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The Insurer Process of Vetting Panel Counsel: The ABCs of Pitching for Legal Work

I. The Panel Counsel List

Of the almost 6000 insurance companies in the United States, most utilize a centralized bank of legal counsel to handle litigated and pre-litigated files. This bank or list is often referred to as the Panel Counsel list. Firms regularly vie for the position of panel counsel as such a designation often results in increased work and opportunities to showcase talent. The benefit of being on a carrier's panel always boils down to dollars and cents. It means increased profits for firms. For this reason, individual lawyers and law firms work diligently to obtain coveted spots on the panel and to maintain the position.

Panel counsel firms have negotiated rates, typically less than regular rates, the difference of which is offset by the volume of work. Panel firms also follow strict company guidelines that specify carrier requirements for billing, reporting, and cost mitigation. Panel counsel, while retained by the carrier, also has the ethical obligation to put its client's (often the insured) best interest above that of the carrier. This unique tripartite relationship sometimes faces unavoidable conflict that may require creative solutions in order to preserve the relationship and guarantee that focus remains on the shared outcome, which is always a fast-cost-efficient resolution.

The Panel Counsel Makeup

Insurance companies utilize panel counsel lists that categorize individual attorneys and/or firms based on jurisdiction, practice area and rates. Panel Counsel can be regional (specific to a region only) or national (different offices of the same firm used all over the country). Within some companies, panel counsel is separated by department. For example, a carrier may have a different Primary Department panel list from its Excess Department panel list. Others separate their panels by the discipline, such as a Construction Defect panel and an Environmental panel. While some firms may overlap lists within companies, rates are often negotiated based on complexity of the cases

assigned as well as industry standard. For the most part, rates within a specific jurisdiction will be similar or within a capped range.

Coverage vs. Defense

A company's coverage panel often differs from its defense panel for one main reason: the client is different. Coverage counsel represents the carrier and evaluates coverage issues as they arise under the policy. Defense counsel represents the insured and has no interest in how coverage is evaluated or allocated. While firms can wear both the coverage and defense hat, it is rare that the same attorneys who are on a defense panel list are also on a coverage panel list. The main reason for this defined distinction is to prevent conflict.

II. The Process of how Firms become Panel Counsel

The "Application Process"

More often than not, a non-panel firm's main goal is to be on a carrier's panel list. This elite distinction allows for increased revenue and notoriety. The process of acquiring panel counsel status varies from carrier to carrier. While some companies utilize formal application processes that include interviews and references, others rely strictly on word-of-mouth and industry reputation in choosing which attorneys and/or firms to add to panel.

Choosing Counsel

Once a firm is on a company's panel, it still takes time to get significant work load. The potential panel pool is significant. There is an endless number of competent firms capable of obtaining the same results. What sets some firms apart is their appeal to the carrier. Adjusters and panel managers choose firms based on work product and success rate. In addition, when a firm is given that first opportunity to handle a matter, it is crucial that the lawyer shines. Responsiveness and a high-quality work product are key in determining whether the lawyer or firm will continue to get work. In addition, once there is momentum in the rate of assignments going to a firm, the firm must remain consistent in order to maintain its position and reputation on the panel.

The Request for Proposal (RFP)

In order to level the playing field and create a platform for comparing law firms, many major buyers of legal services have institutionalized the panel selection process and invite selected law firms to submit Requests for Proposals (RFPs) to provide outside legal services. These RFP's typically set forth a description of the specific legal services the company is seeking to purchase. Some RFP's further suggest a pricing format (hourly, flat fee, task billing, hybrid, etc.) and solicit firms to propose alternative fee arrangements (AFAs).

The RFP process should be led by the law firm's proposed relationship and service partners. These attorneys should provide the soliciting company with the firm CV which, in turn, should set forth the biographies and expertise of the firm's staff.[1] The response to the RFP should identify the criteria the firm will utilize in identifying which attorneys will service this client. Law firms that are experienced with the RFP process often offer robust descriptions of their team management and quality assurance processes.

The lead partners should disclose their client lists, case studies, litigation history and publications. Procedures and timelines for conflict checks should be identified.

Companies seeking to procure legal services through an RFP process normally establish a strict timeline for the legal selection process. These timelines are in fact deadlines and must be precisely adhered to.

Firms responding to an RFP should avail themselves of the opportunity to discuss the company's RFP process with designated in-house liaisons. Such discussions will provide invaluable insights into what the company is looking for.

To be successful in securing new work, law firms must be able to articulate their own individual "Value Added" proposition. Law firms that are invited to submit responses to RFPs are expected to be at the top of their fields. It is a given that they have outstanding attorneys and staff and obtain consistently excellent results. Value added is the secret sauce that separates the good candidate from the selected firm.

Value added can mean many things. It can refer to a firm's ability to leverage technology and analytics to streamline the litigation process or it can address a firm's ability to provide a "white glove" client experience that is client centric and driven. Alternately it can mean the ability of a firm to identify cutting edge issues and leverage these issues so as to provide clients with exceptional innovative defenses.

The most important value-added proposition that law firms in the insurance industry can utilize to differentiate themselves is metrics. Law firms should track their closed case outcomes, work in process and inventories and be prepared to share this information with potential new clients. In today's day and age, the single most important value proposition a law firm can offer new clients is data that shows that it is

[1] These statements should of course be absolutely accurate. The worst thing a firm can do is indicate that it has an expertise in an area and accept an engagement when in fact it lacks seasoned staff capable of litigating the relevant procedural and substantive issues.

providing outstanding legal work in a time and cost effective manner. Insurance company decision making is increasingly driven by big data, metrics and predictive analytics and law firms that want to flourish in this new environment must simply get on board and demonstrate their data bona fides.

The Importance of Diversity in Panel Selection

A new and key component in choosing panel counsel is diversity. Diversity affects the bottom line and offers a broad perspective in evaluating and handling claims. It is proven to be a successful catalyst for conflict resolution.

One prevailing theme of successful businesses is that a company's active pursuit and engagement of diverse talent internally and externally yields more successful and sustainable outcomes than utilizing non-diverse talent. Particularly in a client-based industry, such as insurance, having a company reflect the marketplace is guaranteed to increase profits. Studies show clients are more likely to engage in repeat business with companies that have employees who look like them. In addition, companies with diverse executives are slightly more successful, and show a faster growth rate, than companies that lack executive diversity. Based on this principle, utilizing firms with diverse talent also broadens the experience pool and allows insurance adjusters to uncover implicit biases that may lead to errors in the claims and coverage decision making process. Diverse litigation teams have been shown to be more likely to scrutinize facts and remain objective in the information gathering process. This dynamic encourages each member of the tripartite relationship to be intellectually rigorous thereby keeping the group's joint cognitive resources sharp and vigilant.

Legal-claims teams populated by individuals from diverse cultural and socioeconomic backgrounds are more likely to identify and offer innovative strategies for confronting hot button litigation issues. By including individuals who have had different backgrounds and experiences the team becomes more attuned to nuances in claims. Creating a more diverse workplace with a breadth of experiences helps to keep team members' biases in check, make individual's question their assumptions and ultimately fosters better claims management.

Experience demonstrates that jurors are more likely to identify with people like themselves. By partnering with diverse trial team's insurance adjusters can dodge the costly pitfalls of conformity and group think and develop new and innovative approaches to claims resolution. By employing individuals from different genders, races, religions, nationalities and sexual orientations, adjusters can boost the teams' joint IQ and EQ potential and the company's bottom line.

Pitch Meetings

Law firms fortunate enough to survive the RFP process should carefully plan for the "pitch" meeting. The key to success in pitch meetings as in litigation and life is preparation. Law firms must continue to do their homework. The relationship and service partners should continue to investigate the company and its needs, identify the ultimate decision-makers, research the people who will be interviewing the firm, catalogue the relationships between the law firm and the company and determine what the core motivators are for the potential client (i.e., quality, price, case cycle time, etc.). Law firms should ask the company's RFP liaisons what the expectations for the pitch meeting are with respect to format, time constraints and participants.

Firms should assemble the core members of a proposed new client team long before any pitch meeting. All members of the team should be fully briefed on the client and the industry and be prepared to articulate the firm's value propositions. Care must be taken to organize the team that will in fact service the client. Such a team should be diverse and possess the right expertise, personalities and seniority to meet the client's needs.

If permitted, firms should prepare customized informational packages for pitch meetings that showcase their capacities. Written materials should demonstrate how a firm has utilized creative approaches in the past to help similarly situated clients meet their legal needs.

In preparing for a pitch meeting a firm may want to identify some examples of how it is helping current clients to respond to legal issues the prospective client is confronting. Litigation is ultimately about story telling. A few well-crafted war stories buttressed by metrics that quantify legal results may go a long way to establishing a firm's value proposition.

Once in a pitch meeting, the focus should be on listening rather than talking. Let the prospective client identify what its need are. The more a prospective client talks, the better a firm's chances are of getting work. When talking attorneys should concentrate on asking questions that show off their understanding of the company's business imperatives.

Pitch teams should offer some free advice and keep the focus on how they can be of service to the potential client. Objections as to size or price should be acknowledged and responded to head on. Finally, law firms should be enthusiastic and demonstrate why working with their team will be fun and make the company's burden lighter.

Attorney's leading a new client team pitch meeting must read the tea leaves. They must make the ask but be careful to not oversell themselves or their capacity. Doing good work one file at a time is ultimately the best recipe for getting more files and more work.

III. The Lawyer/Adjuster Relationship

Developing a Relationship with the Panel Manager

It is important for firms to identify who is in charge of a company's panel and foster a relationship with the person(s). Maintaining a good relationship with the panel manager(s) is particularly important to assist in resolving any issues that may arise with regard to company guidelines or litigation management. Resolving issues quickly prevents undue bias towards a firm that could result in a strained or severed relationship.

Maintaining a good relationship with clear communication is the panel manager's main objective as well. A good relationship with counsel facilitates early resolutions. A strained relationship between counsel and the panel manager can result in restricting work provided to individual lawyers while not penalizing an entire law firm. Carriers often specify that they "hire lawyers, not firms". However, if a persistent problem exists with several lawyers from a particular firm, a carrier could choose to end the relationship with the entire firm. For this reason, having a strong relationship with the panel manager allows the firm to address and correct issues before they become excessive.

Utilizing the Adjuster as a Resource

The most useful asset in understanding the carrier's rules and procedures is the claims adjuster. Since the claim's adjuster has firsthand knowledge on the work product being delivered by counsel, it is imperative that counsel fosters a good relationship with the file handler. In addition, an open dialogue between the adjuster and counsel is necessary to maintain a smooth operation and establish a level of trust. The file handler relies heavily on counsel's evaluation and guidance in the claims handling process. If the adjuster does not trust counsel, the relationship can become strained and the file may be negatively affected. In addition, the adjuster is available – and should – guide counsel through the panel process and company-specific nuances.

IV. The Importance of Diversity in panel selection

Carrier Rules and Procedures

Carriers place several requirements on its panel firms in order for the firms to stay on the list. Insurance companies provide their panel firms with guidelines that require timely reporting, cost control and the shared goal of early resolution. Carriers place timely reporting at the forefront of its requirements in an attempt to avoid being blindsided. The fastest way for a lawyer or firm to get removed from a panel is to surprise the carrier with a missed deadline or an impending one that prevents the carrier from having the opportunity to adequately evaluate its exposure on a matter.

Companies require adjusters and panel counsel to engage in advance planning in order to adequately handle a claim file. Assignments are formally made through assignment letters also known as retention letters that specify the insured's information, the details of the assignment (coverage or defense), the reporting deadlines (including a copy of the carrier litigation management guidelines) and the agreed upon rates. More than likely there is a deadline for an initial comprehensive report to be provided by counsel and several follow up deadlines and report requirements. Counsel is required to constantly evaluate exposure and the possibility for early resolution while focusing on cost savings.

The Action Plan

The litigation management plan should be the best possible roadmap for handling the case at any given time. Accordingly, the adjuster and counsel should work together to amend and adjust the plan as new information becomes available in a case. No two litigation plans are the same and counsel should be able to tailor the resolution plan around the facts and circumstances as they evolve. As the case develops, so should the plan of action. Adjusters are to work with counsel to steer the plan to meet carrier needs.

Communication is key in the relationship between the adjuster and counsel. Communicating important case deadlines are paramount to the success of any case handling. Panel counsel must convey conference and mediation dates, trial dates and any other important case scheduling deadlines in a timely manner. This is necessary in order to allow adjusters to meet internal deadlines and adequately escalate matters. The adjuster often has to provide management with specific updates based on the case posture.