



## *Using Defense Attorney "Report Cards"*

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## Today's Conversation

Using "report cards" to address unwieldy defense rosters, overhaul litigation practices, and more: How one pool untangled a thicket of issues surrounding its attorney panel.

In this session we will discuss:

- Criteria for rating attorney performance, stability effectiveness
- Improved litigation management
- Measurable data and a process for removal of an underperforming attorney
- Enhanced reporting and relationship with the pool's liability reinsurer



# One Pool's Story

It all started with a city manager task force...



## Our Evolving Story

- A task force with recommendations
- Lessons in politics and process
- Lessons in data access/structure
- Practice, repeat... while upgrading systems, specifications and approach

### Goals

- Defense cost control
- Objective rating for each attorney's litigation management, performance, stability and effectiveness
  - Measurable performance data
  - Data-driven attorney assignment
  - Removal of underperforming counsel
- Improved litigation management
- Enhanced reporting and relationship with the pool's liability reinsurer

POOLING

**TODAY**  
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## Early Scoring Questions

- **Ratios: Closing, Legal expense / Total legal expense**
- **City attorney**
- **Case load during review period**
- **Geographic area, qualifications and area of expertise**
- **Compliance with litigation management policies :**
  - Complied with billing standards
  - Submitted annual proof of insurance
  - Provided analysis within 60 days of receipt of case
  - Initial valuation was within 10% of actual case value
  - Provided reports at 90-day intervals
  - Involved TPA, city and litigation manager in strategy
  - Provided initial budget of defense costs
  - Complied with budget
  - Provided a trial and/or closing report

## Lessons Learned

- What efforts were made on early resolution?
- Was a demand made?
  - If so, was an offer extended?
  - Was there a mediation?
- What was successful?
- What were possible areas of improvement?
- Was transfer of risk considered, and were proper contacts received and reviewed?
- What were the results?
- Were coverage issues addressed?
- What risk control issues led to reduced or increased exposure?

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# Report Carding

Why, For Whom, Parameters, Variables, and Measurements



## Tips for creating an attorney scorecard

October 29, 2015 – ORIGAMI RISK Blog

Litigation is a cost of doing business. Make sure you understand how much it really costs...and that includes attorney fees, not just payouts. Create an attorney scorecard so you can compare results between internal and external counsel; measure attorney performance, time management and price, and whether they correlate; and benchmark the cost of future litigation.

According to the [Association of Corporate Counsel](#), attorney scorecards should assess whether an attorney:

- 1) Won the trial or appeal
- 2) Closed the deal
- 3) Settled the matter for less than X dollars
- 4) Concluded the litigation within X number of months
- 5) Performed component piece of work X at a cost of Y dollars
- 6) Submitted budgets and forecasts on time, as requested
- 7) Forecasted expenditures with reasonable accuracy
- 8) Completed the work at or below the budgeted amount (adjusted as necessary to account for unexpected changes in assumptions)
- 9) Applied discounts correctly

## 2019 CLM Litigation Management “State of the Union”

- 55% ranked current metrics “helpful”
- Thus current metrics are “more helpful than not” but not dramatically so
- 90% said rare for a firm to provide metrics
- 64% are impressed when they do
- 89% rely on their claims system [to track litigation activity, ...]
- 62% of those with staff counsel operations maintain scorecards for the attorneys or offices in their operations

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# Report Card

...probably **isn't** the right word

<b>Why assess, measure, ...?</b>	Nothing will make sense without this; lots to consider
✓ Building awareness	Defense costs Use of counsel Range of outcomes
✓ Targeting response	Panel and policy changes Cost controls Communication
✓ Active management	Litigation handling compliance Quality control ( <i>not ranking</i> ) Strategic defense
✓ Sense-making and insight	Trends, shifts and foresight



## The next question is “for whom” ?

	MEMBER	BOARD	MANAGEMENT
How does ____ measure compare with others?	✓	✓	✓
Is it similar to, higher than, lower than others?	✓	✓	✓
Why do we think that is so?	✓	✓	✓
Is there something we should change or correct?	✓		
Is there something we could teach others?	✓		
What does it suggest about attorney selection?	✓	✓	✓
What does it suggest about defense strategy?	✓	✓	✓
What does it suggest about litigation management?	✓		✓
What does it suggest about settlement authority?	✓	✓	

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## The next question is “for whom” ?

### ICRMA started here:

- |                      |   |
|----------------------|---|
| ✓ Management         | Cost control<br>Quality control and continuous improvement<br>Claims and litigation handling<br>Strategic defense<br>Member outcomes, loss control, communication |
| ✓ Board of directors | Generative governance<br>Insight, foresight and sensemaking<br>Policy decisions   |

### The adjustments came here:

- |                                   |  |
|-----------------------------------|--|
| ✓ Members                         | Loss control and budgeting<br>Attorney and strategy selection ( <i>if relevant</i> )<br>Outcomes and council communication |
| ✓ Reinsurance and excess carriers | Welcome to the hardening market!   |



## Bridges to Cross

Specific parameters – how should we track and measure?

✓ Objective/subjective	Compliance or grading; trending or judging See little “p” politics
✓ Garbage in/out	Who enters/manages data (member, TPA, pool)? What is automated, dropdown, verifiable?
✓ Reports or dashboards?	What can the system do? Who is the audience; what is the purpose?
✓ Assessment window	How far back? All, select, current – panel Rolling or static?

**And how  
they played  
out in our  
pool...**

## Critical Variables

What should we track and measure?

✓ Attorney or firm?	Depends on: <ul style="list-style-type: none"> <li>• Panel structure and selection process</li> <li>• Litigation management expectations</li> </ul>
✓ Coverage type, loss cause, something else?	Think about: <ul style="list-style-type: none"> <li>• Relative volumes</li> <li>• How decisions are made</li> <li>• Where expertise lies</li> <li>• What affects loss control</li> </ul>
✓ Claim or occurrence?	Questions to ask: <ul style="list-style-type: none"> <li>• Where is data discernable (where not)</li> <li>• Where do costs/outcomes skew dataset</li> <li>• What are you trying to control</li> </ul>
✓ Which dates matter?	Turnaround, closure rates and claim cycles: <ul style="list-style-type: none"> <li>• Incidents or reports</li> <li>• Filings or court dates</li> <li>• Resolution or claim closure</li> </ul>

## Wins/Losses and Other Measures

COST?	Defense Outcomes <b>WITHOUT</b> Liability Incurred	Plaintiff Outcomes <b>WITH</b> Liability Incurred
No, NONE incurred	<b>Zero incurred</b> occurrences closed without payments	<b>Damages without cost</b> occurrences closed with payment of damages but no other costs accrued
Yes, some incurred	<b>Cost without damages</b> occurrences closed with ALAE or legal costs but no payment of damages	<b>Damages with cost</b> occurrences closed with payment of costs (ALAE or legal) and damages

4. LOSE: Damages WITH Cost	Damages +	<b>COSTS</b>	= Total Incurred	Occurrences
Other Bodily Injury	\$37,810,938	\$11,257,570	\$49,068,508	141
Employment Practices Liability				18
Errors & Omissions				1
Other Liability Other				3

B. Benchmarks	Occurrences	<b>RATIOS</b>		Average Cost/Occurrence	Highest Cost Occurrence
Other Bodily Injury	141	Dam. 77	Cost 23%	\$xx,xxx	\$xx,xxx
Employment Practices Liability					
Errors & Omissions					
Other Liability Other					



## ATTORNEY

USE & CASELOAD						
Claims resolved - rolling past 3-FY counts >>	ABI	EAO	EPL	...	Total	OPEN
Member						
Member						
Total	-	-	-	-	-	-
OPEN						

STAGE RESOLVED			
Independently Resolved			
Pre-Trial 1st Mediation			
Between 1st Mediation & Trial			
Mid-Trial Resolution			
Trial Verdict			
Appeal			
Total	-	-	-

AVERAGE DAYS TO RESOLUTION			
Independently Resolved			
Pre-Trial 1st Mediation			
Between 1st Mediation & Trial			
Mid-Trial Resolution			
Trial Verdict			
Appeal			
Total	-	-	-

Financial Overview by OCCURRENCE							
	Clm N	Occurrence N & Comp%	Damages	COST ALAE	COST LEGAL	Total Paid	\$ COST \$ TOTAL
							%
Total	0	0	\$0	\$0	\$0	\$0	%

DEFENSE OUTCOMES							
Zero Incurred	0	%	\$0	\$0	\$0	\$0	--
Cost w/o Damages	0	%	\$0	\$0	\$0	\$0	--
Average Cost w/o Dam>>	--	--	--	--	--	--	--
PLAINTIFF OUTCOMES							
Damages w/o Cost	0	%	\$0	\$0	\$0	\$0	--
Damages with Cost	0	%	\$0	\$0	\$0	\$0	--
Average Dam w Cost>>	--	--	--	--	--	--	--
0	0%						

## Other issues that ~~may~~ arise

Specifically, how should we track and measure?

- ✓ Little “p” politics
  - ✓ In-house counsel (employed or contract)
    - Allowed? In or out? Comparable costs?*
  - ✓ “Favorites” and relationships
  - ✓ Whose side are you on anyway? How dare you!
- ✓ Limits and exceptions
  - ✓ But you can’t compare *Plaintiff v. Defendant* to ...
  - ✓ Overreach: measurable criteria and answerable questions
- ✓ Public information
- ✓ Time
  - ✓ To do the work
  - ✓ To use the work
  - ✓ To get to desired results

# Back to Our Story

Especially in the current market





## Lessons and Next Steps

- Evolving process
- Why and for whom
- Little “p” politics and communication
- Data, data, data
- Hardening markets and reinsurance relationships
- When removals meet little “p”
- What’s next

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## Contact Information

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