

RISK & ONLINE INSURANCE®

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Litigation Management



“The very first thing that you need to have a good litigation strategy is to have a strong partnership with your attorneys,” said Janice Van Allen, director, risk management at Wal-Mart in Rogers, Ark.

Litigated claims are among the most complex and costly workers’ comp files employers face as the claims age and grow, said Misty Price, director of analytics at Westlake Village, Calif.-based national law firm Adelson, Testan, Brundo, Novell, & Jimenez.

“They become the tail that wags the dog,” she said.

Typically, however, workers’ comp litigation is managed one claim at a time by adjusters working without an overall litigation strategy, Price said. That slows claim resolution and impedes workers’ comp program performance, she added.

“A lot of us feel like our hands are tied because the TPA sometimes decides who the attorneys are or we have carriers [who say] we have to pick from [a certain] panel. But as the employer, as the client, you really do have an opportunity to drive that and determine what firms you want to have as part of your program.”
- Janice Van Allen, Wal-Mart director, risk management.

COMPENSATION LITIGATION STRATEGY

An outcomes-based litigation strategy calls for benchmarking workers’ compensation attorney performance. By: Roberto Cenicerros

Wal-Mart Stores Inc. benchmarks attorney performance as part of its workers’ compensation-litigation strategy.

The “outcomes-based” approach to litigation management the employer embarked on relies on claims data analysis and met-

rics to consolidate the number of workers’ comp attorney firms it hires, while forming tighter relations with a smaller number of lawyers it partners with, speakers told the Risk and Insurance Management Society Inc.’s annual conference held April 27-30 in Denver.

Adjusters generally select lawyers to litigate a case based on their relations with specific attorneys. Meanwhile, employers often do not receive direct attorney feedback on a case's progress, despite practices such as holding employer and adjuster claims reviews, Price said.

An outcomes-based litigation strategy, in contrast, relies on a multivariate analysis using an employer's claims data. Metrics are used to benchmark attorney performance and align specific lawyers with cases, depending on claim facts and knowledge about an attorney's skill sets and experience.

"What I can tell you [after] spending a lot of time modeling data is that a claimant attorney [selected for a case] tells you a whole lot about where that claim is going," Price said.

Employers should take charge of selecting attorneys to partner with even though third party administrators or insurers often assume that responsibility, Van Allen said.

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times decides who the attorneys are or we have carriers [who say] we have to pick from [a certain] panel," she explained. "But as the employer, as the client, you really do have an opportunity to drive that and determine what firms you want to have as part of your program."

As part of its overall litigation strategy Wal-Mart has consolidated the number of attorney firms it works with nationwide. In California alone, for example, the retailer reduced the number from more than 20 to three "of our solid firms," Van Allen said.

The consolidation efforts required considerable work including deciding whether the employer should leave open files with the attorneys that had been working them or transfer them to a vetted firm.

"We looked at each file individually, but for the most part we did move them," Van Allen said. "In doing that we have seen huge results over the last few years, improving our litigation, lowering the number of files we have currently in litigation."

Other aspects of Wal-Mart's strategy include avoiding litigation by taking care of its employees with quality care early on. But for litigated cases, knowing a law firm's practices, such as their case load and lawyer compensation arrangements, is vital, Van Allen said.

Wal-Mart has also found success in requiring its selected law firms in large states such as California and Florida to cooperate with each other in a "one team approach."

"They are all representing us, we are the client," Van Allen said. "We want to make sure it doesn't matter which firm we are going to that they have the same philosophy, the same strategy and understand what our expectations are and we are working toward the same common goal."

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