

Managing the Business of Law

Technologies that Benefit the Carrier/Firm Relationship

by Taylor Smith

Insurance companies are deploying increasingly sophisticated technologies to direct their relationships with outside counsel, manage case-specific communication and guide the manner in which they purchase legal services. Technology applications now play an increasingly dominant role in the interactions between defense counsel and their insurance carrier clients and principals. To some members of the defense bar, these applications are seen as barriers to more traditional methods of maintaining and developing firm business. To others, these technologies have been viewed as an unpleasant but necessary administrative burden.

But to the wise, as specific applications become easier to use for both firms and carriers, these emerging technologies are increasingly seen not only as a mechanism to enhance efficiency of firm and carrier, but also as an opportunity for the firm to distinguish its practice, and the quality of service provided, to the insurance compa-



Taylor Smith is National Director, TyMetrix Inc., a CT Corporation Company headquartered in Hartford, Connecticut. As National Director, Mr. Smith works with the corporate law department, claims management, and litigation executives to reduce costs, improve case outcomes and strengthen relationships with retained counsel. He has 20 years of experience in the insurance industry including extensive work in litigation management, distribution management and legal services sourcing.

nies whose business they desire. Current technology now enables defense firms and insurance company personnel to collaborate on budgets, documents, notes, calendar and task assignment, docket management and almost all aspects of case management, creating new possibilities for firm and carrier partnership. The power of these communication methods, including the ease of accessing information on a commonly shared platform, is appealing to firms and insurance companies alike. It enhances strategic decision making and is felt by many to improve case outcomes. To understand where this technology may lead and its future impact on insurance defense firms and carriers, it will be helpful to review the history of how these applications came to be, and the specific business needs that have driven their development.

Technology Applications Overview

The technology applications used by insurance carriers and their outside counsel fall into several categories. The two categories discussed in this article are those that have the greatest penetration in the marketplace and those that affect the vast majority of defense firms. These are applications used to manage and process legal invoices and those used to communicate collaboratively

about case developments and progression. At the highest level, these applications can be referred to as e-billing and case management tools.

There are multiple variations of these applications, with many different combinations of features and requirements. The most sophisticated of these solutions combine both e-billing and case management into a seamless platform with the ability to turn on or off certain features and modules consistent with the business requirements of the insurance carrier. These features can include collaborative budgeting modules, document libraries, task and calendar engines, and alerting systems. Less sophisticated versions might merely include the ability to send or fax legal invoices to a central location for processing.

The Historical Context of E-Billing

The history of e-billing and case management technologies is a story about data, and specifically the insurance industry's challenge to create systems that could capture, verify and report data. As claim management and litigation executives have recognized, the ability to reduce costs, improve outcomes, and strengthen their working partnerships with outside counsel requires data, and lots of it.

The first development of applications designed to meet these goals occurred in the mid-1990s in the e-billing arena. Large and small insurance carriers alike recognized their fundamental inability to report on the most basic of metrics regarding their legal expenditures. How much they paid annually in defense fees, to whom, and why, were questions that could not be answered, or that required significant labor and effort to answer.

Carriers with thousands, hundreds or even dozens of law firm relationships found that the limitations of their older, legacy claims management data systems prevented them from answering basic inventory questions. A majority of these legacy claims systems could not associate a specific law firm assignment to a specific claim. This made it difficult to identify how many cases had been assigned to an individual firm, much less their level of legal expenditures, average legal fees, outcome ratios and other metrics of increasing interest to claims and litigation management teams.

As insurance industry legal expenditures spiked in the 1990s, carriers applied increased attention and resources to new initiatives designed to manage them effectively. One of these efforts was to formalize their litigation and engagement guidelines, and to apply those guidelines systematically to the legal invoices being received from their defense firms. This focus drove five key developments that many remember clearly from the 1990s:

- A flurried issuance of more detailed and comprehensive billing and litigation guidelines;
- Requirements (in many cases new) that legal invoices must contain detailed information beyond a summary of legal expenses and fees;
- The rapid growth of third-party legal bill auditing firms;
- The formation of internal invoice review units within those carriers who chose to not use third-party reviewers; and
- The development of e-billing software applications designed to accept and present invoices electronically.

The Hartford was one of the first major insurance carriers to deploy tools to accept electronic invoices from outside counsel in the mid-1990s. Specifically choosing an alternative to third-party auditing, The Hartford worked with a consulting firm (which later became TyMetrix, Inc.) to create an application that would accept legal invoices submitted by defense firms on computer diskettes. The invoices could then be screened, validated and presented to invoice reviewers or simply paid directly. The data on the diskettes could be aggregated, sliced, reported on, and used to make meaningful decisions about case assignment, inventory and firm metrics.

With litigation costs rising, the use of third-party legal auditing firms increased dramatically. As third-party auditors reviewed defense firm invoices with escalating scrutiny in the 1990s, an increasingly confrontational environment was created between carriers and their firms. In 2000, the Montana Supreme Court ruled that third-party auditing firms were not within the circle of privileged parties and that their review of invoices could conceivably violate attorney-client privilege. Shortly thereafter, the American Bar Association issued an ethics opinion supporting the position

that confidential information could not be shared with third-party auditors without the consent of the insured party.

The court's ruling and the ABA's ethics opinion were two major catalysts for the rapid growth of electronic invoicing applications. Technological solutions, accessible via the Internet, that could accept an invoice directly from a firm's time and billing software and present it to insurance company invoice reviewers without third-party involvement, were successfully introduced. Insurance companies benefited from appli-

Insurance companies benefited from applications that utilized the carrier's unique and specific billing guidelines.

cations that utilized the carrier's unique and specific billing guidelines. Additionally, the invoice reviewers were frequently the claims professionals who were intimately involved in the litigation itself, an element beneficial to both firms and claims organizations.

The development of the Legal Electronic Data Exchange Standard (LEDES) was the third catalyst in the advance of electronic invoicing. Released in January of 1999, the LEDES format made it easier for firms to submit invoices in a common format to potentially multiple e-billing vendors that had been selected by insurance carriers and firm corporate clients.

The Growth of Collaborative Case Management

In the wake of industry tensions around third-party auditors, carriers began to recognize that legal bill review was just one of many ways in which to improve their litigation costs. The more visionary of litigation and claims executives recognized that a closer partnership with their firms, with increased communication and collaboration on specific claims, had a significant impact on not only keeping defense costs in check but also on achieving better results.

The advent of web-based applications, hosted by professional technology providers, created an opportunity for insurance companies to work in collaboration with their law firms in a manner that had not

been possible before. Reluctant to allow law firms entry into their own data and claims systems to share case developments or to provide budget recommendations, insurance carriers found it difficult to host these applications. This reluctance stemmed from security concerns (*i.e.*, not allowing access behind the insurance company firewall) and from technological limitations (*i.e.*, an inability to enable firms and claims staff to do and see different things within the same application).

Externally hosted applications on the web, however, could be accessed by both firms and carriers, and could pass information to and from the insurance company claims systems. The most sophisticated of these applications could create a different look and feel, presenting different data fields and information, depending on whether the user was from the law firm or the insurance company. E-billing could now be part of a larger and more holistic approach to managing and collaborating on claims.

The Growth of Technology

Insurance carrier adoption of both e-billing and collaborative case management tools has grown exponentially since 2000. Initially adopted by only the larger (or more visionary) of the industry carriers five years ago, 2003 and 2004 saw the adoption of such tools by smaller insurance companies, including those with a stronger focus on firm communication.

In 2005, as a number of larger carriers have focused intently on reducing their overall number of defense firms, and on converging their defense panel into a smaller number of legal services partners, collaboration is seen as a key ingredient to this success. Members of the defense bar will see more of these technology applications affect their interactions with their insurance company clients and principals in the next two years than they have ever seen previously. In July of 2004, a legal industry survey revealed that 96 percent of firms reported at least one of their clients (including non-insurance clients) had moved to an e-billing system in the 12 months previous. This includes clients large and small. TyMetrix, Inc., for example, provides applications to insurance carriers that manage over \$300 million in annual legal expenditures, and others with less than \$10 million in legal costs per year.

Business Drivers Overview

With the proliferation of technology applications affecting so many defense firms, exploration of the fundamental business needs of insurance carriers who seek out these tools is beneficial. What are they seeking to accomplish? Defense firms who have a deeper understanding of these objectives find that such knowledge assists them in engaging in dialogue with insurance carriers about how they can partner more closely to achieve their goals.

At the highest level, insurance carriers have sought to accomplish four important objectives with the case management and e-billing solutions they have put in place:

- Create access to management information on a single, unified platform;
- Reduce litigation costs, both with firms and non-firm litigation support vendors;
- Improve litigation outcomes (reduced indemnity costs);
- Create deeper and more productive relationships with their defense firms.

Insurance companies have worked diligently to overcome the limitations of their data management and information systems. In a technology environment where distribution systems (underwriting, policy issuance, agency management) frequently cannot communicate effectively with claims management systems, and where claims management and accounts payable systems are frequently in two different computing environments that may not communicate with one another effectively, insurance companies have focused intently on creating single, unified platforms on which to house their management information.

Centralizing data in large IT environments with older applications is not easy. Insurance carriers have to decide whether to build or buy systems to support this need, and too often decide to build their own proprietary systems, which have proved difficult to maintain and expensive to update. Despite a strong explosion of data “warehouses” in the last five years, insurance companies remain intently focused on creating an environment in which they can locate key data elements quickly and easily so as to make better informed decisions.

It remains surprisingly difficult for many insurance organizations to produce key data important to the purchase of legal services. How much do we pay this firm annually?

How many firms are we using? What are their rates? How many cases were assigned to the firm? Who within the firm works on our cases? What were the outcomes on those cases? How did those outcomes compare to other firms? What specific types of claims are trending positively or negatively? Do some firms consistently get better results than others? These are just a few examples of questions still difficult for many claims organizations to answer with ease and without delay. The ability to produce such information at the click of a button delivers significant benefits and is extremely desirable to the insurance market.

Many defense firms might shudder when they hear that an insurance carrier has initiated a renewed focus on “reducing litigation costs.” Historically, this might have meant only one thing—hourly rate reductions or a greater percentage of invoice reductions. In a more technology-supported, data-driven industry, however, it might mean something quite different. As several more visionary chief claims and litigation officers have suggested, it might mean a consolidation of firms, paying specific attorneys more (not less) to ensure their involvement on specific cases, alternative fee structures that offer more upside to firms, and a recognition that spending more on the defense costs of particular cases will translate to the reduction of superfluous indemnity costs—which is the ultimate goal for carriers today.

The adoption of e-billing and collaborative tools now available makes it possible for insurance carriers to examine these scenarios in a more data-driven fashion, and to support what many legal sourcing experts know intrinsically. One Chief Claims Officer of a smaller specialty carrier purchased services from TyMetrix, Inc., because so many of her defense attorneys, unable to sustain lowered hourly rates, had moved to the plaintiffs’ bar. She wanted to use the billing and outcome data produced from the invoices to make a stronger case to her board members that the utilization of specialized firms, at increased hourly rates, would reduce the company’s loss payments and improve the overall loss ratio.

Such philosophies can paint the objectives of e-billing with a different perspective. Used in this fashion, the primary benefit of having invoices in electronic format becomes not what can be reduced from an invoice,

but what the data can suggest. Which firms use more associates than partners? Does the use of more partners improve or reduce the severity of outcomes? On which types of cases? How does the firm practice? Does it spend more time on strategy and development, or case assessment, or client reporting, or negotiation? What is the general timing of discovery employed by a specific firm and how might that compare to other firms? Do these differences have any appreciable impact on the outcome of specific types of cases? Are their best practices apparent in the data than can be shared as part of overall litigation management philosophy?

The experience of one insurance company, examining their firms’ management of a specific type of case in a specific jurisdiction, reveals an interesting outcome. In examining the handling of a particular claim type by all of their primary firms, and after adjusting for severity exposure and reserve levels, one firm clearly stood above the others in achieving desirable outcomes. Yet a survey of claims professionals working with that firm revealed a general lack of firm popularity and a consistent complaint that the firm routinely ignored the litigation guidelines. For these particular low-severity, high-frequency claims, the guidelines mandated low partner involvement, high reporting, and a high degree of case assessment and strategy activities. But the firm achieving the best results had high partner involvement, conducted very little client communication (reporting), and moved quickly to negotiation. The valuable data available to the insurance carrier allowed them to examine whether their guidelines were the most appropriate for that specific claim type.

Experts have long affirmed that two parties who understand each other’s objectives and limitations can have more sustained and productive business relationships than two who do not. This is fundamental to good business. The metrics and the data provided with the most sophisticated of the collaborative case management and e-billing applications provide key points around which to examine these mutual goals and to distinguish firm outcomes and processes.

From Past to Present

Today, the leaders among the case management and e-billing technology solutions will

Insurance Law Committee

support the most collaborative relationships possible between an insurance company and a defense firm. The technology supports relationships in which either party can:

- Communicate about case developments within the same application;
- Assign tasks and calendar items to each other within shared case calendars;
- Track and monitor relevant case events and developments;
- Identify specific cases that are exceptional or that meet certain criteria and deserve additional focus;
- Propose, edit and collaboratively work on budgets, strategies, case assessments, closing evaluations and litigation road maps;
- Track case expenditures against budgets that are specifically chosen from a library of budget templates;
- Exchange, edit and manage documents

specific to cases while sharing common document libraries;

- Share and track firm-specific information, such as areas of expertise, success metrics, geographic coverage, credentialing information, along with the firm's engagement agreement or contract;
- Submit, manage and monitor legal invoices and track those invoices against pre-established billing guidelines that are set on either a firm or case-specific basis;
- Utilize different data capturing templates depending on case type, line of business or other distinguishing hierarchies.

Importantly, existing technologies enable law firms and claims organizations to do all this, while feeding information from their existing time and billing software and back and forth with their existing claims man-

agement applications. Insurance carriers are closer than ever before to having truly collaborative relationships with their defense firms, and being able to generate the data needed to manage costs, improve outcomes and collaborate more effectively with their defense firms.

Defense firms will see more of these technologies emerge as key elements in their relationships with insurance carriers over the next five years. To many this will represent an opportunity to partner with their insurance company principals and clients, to showcase their own distinguishing characteristics, and to help meet their mutual objectives and mutual gain. The successful law firm in the future will embrace these technologies and perhaps even help to drive and direct these developments with their insurance company partners. 