Because many of the AI solutions in the claims and litigation landscape are so interesting, and because there appears to be a new solution every month or so, we were interested in how personally familiar many of the executives who participated in this Study are with the various solutions.

Participants ranked their own familiarity level at an average of 48 out of 100. We view this score as suggested that they are not "unfamiliar" with AI solutions, but they are not overly "familiar" with them either.



Lastly, we asked for predictions about whether their organizations will be investing in litigation management technology in the next three years. Participants were quite bullish on this, with a full 75 percent suggesting that technology investment will increase.

What is your prediction relative to technology investment in litigation management over the next three years?	
Study Year:	2023
Up - our investment in techology will go up	75%
Down - our investment in technology will go down	1%
Same - our investment in technology will stay the same	24%

It will be interesting to see where these investments will be made.

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We want to thank each of the Study Sponsors whose contributions have made this Study possible. Each of these organizations is both a thought-leader and important participant in our litigation management community. Please take the time to learn more about them.

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Conclusion

We trust that both Study participants and general readers find the information in this Report to be helpful. We believe these data points can be conducive to facilitating conversations from which all members of the litigation management industry benefit.

Claim organizations, outside law firms, staff counsel, legal departments, and the service and technology providers that serve each of those constituencies, all benefit from collaborating and exchanging ideas about how to promote the highest standards and best practices in our industry.

Questions about the Study

A copy of this report can be requested, without charge, by writing to: clm.study@suite200solutions.com, or by asking any the Study's Sponsors (listed above) for a copy.

Any questions about this Study may be directed to:

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