

# Measure for Success!

Employing cross-functional best practice measurement to improve litigated case outcomes

By: Mark Snyder, Director, Insurance Services, Athenium, Inc.  
Daniel Costello, Managing Partner, Costello & Associates LLC

## Introduction

***The case had everything a defense attorney would want; celebrity defendants, a hint of scandal, internet buzz, news coverage...***

***Yet, in this real life example, the matter was resolved prior to generation of the initial litigation plan. How and why did counsel settle so quickly?***

For many P&C carriers, the opportunity to reach an early and amicable resolution for a case like the one described above is more wish than reality. Why did this case resolve quickly?

In this matter, the behaviors exhibited by claims handlers, case managers and counsel were aligned to organizational best practices. Everyone involved in the process collaborated effectively. But, how did this team know how to execute its mission so well?

Before we answer that question, let's consider a more typical scenario:

*A claim is thrown over the fence from the original claim handler to the litigation department. It is fired-out to counsel for an immediate answer. A litigation plan and budget are developed. From there, counsel initiates a typical procession of discovery, leading to an ultimate disposition many months- or years - down the line.*

What has lead to the time consuming and expensive outcome in this example?

Chances are you are familiar with many of the contributory factors – sub-optimal initial claim handling, cookie-cutter litigation plans, failure to act in a timely fashion to new information, time constraints, regulatory compliance requirements and decreasing availability of resources – just to name few.

Add to this – claims handling, litigation management, and counsel operating in silos. Overcoming these hurdles has made effective litigation management one of the primary financial and operational challenges – and opportunities – for all insurers.

Let's start unraveling the answer to our first question: Why do some litigated matters achieve timely resolution, meet the needs of the insured and achieve the operational goals of the insurer, while others don't?

Successful litigation managers have found ways to effectively navigate operational silos, address case management issues, manage relationships with counsel, and achieve timely and equitable outcomes for the insured. Insurers that have captured the best practice behaviors of claim handlers, case managers

and counsel have created a proactive metrics based litigation management culture – one that recognizes the importance of alignment to best practices - rewarding their use, documenting their salient features, and sharing knowledge of results. For these organizations, continuous quality improvement has become standard operating procedure.

This brings us to our purpose:

- To present a systemic, operational model that engages all relevant parties in a continuous program of best practice measurement conformance, and,
- To institute a methodology that enables the claim organization to leverage performance metrics that positively impact expenses, indemnity payments, and quality of service.

Our organization – Athenium – has nearly a decade of experience providing consulting services and performance measurement solutions to major insurers. Our patented performance measurement system, team**think**®, surfaces the top drivers having a negative impact on indemnity and expense outcomes.

By measuring the performance of individuals, benchmarking them against best practices, and providing objective feedback detailing process or behavioral misalignment, our customers achieve better use of resources and positive financial outcomes.

Athenium has expanded its team**think**® solution to measure the quality of initial claim handling, litigated case management and counsel performance in one process, creating a cross-functional analysis that:

- Surfaces root causes of issues negatively impacting litigation spend (claim handler / litigation handler / panel counsel)
- Holds panel counsel accountable for performance against best practices
- Creates a litigator meritocracy, where insurers can objectively re-assign and re-allocate their spend to counsel whose quality, value and service metrics exceed the competition
- Identifies top internal performers and new best practices
- Provides insurers with the information they need to match the right counsel to the right case

Our goal is to provide solutions that help insurers govern the many moving parts comprising the entire litigation process, from initial investigation through final resolution. By measuring what matters, we help organizations effectively mitigate financial exposure, manage best practice compliance, and ensure a positive financial outcome for both the insurer and insured.

### **Approach – Establish a performance baseline**

As recently stated by John G. Kelly in the October 2008 issue of the Litigation Management Report...

*“There is obviously a need for the development of a litigation management program that will put insurers and insurance defense attorneys on the same planet. There is obviously also a need for some form of data aggregation that enables the insurance defense community to analyze business intelligence as the basis for working smart to achieve best practices capability.”*

Athenium applies a basic tenet of navigation in answering this challenge: You have to know where you are before you can launch yourself towards where you want to be. The first step in developing and implementing a metrics based best practice culture is to assess the current state of litigation management within your organization. Many insurers have documented and communicated their best practices, and engaged external counsel in commitments to financial billing guidelines. By measuring performance against the “game plan”, insurers can successfully engage in actionable improvement initiatives.

Establishing a current-state baseline requires that a cross-functional team review and analyze the processes and behaviors of all players that touch a litigated claim. It is imperative that all functional and operational gaps be identified from assignment to final case resolution. To establish actionable improvement targets, the team must objectively assess not just what is going on, but also understand why things happen the way they do.



Athenium’s baseline analysis process has five core components:

- Best Practice Review
- Data Analysis
- Group Interviews
- File Review, and
- Root Cause Analysis

The Best Practice Review compares an insurer’s documented operational guidelines to industry accepted best practices. During this phase, experts review billing guidelines, core claim handling guidelines, and existing litigation management best practices

The Data Review phase inspects litigation audit data, panel counsel scorecards, and bill review data, and assesses how well current and historical management guidelines and best practices have been adhered to.

Group Interviews with claim handlers, case managers, and panel counsel provide a qualitative assessment of the gap between best practices theory and application, recognize discrepancies between stated objectives from management and those as viewed by front line personnel.

Athenium has developed a robust litigated File Review solution. This toolset allows the review team to iterate through the entire claim handling and litigation management process, identifying, assessing and

#### **Dan C’s Litigation Management Best Practices**

- Require counsel to obtain a demand from plaintiff’s counsel within the first 30 days
- Reward firms who consistently show low cycle times
- Employ alternative fee agreements with counsel
- Define tasks for counsel and adjuster within the first 30 days to narrow potential issues
- Contact opposing counsel with the first 30 days to determine if settlement is possible
- Narrow issues to key liability, investigation, and settlement within first 30 days
- Formulate most likely resolutions to the case versus worst case scenario in initial plan

reporting on the issues that are impacting costs and spend. The file reviews conducted with teamthink® measure quality and leakage on recently closed litigated files, evaluating current adherence to guidelines for topics ranging from investigation to evaluation/litigation planning, handling, negotiation and overall file results.

Data Analysis, Interviews and File Reviews form the basis for the baseline report. From initial handler, litigated handler and panel counsel perspectives, the analysis delivers data that:

- Surfaces issues that have a negative impact on litigation outcomes
- Shows the frequency of an issue's occurrence
- Documents the financial consequences of issues
- Provides insight into the potential root causes of issues

### **Beyond the Baseline – Continuous performance measurement**

The best way to ensure ongoing compliance and alignment to desired behaviors - and reap the rewards that ensue, is to embed a continuous cross-functional best practice measurement process that holds all parties equally accountable.

Central and field review teams can be engaged to measure, track and mitigate the issues identified during the baseline analysis. The central review team's charter is to periodically look at the big picture, with a focus on operational and process issues impacting the entire organization. The field review team extends the reach of the program by continuously reviewing the performance of individuals, units and offices, developing local improvement plans that are aligned to the organization's overall performance objectives.

By evaluating the top issues driving sub-optimal financial outcomes in litigated claims, insurers can identify the functional performance gaps in the claim litigation pipeline. Best practice measurement is the foundation for actionable behavioral and operational improvement across the entire litigation management process.

For more information or questions about this article, please contact:

Mark Snyder, Director of Insurance Services

Athenium, Inc.

75 Third Avenue

Waltham, Ma 02451

781-240-1724

[msnyder@athenium.com](mailto:msnyder@athenium.com)

[www.athenium.com](http://www.athenium.com)