

**The 2019 CLM**  
**Litigation Management Study**  
“State of the Union”  
**Report of Findings**

March 2019



2019 CLM Litigation Management Study  
Report of Findings  
March 2019

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## Introduction

### Thank You to Our Steering Committee and Participants

We wish to thank each of the more than 80 claim and litigation executives who either served on the Steering Committee or who responded to the Study's survey (or both). Without their participation this Study could not have been possible.

The dedication of those involved is a reflection of their commitment to the industry and to their interest in promoting and furthering the highest standards of claims and litigation management. We thank them very much.

### Thank You to Our Sponsors

We also want to thank each of the five sponsors who made this Study possible. Without their underwriting support the effort and time required to perform a Study like this would not have been possible.

Our sponsors recognize the importance of understanding emerging trends in the litigation management field, and each is a thought-leader in their respective litigation-oriented fields. Our sponsors are:

Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet LLP  
Esquire Deposition Solutions  
McAngus Goudelock & Courie, LLC / MGC Law  
Ontellus  
Wolters Kluwer ELM Solutions

More information about each sponsor, and a link to their organizations, can be found at the end of this Report.

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## About the 2019 CLM National Litigation Management Study

This is the third Litigation Management Study commissioned by the CLM. The first was performed in 2011; the second in 2015.

In 2019 we expanded the size and scope of our Steering Committee and the number of questions. The Study's approximately 160 questions were designed to capture the "State of the Union" in the litigation management industry — exploring how litigation executives are deploying resources, thinking about law firm performance, using staff counsel operations, addressing cost and quality issues, and facing new industry challenges.

We believe the information shared in this Report can help to facilitate improved communication and working relationships between litigation executives and the defense firms with whom they partner. We know many attorneys, especially newer or younger attorneys, feel that they would benefit from knowing about the claims organizations with which they work.

How litigation executives organize their litigation resources, how they define their litigation objectives, and what they want most from counsel, are several examples of data elements that are critically important to aligning needs and expectations between counsel and their principals.

In some cases, we have drawn comparisons to our 2015 findings. However, we view the Study to be a point-in-time view of the industry and, given the relatively confined data set, we caution against drawing too many conclusions about then-to-now trends.

We encourage readers to use the Study for the primary purpose for which it was intended — as a framework and foundation on which all members of the litigation management industry — including claims organizations, litigation vendors, and law firms — can collaborate and exchange ideas about how to promote the highest standards and best practices in our industry.

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## Steering Committee

This is a Study of the industry, by the industry. As such, our Steering Committee members reviewed each question and added additional ones. One of our objectives was to help readers identify how and what their industry colleagues feel about critical issues that underpin the relationships between all parties in the litigation ecosystem (claims organizations, vendors, law firms, staff counsel). A second objective was to help each of these constituencies identify opportunities that are helpful to their own practices. A third was simply to provide a framework of data points that all members of the industry can discuss and explore together.

The 2019 Study's Steering Committee members are:

- Michael J. Baumel, Esq., Head of North American Claims, Axis Capital
- Robert Biagi, Esq., Director of Litigation Services, Eastern Panel Counsel, Claims Legal, The Hartford Financial Services Group, Inc.
- Wade Bolin, Senior Vice President, Chief Claims Officer, The Hartford Steam Boiler Insurance
- Michael Bondura, CPCU, CLU, ARM, SVP, Chief Claim Officer, Berkley Mid-Atlantic Group
- Dan Brunson, Chief Legal Officer, American Access Casualty Company
- Kenneth P. Carter, CPCU, Vice President, Claims Operations, Merchants Insurance Group
- David Conner, MBA, CPCU, Vice President and Chief Claims Officer, United Fire Group
- Richard Dowd, Regional Vice President, Claims, Atlas Financial Holdings, Inc.
- Tom Dunlop, Esq., Advisor, Suite 200 Solutions
- Jim Everett, Vice President of Claims, Everett Cash Mutual Insurance Company
- Brandon Fahey, JD, MBA, Manager, Specialty Claims, Continental Western Group
- Krista L. Glenn, Chief Claims Officer, IAT Insurance Group
- Rusty Goude-lock, Esq., Founding Member, McAngus Goude-lock & Courie, LLC / MGC Insurance Defense
- Dean Harring, Advisor, Suite 200 Solutions
- Stephen Hunckler, CPCU, AIC, CCP, Chief Claims Operations Officer, State Compensation Insurance Fund
- Al Luther, Advisor, Suite 200 Solutions
- Matt McColley, Vice President, Chief Claims Officer, Berkley Human Services
- John McGann, Head of Litigation and Vendor Management, AXA XL

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- Jeff Mills, SCLA, CIOP, Executive Vice President and Chief Claims Officer, American National
- Bill Mitchell, Esq., Managing Partner, Crusier, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP
- Kevin Mohr, Head of Claim Staff Counsel, Legal Operations, The Hanover Insurance Group
- Linette Ranieri, Vice President and Chief Resolution Officer, Berkley Life Sciences
- Jan Williams Shore, CIC, CPIW, Casualty Claims Technical Consultant, Nationwide
- Tony Smarrelli, Senior Vice President, Claims, Kemper Insurance
- Mike Smith, Senior Vice President, Claims, Union Standard Insurance Group
- Julianne Splain, Vice President, Claims, CapSpecialty
- Patrick Walsh, EVP, Chief Claims Officer, York Risk Services Group
- Meg Weist, Esq., Vice President, Claims and Litigation Management, EMC Insurance
- Dan Winkler, Leader, Claims Legal, Westfield Group
- Michael D. Zeoli, Vice President, North American Claims, Chubb



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## Study Participants

Almost 80 separate organizations participated in this Study. We are deeply indebted to them for their participation.

They included:

- Acadia Insurance
- Acuity Insurance
- Alliance of Schools for Cooperative Insurance Programs (ASCIP)
- American Access Casualty Company
- American Contractors Insurance Group
- American National
- American Trucking and Transportation Insurance Company, RRG
- Anchor Risk
- Arrowpoint Capital
- Atlas Financial Holdings
- AXA XL
- AXIS Insurance
- Beringer & Associates
- Berkley Human Services
- Berkley Life Sciences
- Berkley Mid-Atlantic Group
- Black Car Fund
- Canopus US Insurance
- CapSpecialty
- Carolina Casualty Insurance Company
- Catalina U.S. Insurance Services
- Catholic Mutual Group
- Christian Brothers Services
- Chubb
- Constellation
- Continental Western Group
- Co-operative Insurance Companies
- CUNA Mutual Group
- ECM Insurance Group
- EMC Insurance Companies
- Federated Mutual Insurance Company
- Frankenmuth Insurance
- Gallagher Bassett
- Germania Insurance
- Good2Go Auto Insurance
- Great American Insurance

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- Housing Authorities Risk Retention Pool (HARRP)
- Interstate Cleaning Corporation
- Kemper Insurance
- Lancer Insurance Company
- Liberty Mutual Insurance
- Main Street America (MSA)
- MCPHS University
- Mennonite Mutual Insurance Company
- Merchants Insurance Group
- MiddleOak Insurance
- Missouri Employers Mutual
- Motorists Group
- Nationwide Commercial Casualty
- Nationwide Insurance
- Navigators
- Norcal Mutual Group
- OBLIC
- Oregon Mutual Insurance
- PAJUA
- Palm Insure
- Pekin Insurance
- QBE
- Security First Insurance Company
- SFM Mutual Insurance Company
- State Compensation Insurance Fund (SCIF)
- Strategic Comp
- Swiss Re Corporate Solutions
- Swyftt
- Texas Assn. of School Boards (TASB) Risk Management Fund
- Texas Windstorm Insurance Association
- The Hanover
- TMHCC
- Union Standard Insurance Group
- United Educators Insurance
- United Fire Group
- USLI
- Westfield
- York Risk Services
- Zurich North America

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## **Key Findings**

Key findings from the 2019 CLM Litigation Management Study include the following:

### **Overall Litigation Program Importance and Visibility Remain Very High**

Litigation management remains a highly important function within the property and casualty claims arena. For many claims organizations, more is spent on outside litigation expenses than on costs related to running the claims department.

- 71% of the participating organizations said the effectiveness of their litigation program has been discussed with their organization's CEO within the last 12 months.
- 75% of the respondents said that "litigation management effectiveness" is getting more attention from their organization's senior management when compared to three years ago.
- 49% said they have larger litigation departments than three ago. 33% plan to add additional staff in the next 12 months.

### **Litigation Inventory and Costs Have Increased for Many Organizations**

In most organizations, litigation inventory has risen when compared to three years ago. And, costs per file are perceived to be greater as well.

- 43% of respondents reported higher inventories. In 2015, 49% reported higher inventories, so there may be some leveling off of inventory counts. Still, for almost half the participant pool, there is more litigation to manage.
- 24% reported "the same levels" of inventory, whereas in 2015 this number was 11%.

The primary reasons given for changes in inventory levels were underwriting focus, followed by changes in the law, and then claims management strategies. Change in litigation management focus or practice was the lowest ranked factor for any change.

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- 50% of the Study's participants reported an increase in per-file litigation costs. In 2015, only 44% of respondents said this.
- 17% reported a decrease in per-file costs. In 2015, 32% of the respondents said this. This presents challenges for all concerned.

### **Litigation Metrics Are Key - And Could be better**

Litigation metrics remain both a resource and a challenge for claims and litigation executives.

- Participants ranked the "helpfulness" of their current analytics and metrics as a 55 out 100. We view this to be a score that reflects that current metrics are "more helpful than not," but not dramatically so.

In terms of how this score has changed since 2015, we don't believe it has changed much. We asked the question in a slightly different format in 2015, but the response in 2015 was a 5.7 out of 10, equivalent to a 57/100 in our current rating and essentially similar to the current ranking.

- The most important metrics currently relied upon currently continue to revolve around average costs per file, case cycle time, and total case costs.
- The most desired metrics range from very basic ones (average indemnity paid and average legal fees per case) to some very interesting ones.

### **Outside Defense Firms Continue to Face Significant Competitive Pressures**

- 96% of organizations maintain a panel of approved firms. The most common panel size (22%) is 20-45 firms. This remains unchanged from 2015.
- 40% said they've decreased the number of firms on panel, when compared to 3 years ago. 22% said they've expanded panel size.
- We calculated a 20% net decrease in firms on panel over the past 12 months, for those organizations who provided this information.

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- More often than not, firms face a “team” environment when trying to get on panel with a new organization. Only 10% said that these decisions can be made “in the field.” 30% said an individual decision-maker can make this call; 40% said this is a corporate, team decision.
- 69% of participants said they maintain a formalized system for measuring firm performance. This is up from 64% in 2015.
- 62% of participants feel the landscape for law firms is more competitive than it was five years ago. However, this is down from the 84% who said this in 2015.
- Average invoice adjustment rates for panel firms are 6%. A full 97% said that they review invoices (or have invoices reviewed) for “reasonableness,” in addition to compliance. This includes questions around whether the time spent was “reasonable,” and whether it was “reasonable” to perform the activity in the first place.
- 8% of participants said they now require minimum billable increments of 3 minutes. More troubling for firms may be the fact that 17% of respondents said they would find value in having a lower billable increment than they current have.

**There is Some Good News for Law Forms - Sort Of**

- 54% of participants said that their relationships with firms are stronger than five years ago. Yet in 2015, 71% said this.
- 60% said that firms are “understanding their needs” better. Yet in 2015 70% said this.
- 48% said that firms are doing a better job of “creating value.” Yet in 2015, 58% said this.

One view of the decline in all three numbers from 2015 to 2019 is that it may simply be a reflection that there is “less improvement” to be gained. We don’t believe 2015 to 2019 changes take away from the fact that, in all three categories, participants reported improvement over the past five years in each area.

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**There are Numerous Opportunities for Defense Counsel in Today's Market**

We believe there are many opportunities for firms in today's environment. These include:

- **Become a “go-to” firm.** (The attributes of a “go-to” firm are described in the detailed portion of this Report). For 60% of the respondents, “money is not as important” with go-to firms. For 3%, money is “no object.”
- **Avoid the primary friction points cited most commonly by Study participants.** These include (in order of mention) not showing strategic focus, reporting, and billing issues.
- **Continue improving billing compliance.** The good news is that 56% said firms are “doing better” when it comes to billing. However, in 2015, 70% said this, so improvement may be tailing off.
- **Propose alternative fee arrangements.** 77% of executives said it is very rare for firms to propose these and almost half (47%) said that their reaction is positive, and even impressed, when such AFAs are proposed. Almost one in five (19%) of participants said that they are frustrated with the level of AFAs in place in their organization and would like to see more shared risk taking.
- **Find new ways to describe the Firm's value.** Participants ranked the ability of law firms to describe their value and to competitively distinguish their firm as a 51 out of 100. As “lukewarm” as this score is, we noted that it is a 66% improvement over the score given in 2015, and we regard that as a good thing. What executives are looking for in terms of described value is described in the detailed section of this Report.
- **Improve (or Tout) How You Communicate with your clients.** Communication and responsiveness was identified as the number one thing firms can do to make these executives' lives easier and the number one thing participants said they wish firms would do better. It also received the most mentions as a non-cost metric that participants track.

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- **Provide metrics about your firm.** 90% said that it is rare that a firm provides metrics. When firms do provide metrics 64% are impressed by that fact and 30% are neutral. Only 5% are skeptical of the data.
- **Include in your value proposition a discussion about process.** 100% of participants agreed that some attorneys are better at closing files than others. 43% of those believe that this success stems from processes used, rather than some innate or taught skill for closing files.
- **Ask for performance data.** 92% of the respondents said they will share the information they have about a firm with the firm if asked. Yet 96% of these executives said that firms do not ask for this information enough.
- **Help your clients to find qualified expert litigation staff.** 61% of the participants said it is harder to find expert litigation staff. In 2015, 51% said that. We view the wide professional networks maintained by defense counsel to be a core solution to that problem.

#### **Those with Staff Counsel Operations like Them**

Although Staff Counsel was not a core component of this Study, we gained several data points worthy of mention:

- 69% of those with staff counsel operations reported that their use of staff counsel has grown over the past three years.
- 85% of those with staff counsel believe staff counsel is more efficient than outside counsel
- 92% of those with staff counsel do not believe that outside counsel gets better results than staff counsel
- 15% don't require staff counsel to follow the same reporting guidelines as outside counsel
- 18% are not required to use the same litigation support vendors as outside counsel
- 31% of all participants (not just those with staff counsel currently) predict that the industry will have more staff counsel over the next five years. This is a prediction with ramifications for all industry participants.

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### **Core Philosophical Considerations Remain Similar to Prior Years**

Several data points help to identify some core beliefs held by senior claims and litigation officers.

- Trial rates remain relatively low. The number of bodily injury lawsuits resolved by verdict averaged 3.4% in the past 12 months (with a median response of 2%).
- Executives retain their belief that they are hiring the attorney, and not the firm. 51% say that they approve only specific attorneys to serve “on panel.” 84% say that they hire the attorney, not the firm. 93% said they associate “high performance” with the attorney and not the firm.
- 78% of executives do not believe that spending more money on the defense of a lawsuit will reduce the indemnity costs in that lawsuit.
- 84% do not believe that paying higher rates or compensation to law firms translates to better attorneys or better results.

Perhaps of some encouragement to the law firm community, both those numbers are lower than they were in 2015. In 2015, those numbers were 84% and 92%, respectively. This may reflect some greater appreciation for the benefits of additional defense work, and a correlation between higher rates and better attorneys, but we caution against putting too much stock in those changes, given the confined data set.

- 80% of the respondents agreed with the statement that “a majority of litigated claims settle later in the process than is necessary.”

### **Vendor Management Programs Remain an Essential Component of Litigation Management**

The importance of managing non-firm litigation expenses remains high on the priority list for Study participants. On average, they identified that 21% of their total litigation expenditures are spent on non-law firm vendors.



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- Litigation support penetration rates remain high, (but relatively flat when compared to 2015), across all primary categories, including court reporting, records retrieval, experts, and structured settlement programs.
- Formal mediation program penetration remains low, which we view to be an opportunity for participants. Also noted was the exceptionally low number (21%) of organizations that formally measure mediator effectiveness. We view this to be low hanging fruit as well.
- We did note a decrease in the number of executives who prefer exclusive vendor relationships (use of one single vendor in a category) and an increase in the number preferred panels of more than one provider.
- We also noted a high penetration rate of Social Media Search providers, a service area we have not previously focused on.

#### **What's On the Agenda for the Next Year?**

Participating executives identified the most important litigation management change, initiative, or program they want to focus on for the next 12 months. Overwhelmingly, these fell into three large buckets.

- First, there remains a strong focus on obtaining more detailed metrics (and scorecards) so as to improve both panel management and firm performance. Related to this are initiatives around predictive analytics for predicting case outcome and assignment.
- Second, there remains a strong focus on cost management, to include additional internal staff to review invoices, the selection and implementation of legal bill review providers, and improved software for better understanding litigation support expenses.
- Lastly, several executives reported initiatives designed to achieve earlier case resolution (both litigation and pre-litigation), including revised and earlier mediation processes.

It should be noted that 34% said that they have plans to incorporate more Artificial Intelligence (AI) into their program over the next 18 months. (24% are currently using AI, mostly in their bill review operations).

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## Participant Demographics

### Range of Outside Legal Fees

For 2019, our respondents reflect a diverse group of claims organization, with a wide range of litigation volume and spend. When compared to our 2015 Study, fewer mid-range companies participated in 2019, but greater number of smaller and larger ones participated. 77 companies participated in 2019. 76 companies participated in 2015.

Annual Outside Legal Fees % of Participating Organizations	
Less than \$20MM	61%
\$20MM - \$75MM	19%
\$75MM - \$300MM	10%
\$300MM - \$750MM	6%
Greater than \$750MM	4%

61% percent of the responding companies spend less than \$20MM annually on outside counsel. (This is up from 56% in 2015).

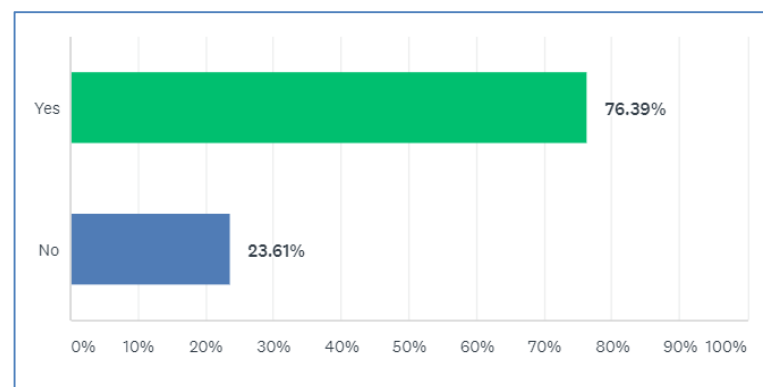
29% spend between \$20MM and \$300MM. (2015 results: 36%).

10% of our respondents spend more than \$300MM annually (in 2015 this group represented 7%).

### Line of Business Concentration

Almost three quarters of the respondents identified that one single line of business contributed to more than 50% of their litigation spend.

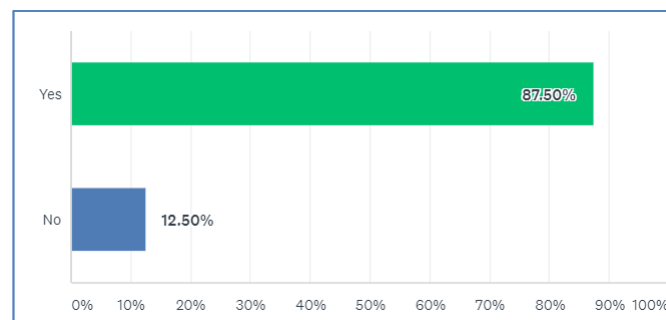
The primary lines of business identified included General Liability (35%), Professional Liability (17%), Auto (14%), Workers Compensation (12%), and Property (5%).



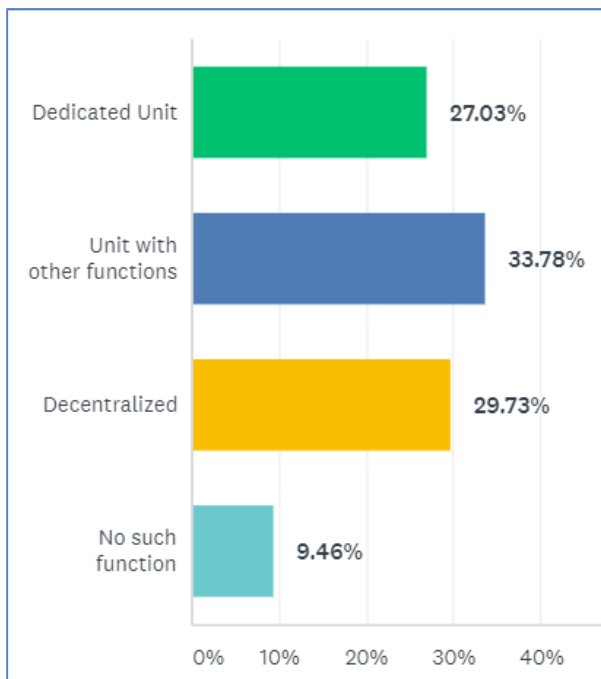
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**Does the line of business that comprises more than 50% of your litigation spend also constitute more than 50% of your litigated files?**

For the vast majority of these organization, the line of business comprising more than 50% of their annual legal fees also comprises more than 50% of their litigation portfolio (number of files).



**The Litigation Management Function**



We asked respondents to explain how their company organizes the litigation management function – defined as including macro-level decisions about the selection and management of approved law firm panels, selection and management of litigation vendors, oversight of legal billing operations, production and analysis of litigation metrics, creation and management of litigation guidelines for billing and general litigation processes. We defined the function as separate from the handling of litigated files.

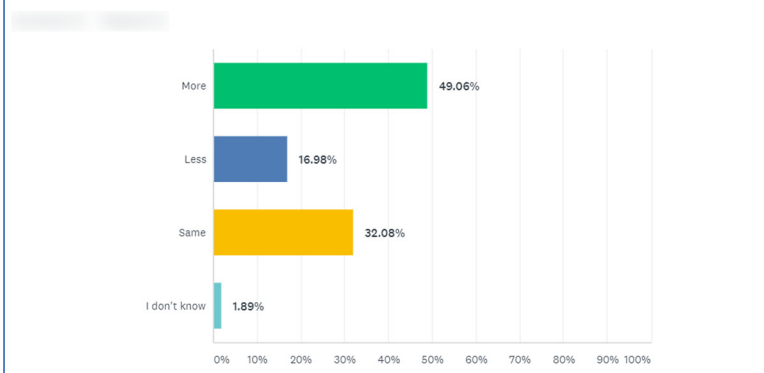
9% reported having no litigation function at all (all smaller companies)

30% reported a decentralized function, with decisions made in diverse fashion

61% reported a centralized unit or department that either does nothing but litigation management, or that has other functions as well.

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Is the employee count in your Litigation Unit or Department more or less than it was 3 years ago?



For those with Litigation units or departments, almost half (49%) reported more having staff than three years ago. (2015 Study results: 52%)

A full 32% said their staff is the same size. (2015 Study results: 42%)

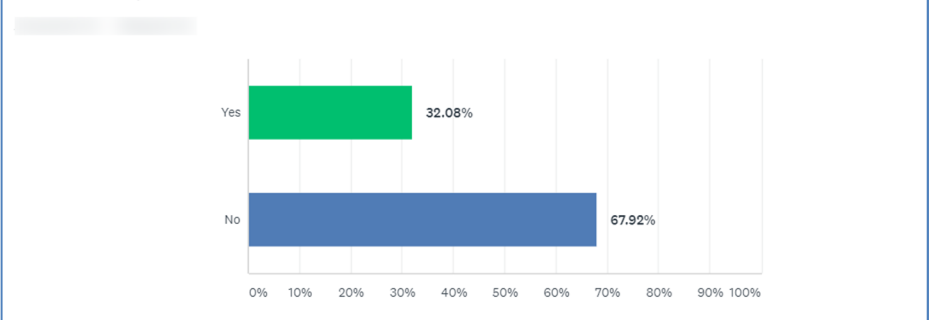
17% (essentially one in six) said their staffing is less than three years ago. This is a change from 2015, when only 6% of respondents reported a decreased litigation unit size.

We also noticed a change in percentage of respondents who said that they intend to add additional staff to their litigation management unit or department in the next 12 months.

33% plan to add additional staff (2015 Study results: 42%)

67% do not (2015 Study results: 58%).

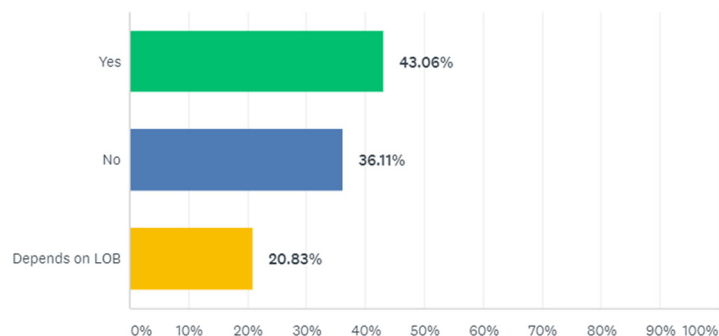
Do you anticipate that you will be adding to the staff count in this Litigation Unit or Department in the next 12 months?



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### Reassignment of Litigated Files

Does your organization re-assign claims files internally once they move from non-litigated to litigated or “represented” status? (I.e., to claims professionals who just manage litigated files?)



We have not previously asked whether claims organizations transfer files to dedicated litigation claims handlers once the file becomes litigated or the claimant becomes represented.

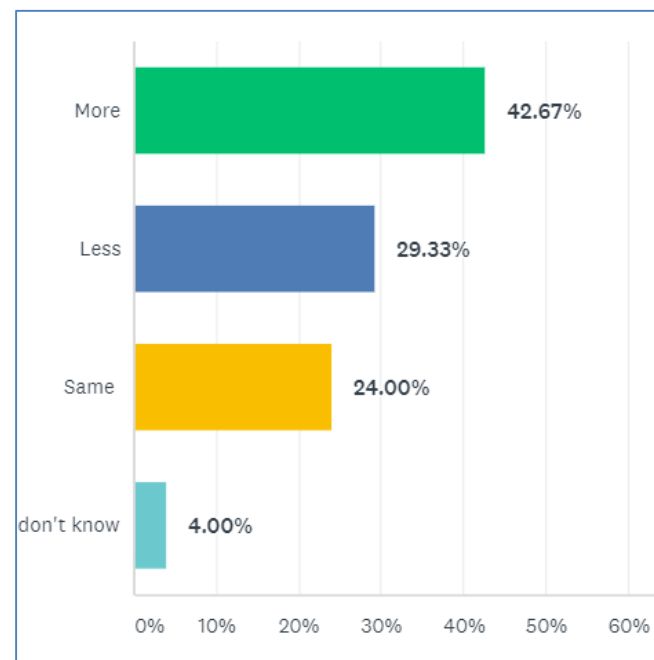
We were interested to see that only 36% of respondents do not reassign files. A full 43% always do, and for 21%, it depends on line of business.

### Change in Litigation Inventory

Compared to three years ago, 43% reported having a greater inventory of litigated files. (2015 results: 49%)

29% reported a smaller inventory. (2015 results: 36%)

24% reported the same amount of inventory. (2015 results: 11%)



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Core Reasons for Change in Litigation Inventory	Weighted Average
Underwriting changes	2.53
Changes in law or tort reform	2.25
Claims management strategies (i.e., early resolution)	2.00
M & A Activity - buying and selling companies	2.00
Environmental or cultural changes	1.91
Litigation management changes	1.89

We asked respondents to rank three primary reasons for their reported change in inventory. Their responses suggest that inventory changes (both increases and decreases) are related to more to underwriting and business decisions, and to changes in the law, than to other factors.

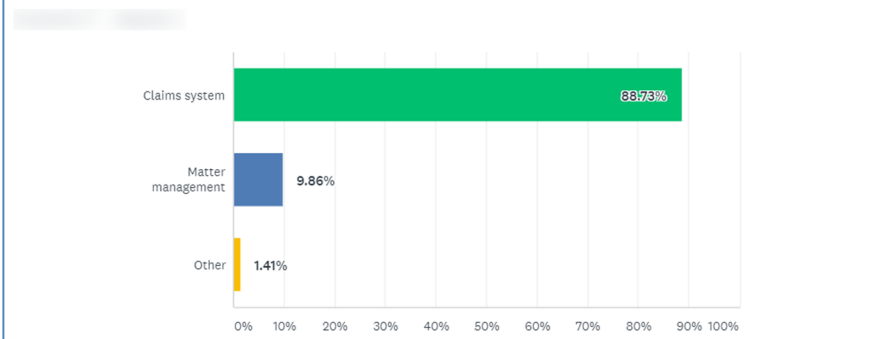
It may be worth noting that “litigation management practices” (i.e., “we are finding it easier or more difficult to get our litigated claims resolved”) scored the lowest as a core factor for litigation inventory change.

### Tracking Litigation Activity

We were interested in what technologies and platforms claims organizations use to track litigation activity, notes, plans, strategy and other core litigation activities.

A full 89% of respondents rely on their claims system for this activity. Approximately one in 10 uses a separate matter management system for this purpose.

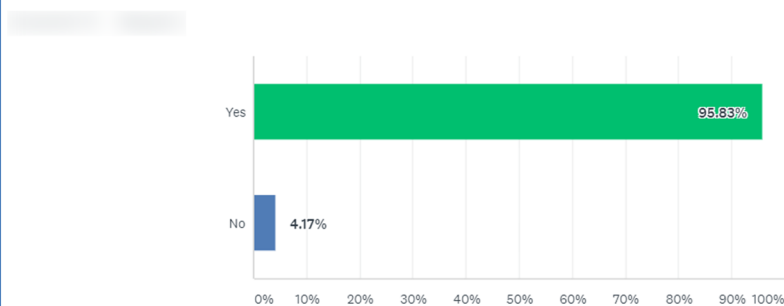
Where do your claims professionals track litigation activity, notes, plans, strategy and other core litigation activities?



## ABOUT THE USE OF LAW FIRMS

### Use of Panels

Do you maintain a Panel of “approved” law firms or specific attorneys to handle your non-coverage policyholder litigation? (Do not include coverage counsel)



Not unexpectedly, the use of pre-approved panels of law firms remains the norm. Only 4% said they do not. (Note: the number of organizations with panels matched our 2015 Study data precisely, at 96%).

Interestingly, 44% of those with panels said that they maintain one broad panel of firms or attorneys, regardless of case type.

51% said they maintain separate panels by line of business.

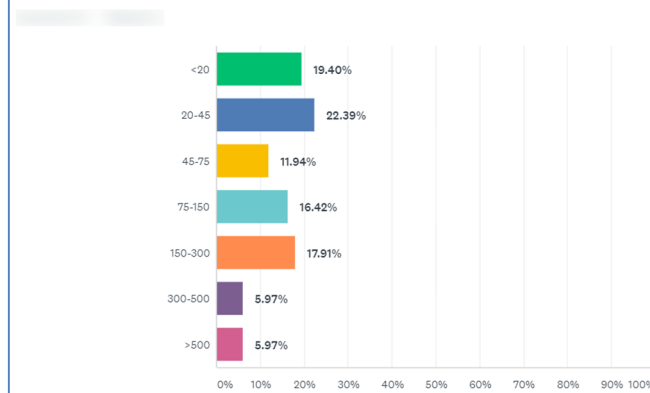
We also asked about the size of each organization’s panel (i.e., the number of law firms on the panel). The most commonly cited panel size range (22%) was 20-45 firms. The second most commonly cited size (19%) was less than 20 firms.

In 2015 the most common size reported was 20-45 firms, followed by 75-150 firms (17%).

In our 2011 Study, a full 36% maintained panels of 75-100.

We feel these numbers reflect a continuing trend of claims organizations maintaining increasingly smaller panels.

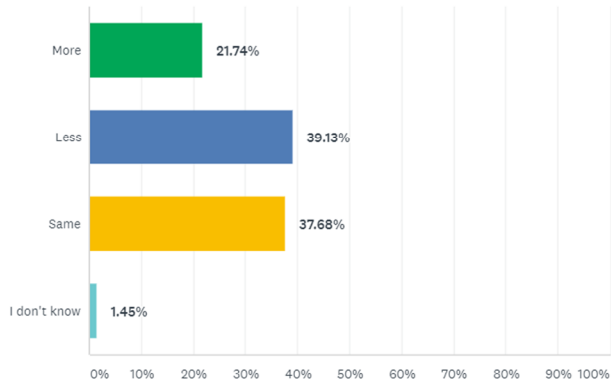
If yes, roughly how many firms are on your approved “panel lists” of firms?



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**Panel Expansion or Shrinkage**

Is the number of firms currently on your panel more or less than it was 3 years ago?(Exclude coverage counsel)



We asked whether the number of firms currently panel is more or less than it was 3 years ago. The answers support our belief that panels are shrinking.

A full 40% reported having less firms on panel. (In 2015, 36% reported having less firms on panel).

38% reported that there panels had not changed in size.

Only 22%, or roughly one in five, said they had expanded the number of approved panel firms. (In 2015, 29% of Study respondents said their panels had increased in size).

We asked this about panel size a different as well, asking respondents to estimate the number of firms removed and added from their panel in the last 12 months.

As you can see from the results, these approximately 80 organizations reported roughly a 20% decrease over the past year.

Panel Consolidation or Expansion	
# of Firms Removed	# of Firms Added
777	622
Net Decrease: 20%	



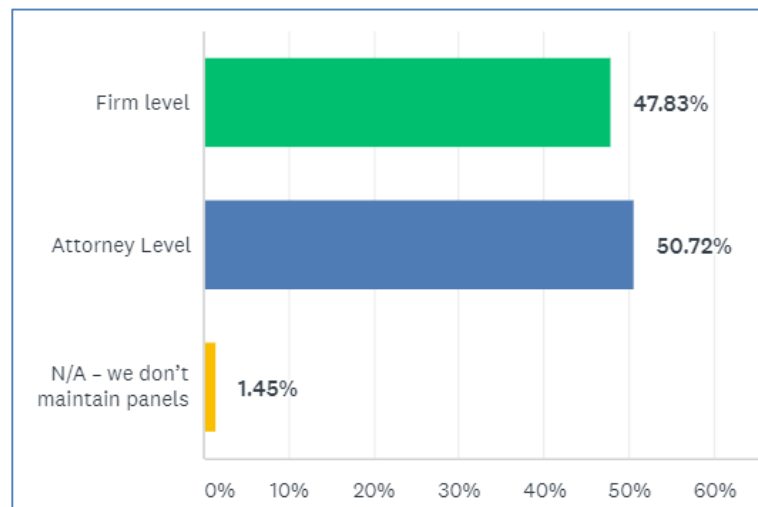
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### Firm vs. Attorney Retention

We were curious whether claims organizations tend to put specific attorneys on panel, or simply the entire law firm.

More than half said that they approve specific attorneys for their panels. Attorneys who are not approved for the panels cannot work on their files.

This philosophical approach is further reflected in other questions we asked about firm vs. individual attorney performance (see below).



What percentage of the files you assign to outside counsel go to panel firms?

92%  
(average)

95%  
(median)

What percentage of your total legal fees are paid to panel firms (vs. insured-select, cumis, or other firms)

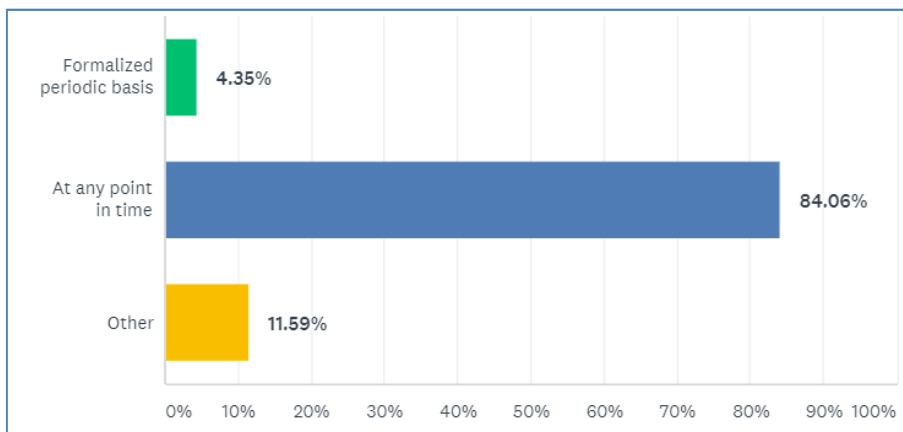
88%  
(average)

95%  
(median)

The importance of strong panel management (or, for law firms, of being on panel) is buttressed by the fact that roughly 95% of all case assignments (and fees paid) by the Study respondents go to Panel firms.

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Process for Changing Panels



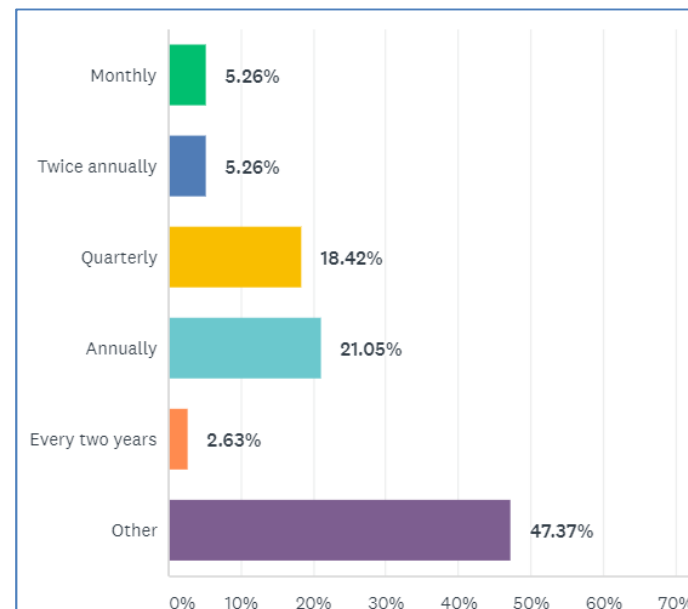
We asked whether respondents will add or remove firms at any point in time, or whether there is a periodic and formalized time-frame for making panel changes.

Overwhelmingly (84%), respondents made it clear that they continually evaluate panel needs and will make changes at any point in time.

This level of flexibility in terms of how to respond to firm performance issues was further reflected in answers to our question about how often the process of reviewing panel firms is conducted.

While 39% reported annual or quarterly reviews, the answer of “other” dominated the responses (47%). Further written explanations of “continuously,” “as needed,” “real time,” and “ongoing” reflect the flexibility with which almost half the respondents address panel reviews.

In 2015, 65% of respondents said they reviewed panels on an as-needed basis. Our perception is that this process is more formalized today than in 2015.



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### Finding New Firms

We were interested in knowing how easy it is for litigation executives to find “good” law firms in jurisdictions where they don’t have panel firms.

The answers suggested that it is not as easy as it could be. Respondents answered with an average of 56 out of 100, suggested that it is more easy than hard, but not by much.

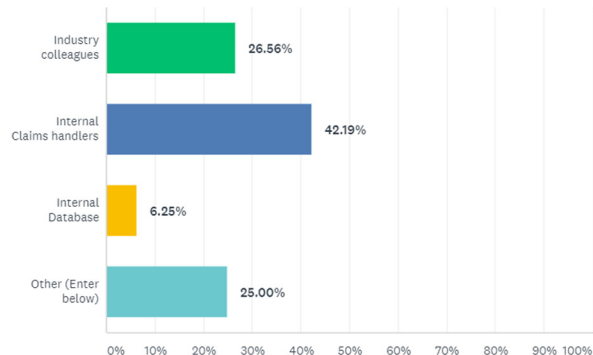
How challenging do you consider it to be to locate, find, and identify “good” law firms in new jurisdictions where no panel firms exist?

1= Very Hard

56

100 = Very Easy

When it comes to finding new panel law firms, where do you turn to?



Most often the respondents turn to their internal claims handlers for recommendations, followed by (external) industry colleagues. 69% of respondents said that they turn to one of these two sources primarily.

This fact certainly underpins the importance, for law firms, of being known to claims handlers, even in organizations where the firm may not be on panel, and to the power of reputation and networking generally.

The 25% of respondents who said “other,” described their sources as either being a combination of internal and external referrals, or the leading national professional trade associations, such as the CLM and FDCC.

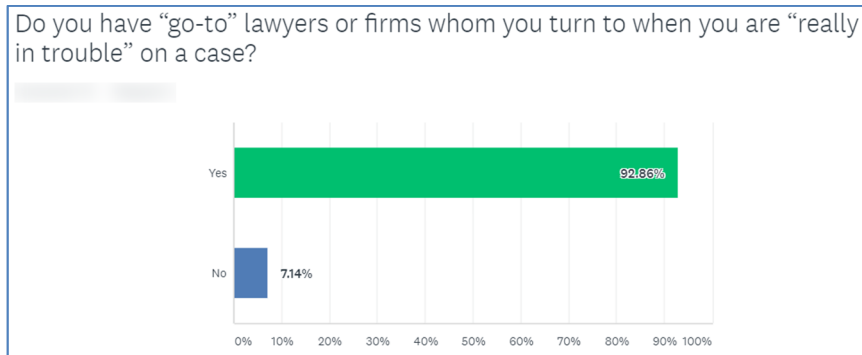
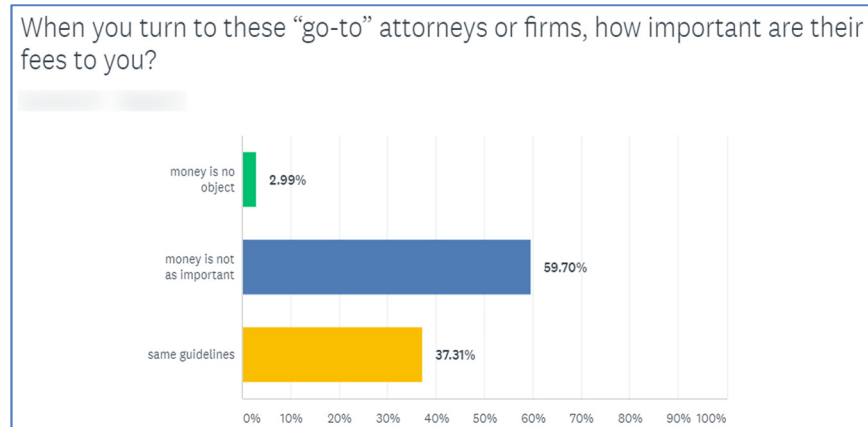
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### Go-To Attorneys

Not unexpectedly, almost all responding organizations (93%) said that they have “go-to” lawyers or firms to whom they turn when they are “really in trouble” on a case. (Note: 99% said they have go-to firms in 2015).

Being a “go-to” firm obviously brings with it many benefits for that firm. However, we were interested on the relationship between being a “go-to” firm and the litigation executive’s perception of legal fee compliance.

For 3% of the executives answering this question, money is no object with go-to firms. (2015 Study answer: 4%)



For 60% of the respondents, money is not as important with go-to firms. (2015 Study answer: 62%)

For 37% of the respondents, however, even go-to firms must operate within the same billing guidelines as less valued firms. (2015 Study answer: 33%).

These responses suggest that, while things are tightening up a bit (i.e., go-to firms aren’t getting quite the “pass” on fees that they did in 2015), being a go-to firm is still the overarching objective for most law firms.

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We asked responding executives to name up to three factors that would lead them to consider a firm a “go-to” firm. We then sorted those free-response answers into categories.

The rather generalized category of “expertise and experience” was the most often cited factor, but followed importantly by a demonstrated “track record.” We make mention of track record later in this report when we discuss the opportunity for firms to provide metrics about their own track record.

Responsiveness, location, creativity and communication round out other important considerations for executives looking for “go-to” firms.

### Factors for Changing Firms on Panel

Primary Criteria for Adding Firms to Panel	Weighted Average
Prior performance for the company	2.55
Assessment of peers and colleagues	1.97
Reputation in the industry	1.96
Verdict results	1.93
Lowest hourly rate	1.67
Responses to request for proposal	1.54
Martindale Hubbell or other service rating	1.5

Criteria for "Go-To" Firms	% of Mentions
Expertise / Experience	35%
Track Record	15%
Responsiveness	9%
Location	8%
Creativity	6%
Communication	6%
National Presence	5%
Ability to influence / credibility	5%
Trust	4%
Efficiency	2%
Strategic Focus	1%
Trial Experience	1%
Accessibility	1%
Evaluation Skills	1%

We asked respondents to help us understand the primary criteria or factors that matter to them when considering adding a firm to their approved panel.

Not unexpectedly, prior performance for their own company seemed to provide the greatest validation (2.55)

Peer and colleague assessments were presented almost equally important, followed by verdict results.

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Of note, hourly rate scored among the lowest criteria; however, this may be correlated with assumptions about a firm’s ability to work within established rate guidelines.

We were particularly interested in what criteria generally prompt the removal of a firm from an approved panel. We asked litigation executives to write the “most likely reason” they would want to remove a firm from their panel.

Communication, responsiveness, and general billing and guideline compliance failures were mentioned most often, along with the more generalized answer of “overall performance.”

Other factors, although mentioned less, bear mention. These include a failure to match the company’s overall philosophy, trust, and “results.” Evaluation skills, ethical violations and unwillingness to try cases, were also cited.

Reasons for Removing Counsel From Panel	% of Mentions
Communication issues	17.5
Responsiveness	15.9
Guideline Compliance, Billing	12.7
Quality of legal work, overall performance	12.7
Failure to match philosophy, objectives focus	9.5
Trust, Inconsistency, Surprises	7.9
Results	6.3
Evaluation skills	4.8
Ethical concerns	4.8
Unwillingness to try cases	4.8
Stay within budget	1.6
Negotiation skills	1.6

**Friction Points with Counsel**

**What are the three most important recurring friction points in your relationships with counsel?**

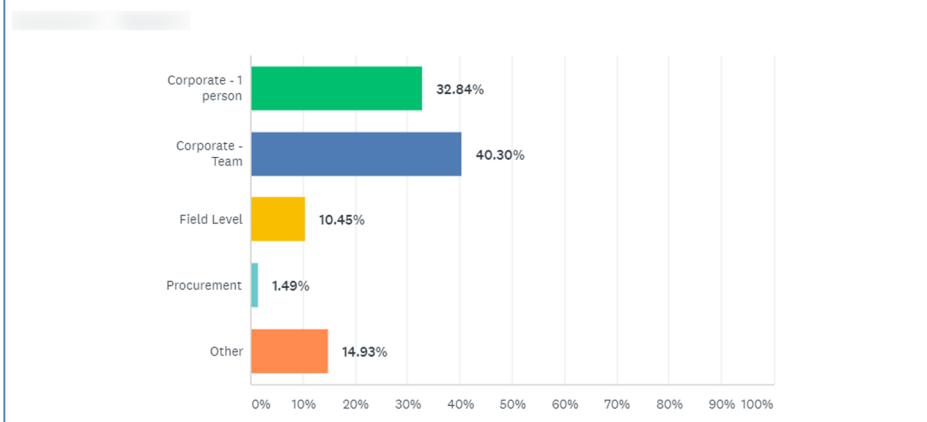
Primary Friction Point	Weighted Average
Not showing strategic focus	2.35
Under-reporting	2.24
Over-reporting	2.17
Billing	1.8
Budgeting	1.63
Something else	1.33

The importance of good communication is reflected in the executives’ responses when asked to identify the most important friction points with counsel. Over- and under-reporting scored high on this list

We did note that, when asked to pick from a list of potential friction points, respondents ranked their concern with billing issues as much lower than strategy and communication.

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What statement best describes who is the ultimate authority on whether a firm is added or removed from the panel list?



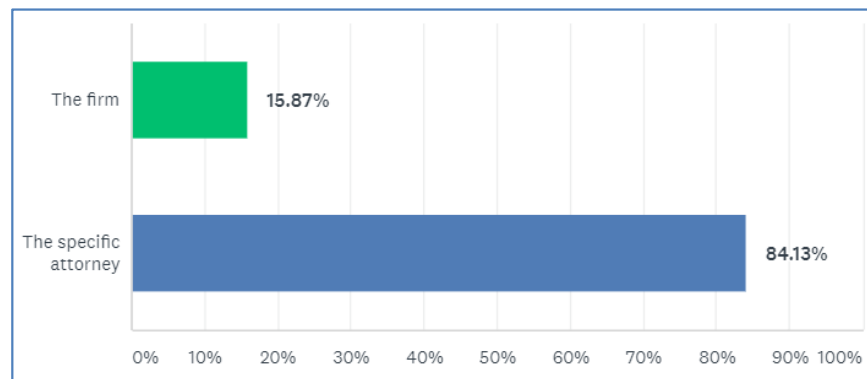
In terms of who makes the ultimate decision on whether a firm is added or removed from panel, we noted that, most often this is considered to be a corporate decision, and a team decision.

While a third (33%) of the executives said that one person could make this decision, a larger number (40%) identified that these are “team” decisions. In both cases, however, these are “corporate” decisions. Only 10% of the respondents suggested that such decisions could be made in the field.

### Retention of Firm vs. Attorney

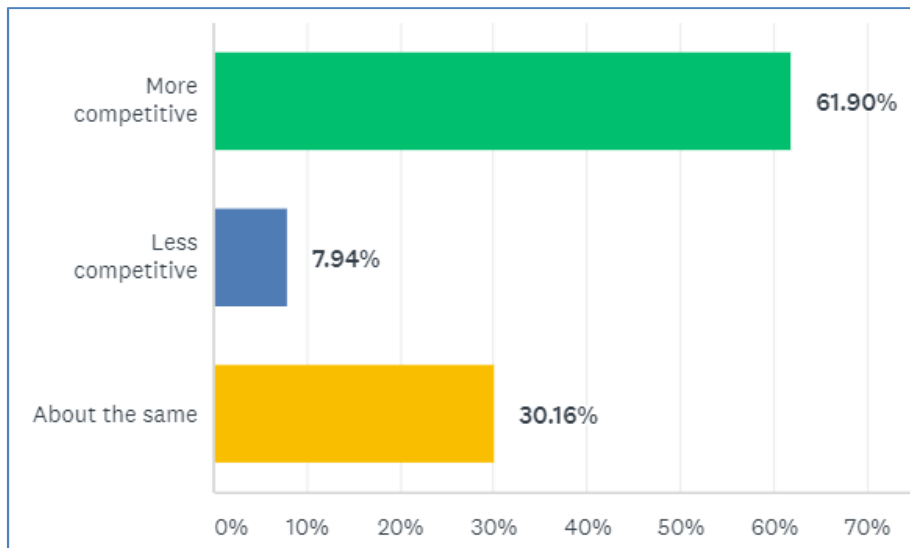
As in 2015, the majority of claims and litigation executives operate under the philosophy that they are hiring the attorney and not the firm.

84% said this in the current Study; in 2015 exactly 84% said this as well!



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Competitive Environment



Responding executives seemed to appreciate that the environment in which insurance defense firms operate is competitive. However, when compared to 2015 results, the data may suggest that it is less competitive than four years ago.

We asked, “Compared to five years ago, what is your perception of the competitive environment law firms are operating within?”

62% said the environment is more competitive. (2015 results: 84%)

30% felt it’s about the same (2015 results: 12%)

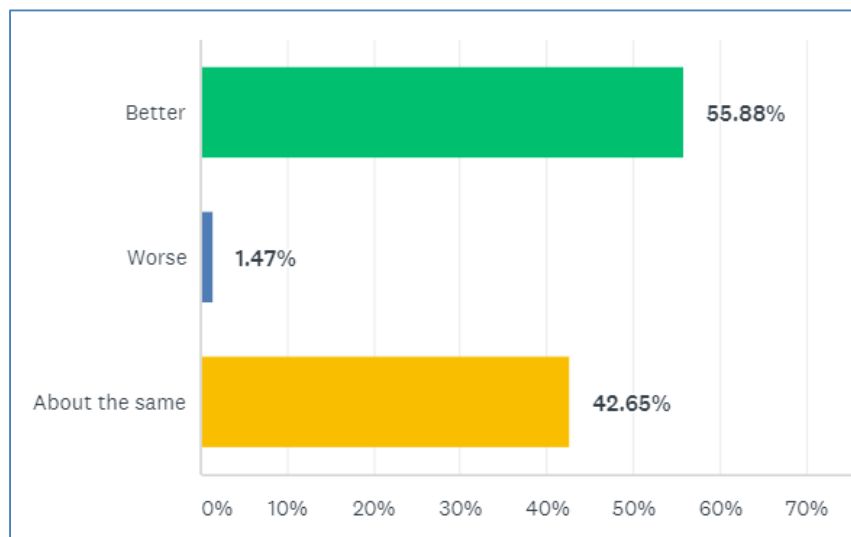
A full 8% said it is less competitive (2015 results: 4%)

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## BILLING AND BUDGETING

### Invoice Review Components



Billing guideline compliance has been a critical component in the relationship between law firms and their principals in the tri-partite relationship. To that end, we asked respondents to answer the following question:

**“When it comes to complying with your billing guidelines, compared to three years ago, how do you feel your law firms are doing?”**

56% of respondents said “better.” (In 2015, 70% said better). 43% said “about the same.” (In 2015, 30% said the same).

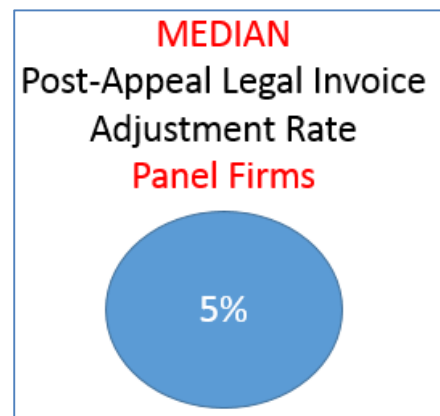
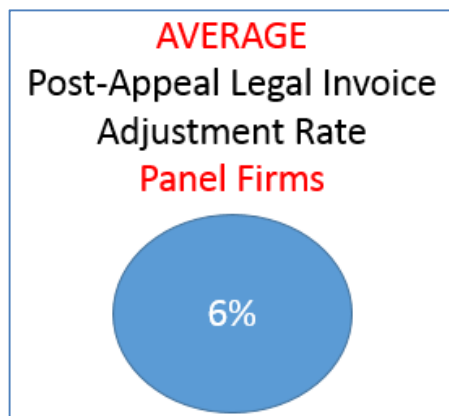
From these numbers, we perceive that executives’ perceptions of “improvement” in billing from law firms are tailing off.

In thinking about billing issues generally, law firms would be well served to think about these items as well:

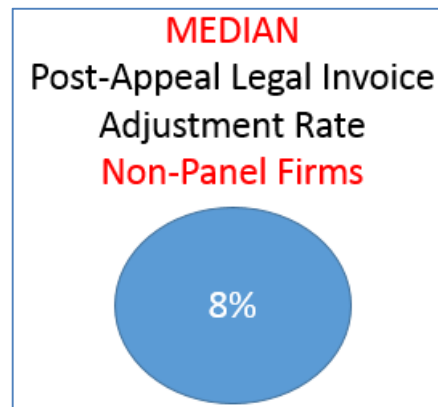
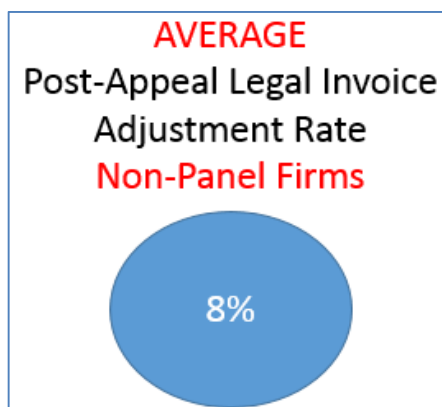
- One third (33%) of the companies polled in this Study reported using third-party invoice review experts to review legal invoices from their law firms. (We defined “third-party” as a company or consultant not employed by the organization).
- A greater number (37%) reported that they main a centralized bill review unit of internal invoice review experts.
- 65% of respondents reported using legal invoice review software to review invoices. This number, however, is a bit skewed because many organizations using outside third-party resources don’t consider themselves to be using “software” per se, even though the third-party reviewers obviously rely on it extensively.

## Adjustment Levels

We asked respondents to identify their post-appeal legal invoice adjustment rates for Panel firms. 6% was the average of responses. 5% was the median.

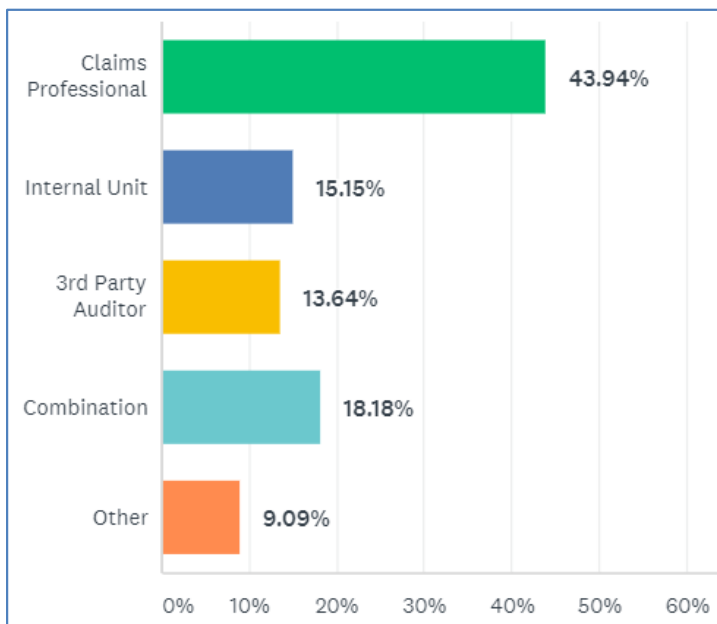
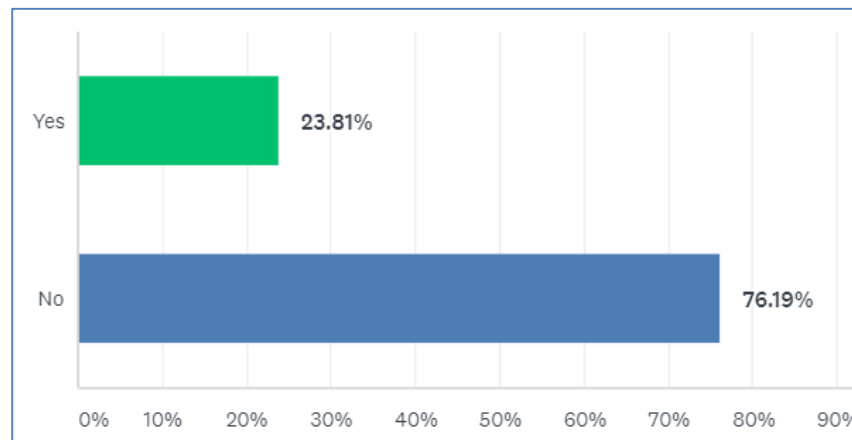


We also asked respondents to provide these rates for non-Panel counsel. We did not ask these questions in 2015.



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In the general category of discounts and adjustments, we also asked respondents to identify whether they ask their firms for prompt-pay discounts. Only 24% said that they do.



We were particularly interested in who is considered to be the primary arbiter of whether an adjustment to a legal invoice should be made.

By far (44%), the assigned “claims professional,” was provided as the response. However, the second most common response (18%) was a “combination” of the claims professional and the internal unit or third-party auditor doing the primary review of the invoice.

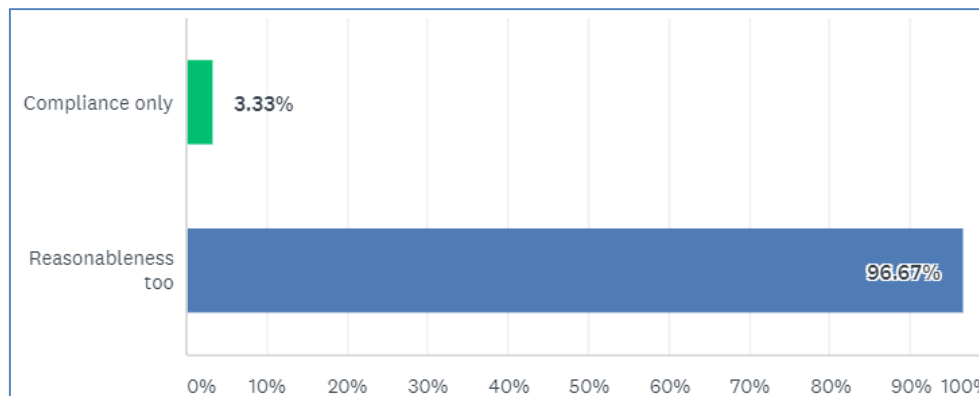
The prevalence of the claims professional response is not unexpected, given both their proximity to the work being performed, and the fact that roughly one of the survey pool reported using neither a third-party review service nor an internal legal invoice review team.

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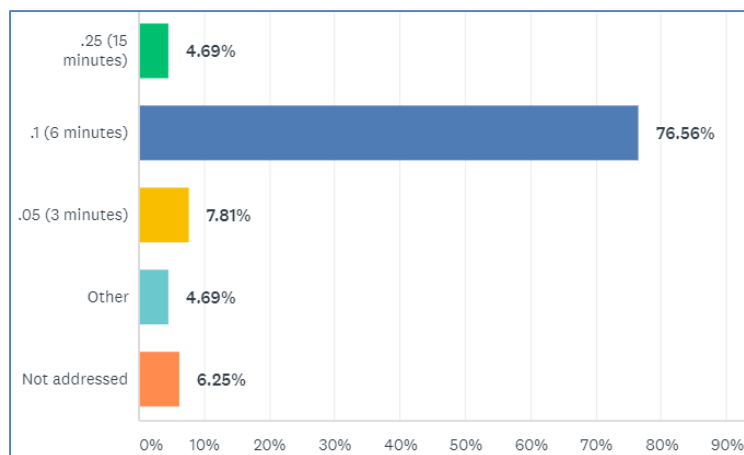
### Compliance vs. Reasonableness

The executives surveyed confirmed that invoices are being reviewed for “reasonableness,” as well as billing guideline compliance. We defined “reasonableness” as examining the reasonableness of time spent on an activity and in fact whether it was reasonable to have performed the activity in the first place.

97% said they review for reasonableness.



### Billable Increments



The vast majority (77%) of billing guidelines mandate a minimum billable increment of .1 (6 minutes).

We were interested to see that 5% of the respondents allow for 15 minute billing increments.

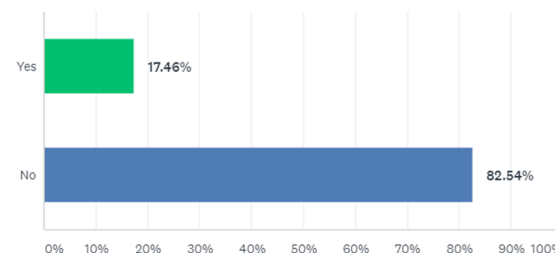
Law firms will be interested to see that a full 8% of organizations now mandate a .05 (3 minute) minimum increment.

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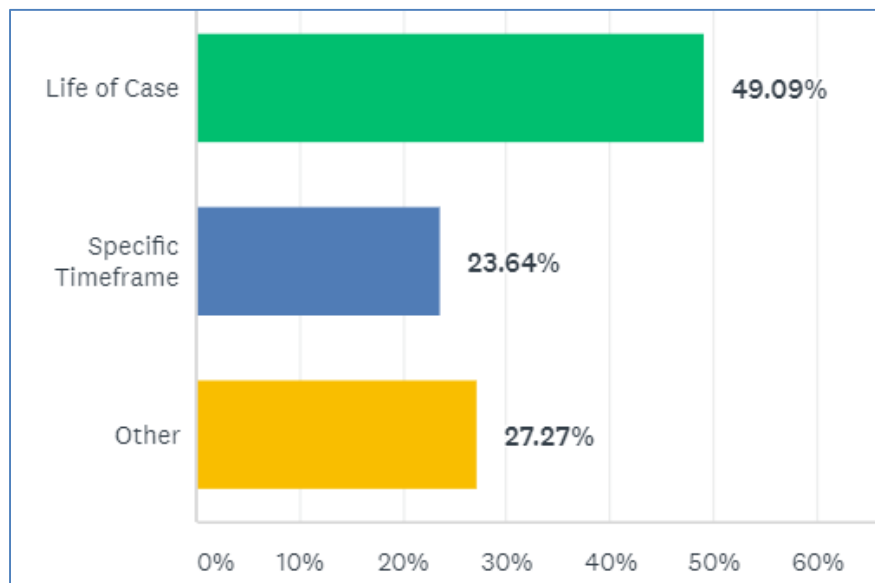
In terms of whether there is a trend toward smaller billable increments generally, we can report that a full 17% of the respondents said that they would see value in having a lower billable increment than they current have.

Law firms may wish to take note the fact that almost one out of six (17%) would find value in these lower increments.

Do you see a value in having a lower billable increment than you currently utilize with your firms?



### Budgeting Requirements

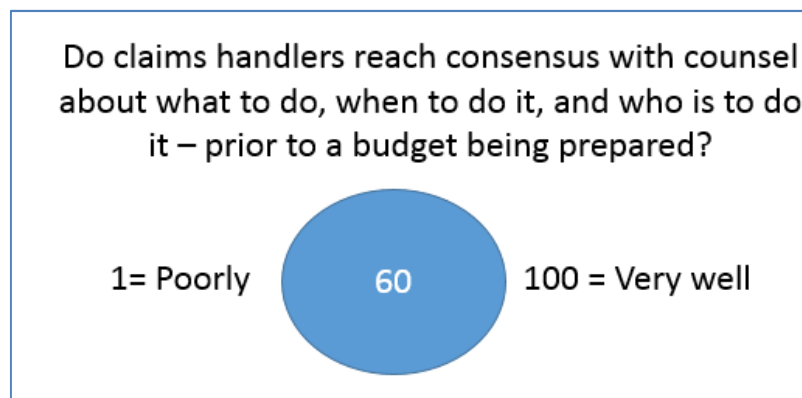
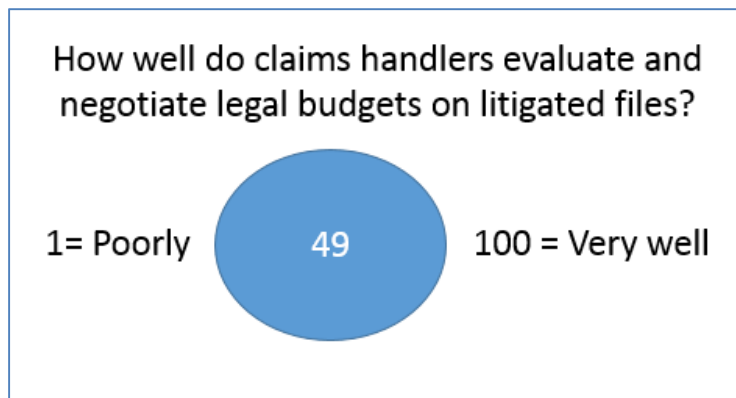


81% of respondents said they require budgets on cases assigned to their law firms.

Of those that require budgets, roughly half (50%) require life-of-case budgets. The remainder require that the budgets be tied to more specific time-frames. This includes by phase, by litigation mileposts, or up and to a specific event, like trial or mediation.

### Claims Handler Budget Engagement

Claims executives seem to suggest there is room for improvement, however, at the engagement levels of their claims professionals when it comes to participating in the budgeting process. We asked this question two ways, as indicated below. Their answers suggest they do feel there is consensus building, but less strong evaluation and negotiation around the budgets themselves.

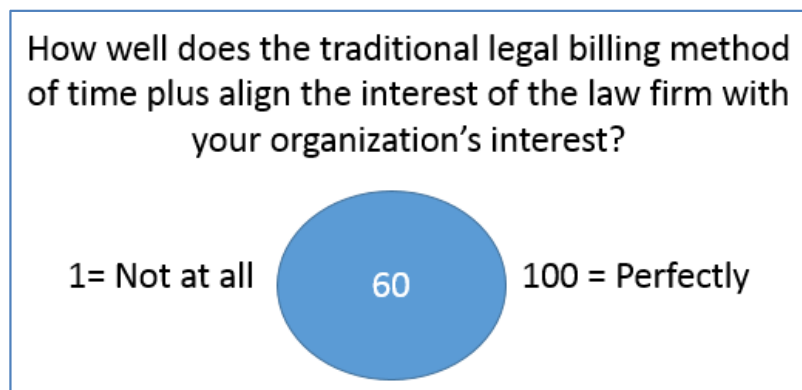


### Hourly vs Alternative Billing Models

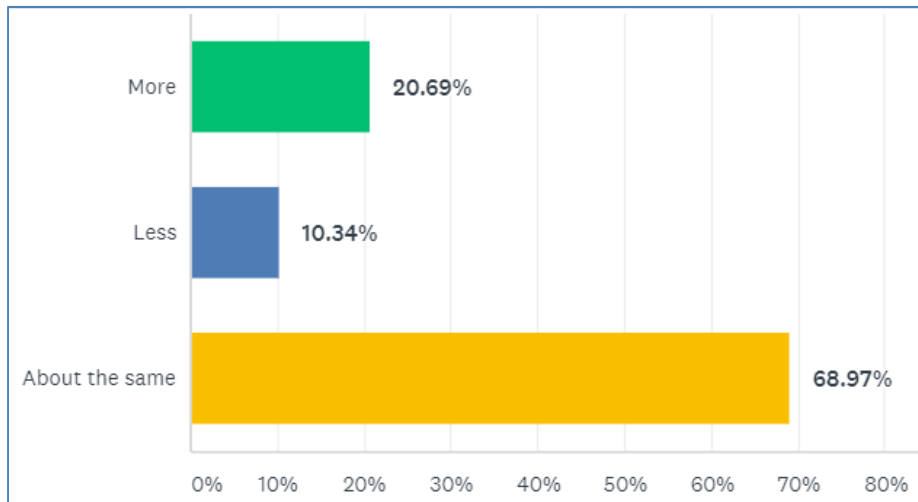
We were curious whether respondents feel the hourly billing model aligns the interests of the law firm and the claims organization?

Respondents scored this as a 60 out of 100.

There seems to be recognition that the model is not perfectly aligned (a perfect score would have been 100), but that it is more aligned than not (by 10 points).



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The number of responding organizations who use alternative fee arrangements (AFAs) split down the middle. 51% said that they do. 49% said they do not.

69% said that, when compared to 3 years ago, their use is “about the same.” (2015 Study results: 71%)

21% said their use of AFAs is greater. (2015 Study results: 24%)

10% said they are using AFAs less. (2015 Study results: 5%)

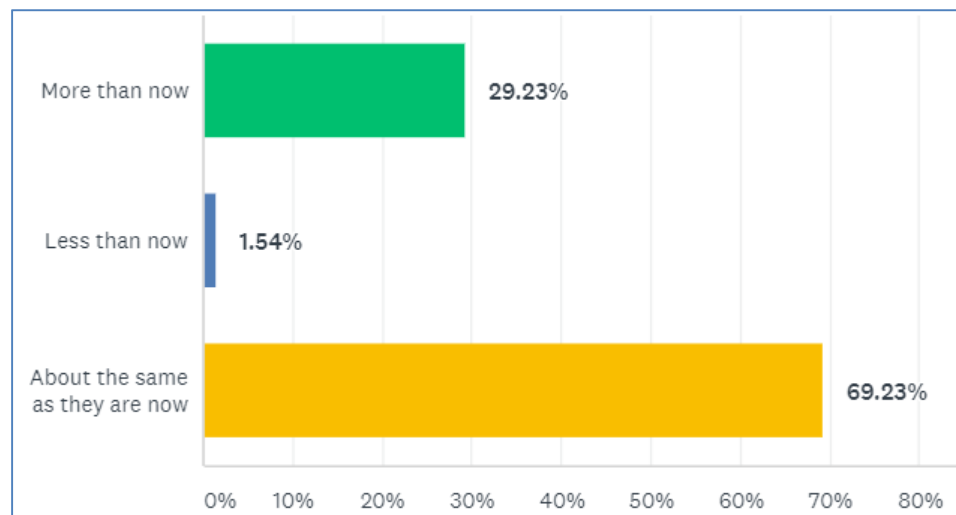
There is nothing to indicate from this data that AFAs are on the rise when compared to our 2015 results.

In terms of projecting AFA utilization over the next 5 years, respondents answered as follows:

29% said AFA use will be greater (2015 results: 29%)

2% said AFA use will be less (2015 results: 4%)

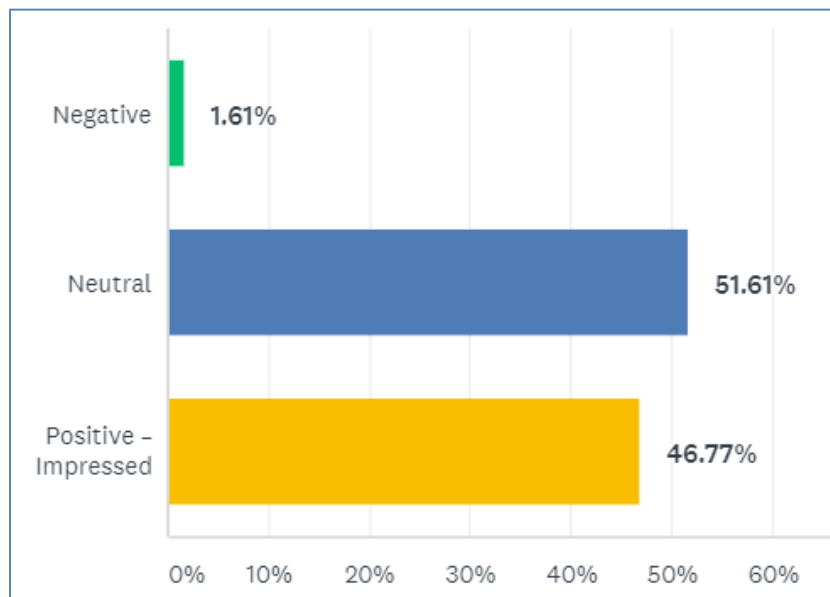
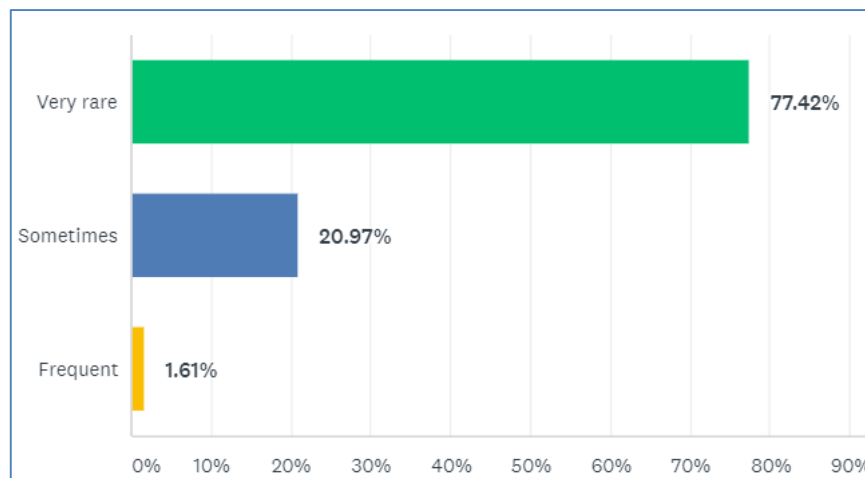
69% said AFA use will be the same (2015 results: 67%)



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We did identify an interesting opportunity for law firms. We asked each executive how common it is for law firms to propose AFAs to them.

The vast majority (77%) said that is very rare for law firms to propose AFAs. One in five (21%) said that this happens “sometimes.”



We were curious as to how executives react when law firms propose AFAs. Almost half (47%) said they have a positive reaction – and in fact are “impressed,” when law firms make such proposals.

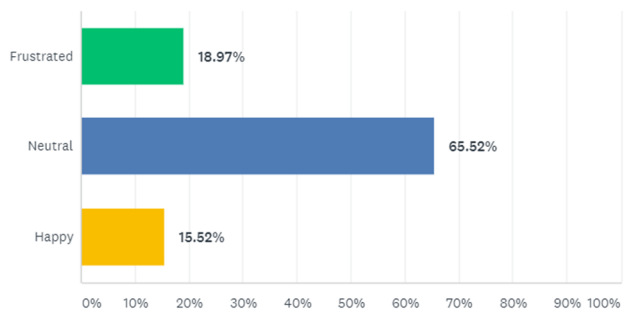
Law firms that wish to impress executives across the industry may wish to take note!

Roughly half (52%) said that their reaction is neutral; it really depends on the proposal. However, only 2% see anything negative in such proposals.



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Please describe your general sentiment about how widely used AFAs are used in your organization, across your policyholder litigation



Why should law firms take note of this opportunity to propose alternative fee arrangements?

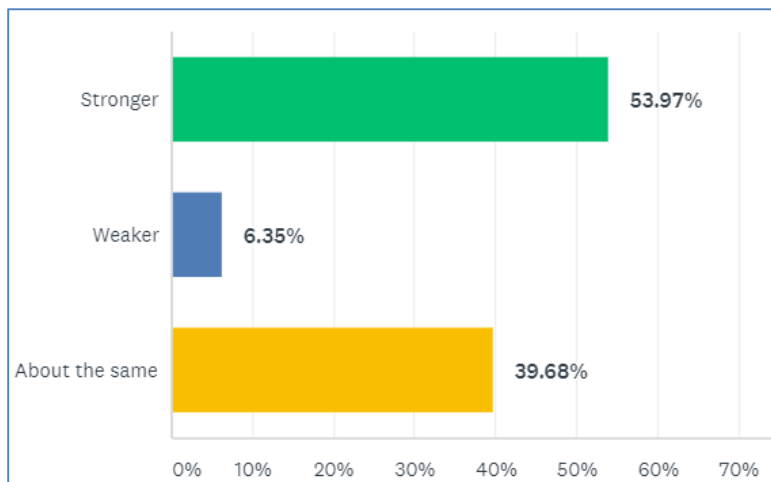
It's not only because they might impress 47% of the executives they propose to (see above).

It's also because roughly one in five (19%) are frustrated with the level of AFAs in place. These executives wish there were more AFAs in place and wish that there was more shared risk taking between their organization and their law firms.

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## GENERAL FIRM PERFORMANCE

### Perceived Strength of Relationships



On the face of it, it appears to be good news that only 6% of respondents said they feel their relationships with their law firms are weaker, when compared to five years ago. Yet in 2015, only 3% felt this way, so more executives appear to feel that relationships are weaker.

54% said they feel their relationships with firms are stronger. Yet in 2015 71% felt this way, so less executives appear to feel that relationships are stronger.

40% said they feel the relationships are about the same. In 2015, 26% felt this way.

One view of these results is that there was more “room for improvement”

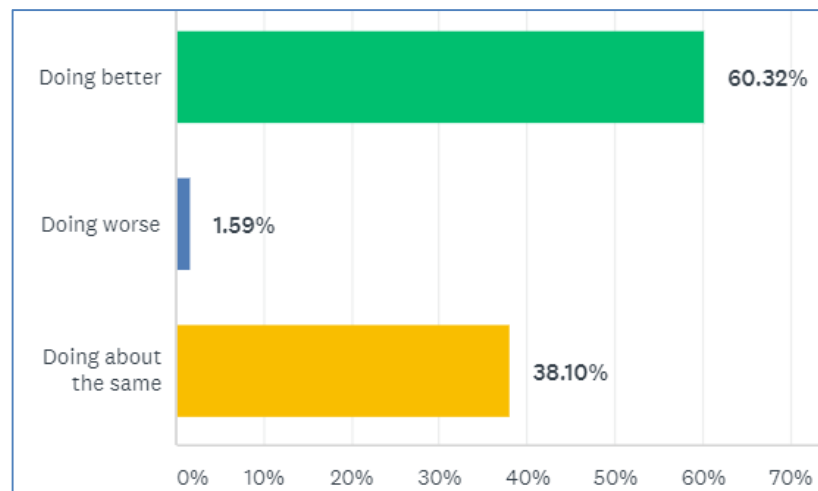
between 2010 and 2015, then between 2014 and 2019, and this is why fewer executives describe their relationships as stronger.

**When it comes the more general question of whether firms are “understanding their needs,” the results were similar.**

Compared to five years ago, 60% said better (2015 results: 70%)

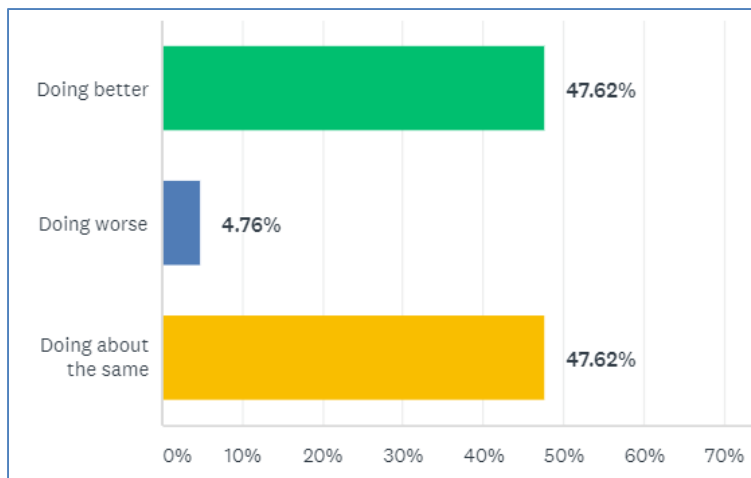
38% said “about the same.” (2015 results: 26%)

2% said that forms are “doing worse” in terms of understanding their needs. (2015 results: 3%)



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### Creating Value



We asked executives to identify how outside law firms are doing, compared to five years ago, when it comes to “creating value for your organization.” Executives were allowed to define “value” as they wished.

About half (48%) felt that firms are doing better in this regard. (2015 results: 58%)

Another 48% felt that firms were doing “about the same.” (2015 results: 39%)

5% said firms are doing “worse.” (2015 results: 3%)

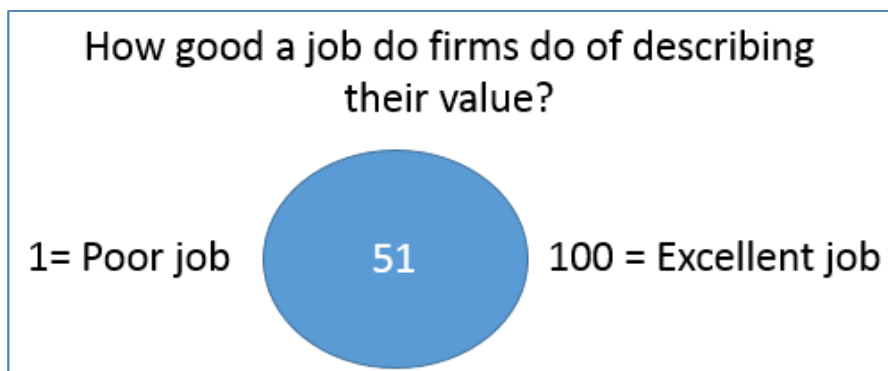
### Ability to Describe Firm Value

We also asked respondents to identify how good a job law firms do in describing their own (the firm’s) value and to competitively distinguish their firm from other firms.

The average score provided was a 51 out of 100, which suggests there is room for improvement in this area.

In 2015, however, survey respondents said firms scored a 3 out of 10. (30 out of 100).

**Therefore we actually view this Study’s score to be a 66% improvement over the 2015 results – which says good things about how law firms may be approaching this issue.**



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We asked respondents to identify “one thing” they wished “their firms did a better job of. We categorized those free-hand responses into categories. We’ve listed each category in order of the most mentions.

What do you wish firms "did a better job of"?
Communication and Reporting
Focus on earlier resolution; proactive; creative
Case evaluation skills
Show me the metrics
Using better billing judgement
Providing education to my own staff
Ability to market themselves and show their own value
Ability to plan, budget, strategize and execute
Deleloping their younger attorneys
More creativity
Ability to budget and plan

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We asked each executive to name one thing that outside law firms could do to stand out in their peer group. This is a sample of the responses:

### One Thing Firms Can Do To Stand Out in Their Peer Group

- Provide training and education. Co-Market
- Timely and aggressive investigation and recommendations
- Stop sugar-coating things. More proactivity in managing the litigation
- Collaborate more effectively
- Strategize earlier on resolution
- Use their billing data to create more AFAs
- Show they understand our book of business; and better manage costs
- Be proactive
- Offer more legal update trainings to our adjusters
- Rate increases are presented merely as a reflection of higher costs. Show what you've done to mitigate those costs
- Align firm interests with our interests
- Creative thinking around resolution
- Make reporting more concise
- Consistently resolve matters at a rate better than their peers
- Understand their client
- Publish their mediation and trial results
- Consider a claims representative to be part of the team
- Provide out of the box alternatives
- Make an effort to understand our business and our goals
- Earlier resolution
- Resolve claims with low expenses and fees
- Provide an annual report that self-evaluates the firm's performance with key objective metrics
- Come to me with an AFA
- CE credit training
- Communicate short and quick information
- Share their results and values
- Create and share a metrics-based scorecard

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We asked each executive to name one thing that their outside firms could do to make their lives easier. A sample of the responses is below:

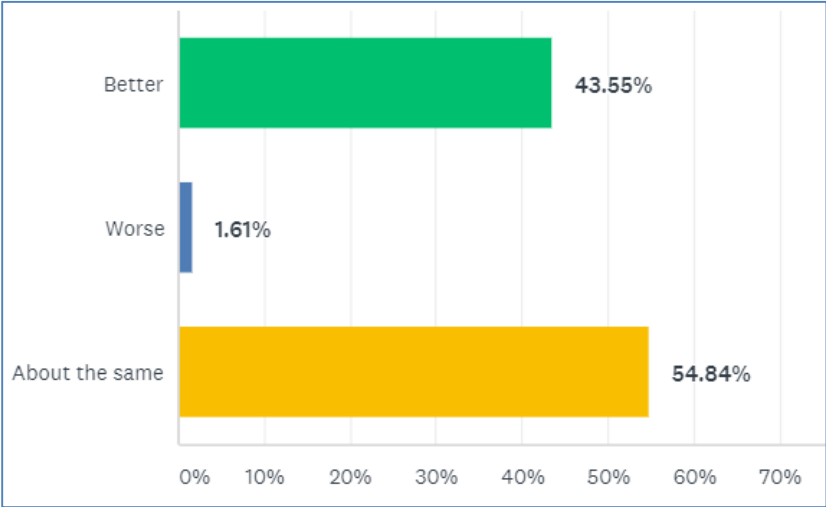
### One Thing Firms Can Do To Make Your Life Easier

- Improved communication across firm, claim team, and client
- Timely and detailed reporting
- Resolve cases more quickly
- Communicate
- Comply with our litigation program
- Timely and accurate reporting
- Keep it brief and informal
- Less billing reduction appeals
- Actually read, understand, and attempt to follow our guidelines
- Move files quickly
- Give us their own metrics; tell us how to streamline our litigation-handling process
- Do what they say they're going to do when they report to us (in a timely manner)
- Give us advance notice of problems
- Adhere to our reporting guidelines
- Help to train our new adjusters
- Consider litigation costs in their evaluation
- Improve on early case resolution
- Use our preferred vendors
- Share their results and value
- Better supervision of associates
- Communicate – I've never been frustrated with a firm for keeping us informed
- Improve the ease of doing business; understand our guidelines and expectations
- Resolve claims more quickly
- Develop and share a firm succession plan
- Push for settlement
- Follow guidelines
- Be more efficient
- Provide better feedback about our non-responsive adjusters
- Stop telling us what we want to hear
- Embrace technology

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**Non-Billing Guideline Compliance**



We thought it was important to ask about compliance with non-billing guidelines as well. These are guidelines that speak to process, protocol, authority, and reporting timeframes.

It seems very positive to us that only 2% of respondents reported a decline in compliance in this area. A full 44% felt that compliance had improved, when compared to three years ago.

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### Non-Cost Metrics Maintained About Firms

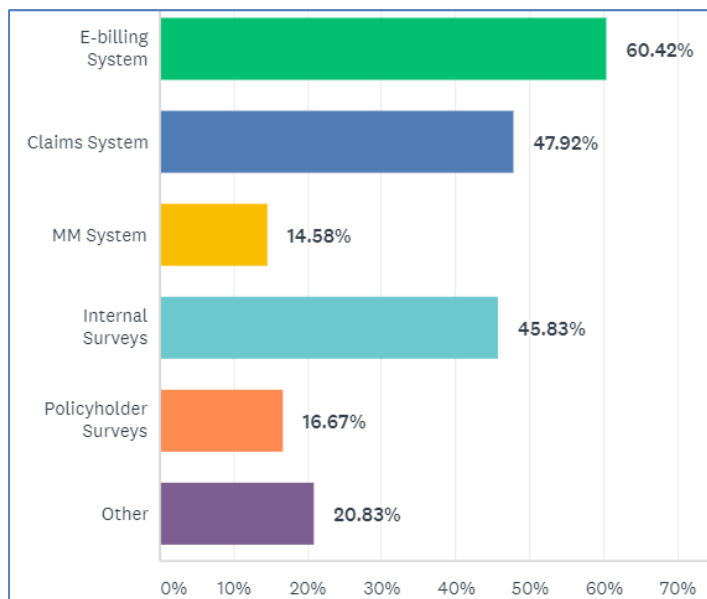
We asked respondents to list up to three metrics that they maintain about their firms that do not pertain to cost. We then weighted those responses by number of mentions and whether they were listed as first, second, or third. These were the results:

NON-COST METRICS MAINTAINED ABOUT FIRMS	
#1 – Communication and Responsiveness	#9 – Successful mediations; ADR results
# 2 – Cycle Time, Lag, Time each case remains open	#10 – Dispositive motion results
#3 – Timely report, Ability to follow our non-billing process guidelines	#11 – Accuracy of evaluation, Delta between exposure analysis and outcome
#4 – Number of trials, trial results, number of cases tried	#12 – Number of current assignments from us, Pending levels, Percentage of cases from us
# 5 – Internal survey results, policyholder survey results, reputation	#13 – File tempo, Pacing of file handling, Date of assignment to the plaintiff's deposition
#6 – Average indemnity payments, Outcomes, Results	#14 – Diversity
#7 – Adherence to strategic case plans, Quality, Performance, Consistency, Quality audit results	#15 – Line of business expertise
#8 – Closing ratios	



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### Measuring Firm Performance



69% of respondents said that they maintain formalized measurement of firms' performance. In 2015, this number was 64%.

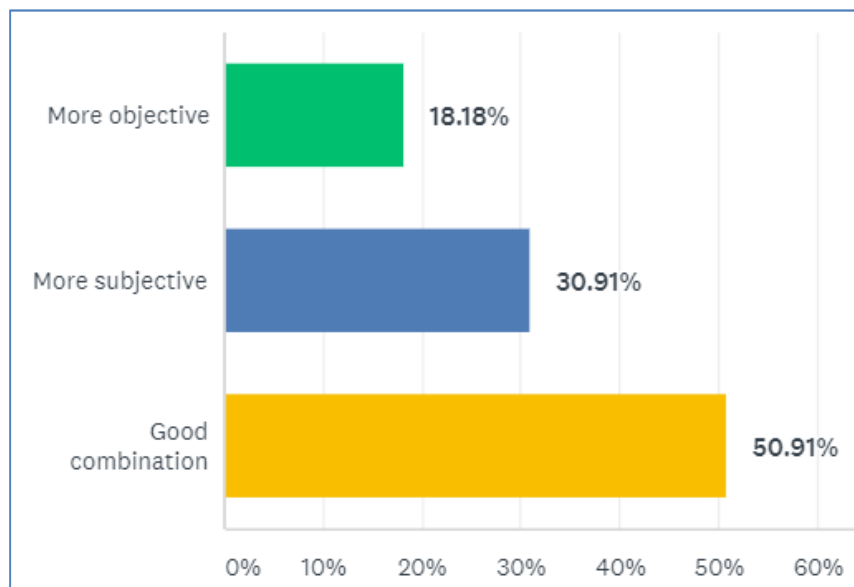
The most commonly cited source of data is the e-billing platform (62%), followed by the claims system (48%, followed by internal surveys of claims staff (46%).

We take note of the fact that 17% reported also taking surveys of policyholders.

Executives were asked to identify their performance measurement criteria as objective, subjective, or a good combination of both.

A full half (51%) said they feel their criteria are a good combination of subjective and objective. (2015 results: 45%)

18% felt that their measurement was more objective than subjective.



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Is your law firm performance criteria weighted more heavily on costs or results?

1 = Costs



100 = Results

Respondents categorized their performance management criteria as weighted pretty much in the middle between costs and results.

In 2015, respondents categorized their criteria as a 6 out of 10 (60 out of 100). We view this to be almost an identical score to this year.

Respondents were asked how comfortable and confident they are with their process for measuring firm performance. They self-identified a score of 60 out of 100.

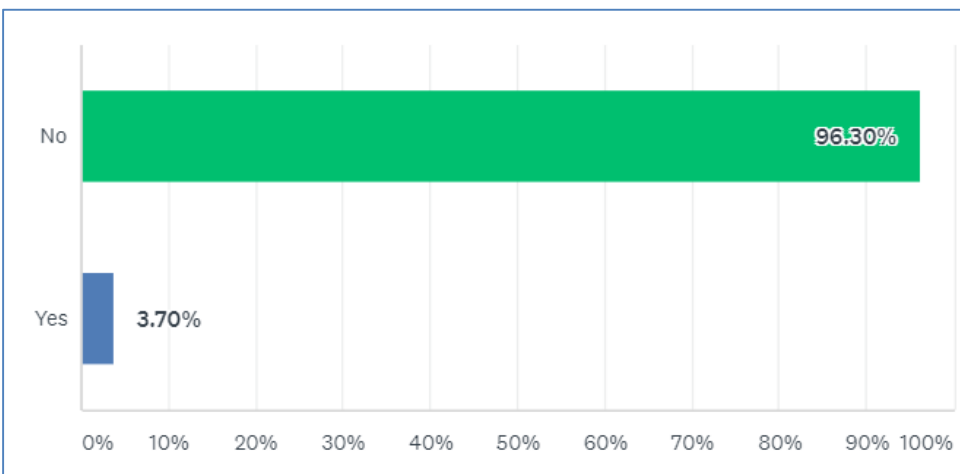
We do not view this score to reflect a high level of confidence or comfort in current processes.

How comfortable and confident are you with your process for measuring firm performance?

1 = Not at all



100 = Extremely



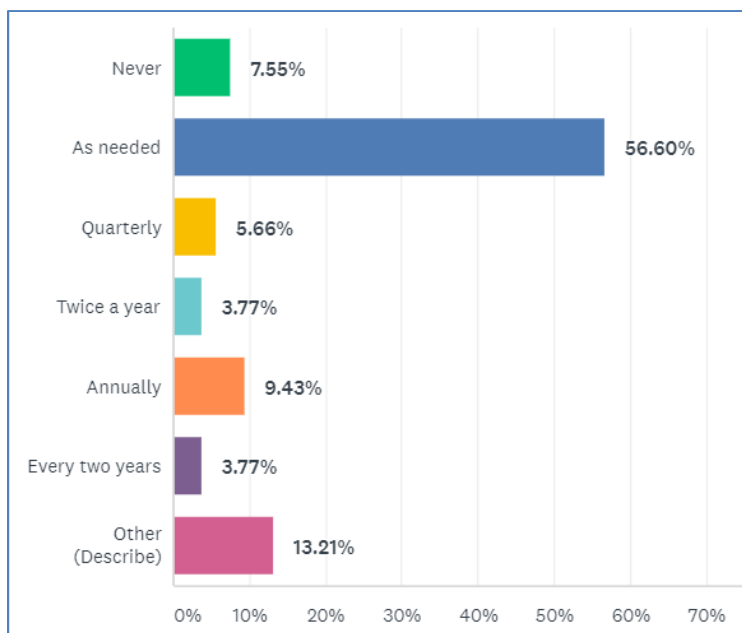
### Do Firms Ask for Enough Data?

**92% of respondents said, if asked, they will share performance information back with a firm (about that firm).**

However, in response to whether they feel law firms ask for such information “enough,” the answer was overwhelmingly no.

**96% of respondents said that firms don’t ask for such information enough.**

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### Communication about Performance

Not unlike the processes for adding and removing firms from panel, responding executives suggested that they most frequently communicate with firms about the firms' performance "as needed." 57% of respondents selected this choice.

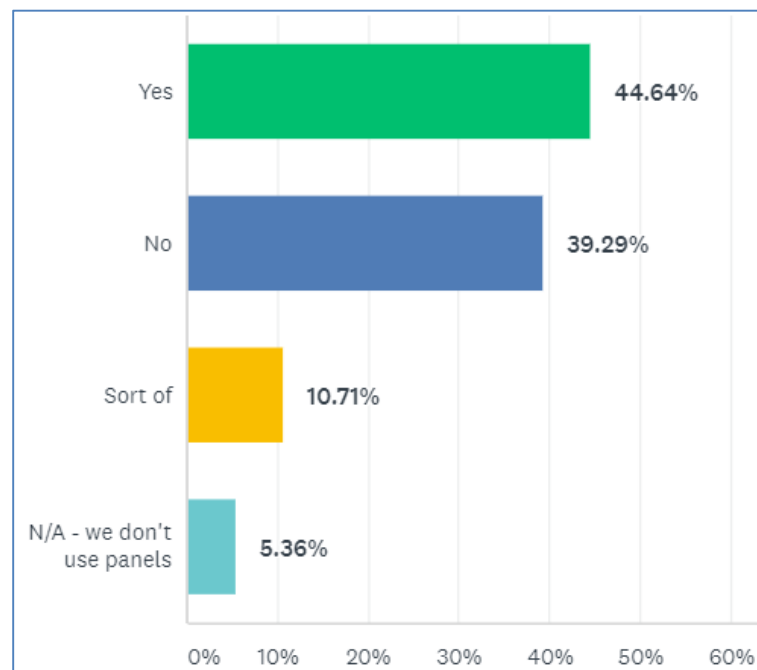
The second most common response (9%) was annually.

We made note of the fact 8% said that they "never" communicate with their firms about performance.

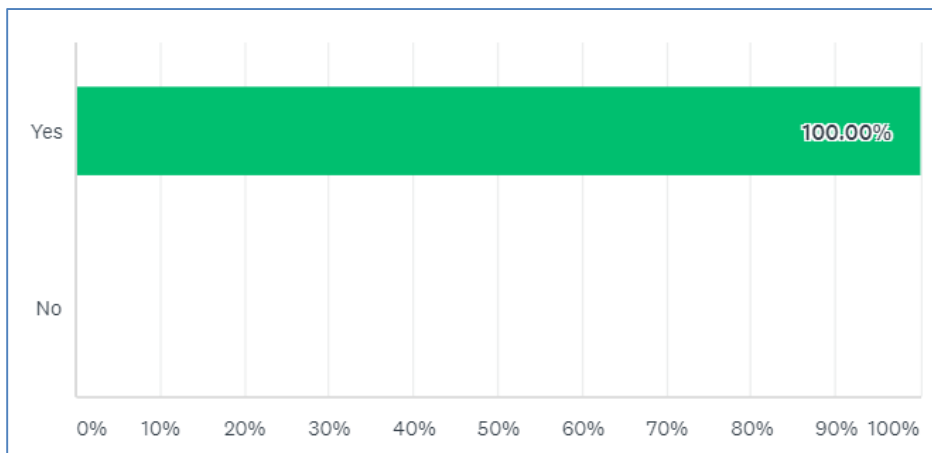
### Panel Meetings

More executives than not (45%) said they hold panel meetings with their panel of firms or a portion of panel firms.

39% do not. An additional 11% have some types of "modified" panel meetings – such as conference calls or webinars with their firms.



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### Ability to Close Files

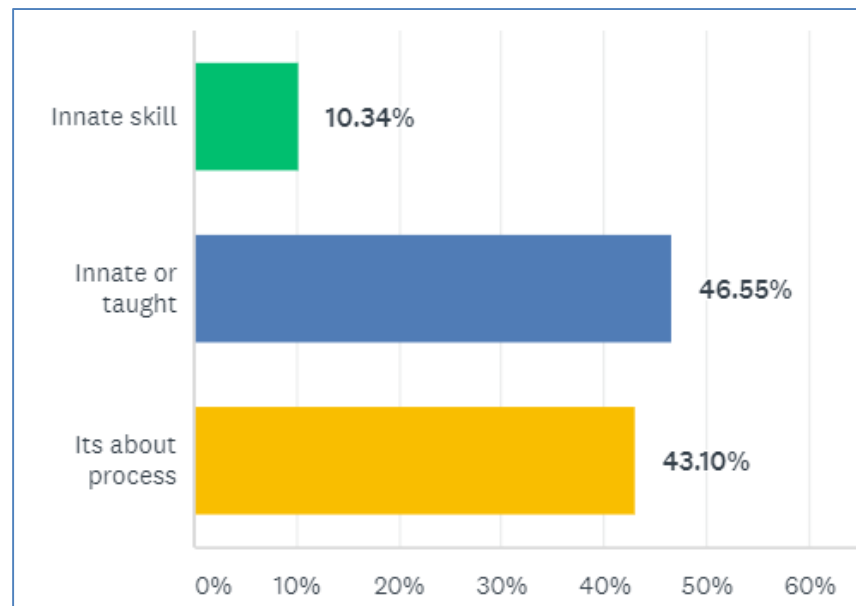
We were acutely interested in whether claims and litigation executives believe that some individual attorneys are better at closing files and resolving litigation than others.

This was the ONLY question on which 100% of the respondents agreed. 100% believe that some attorneys are just better than others.

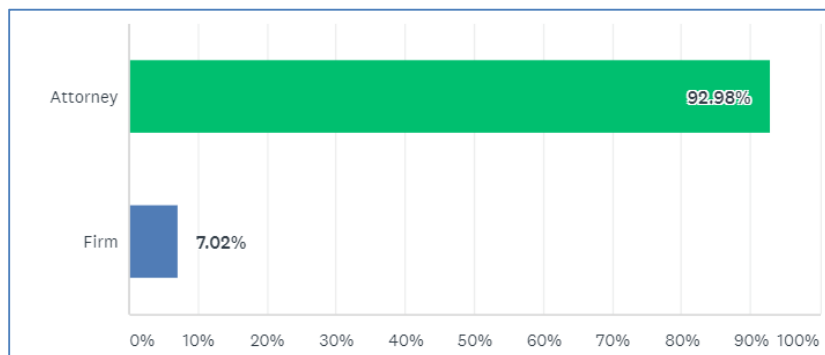
Since we presume that most individual attorneys put themselves in that “better at closing files” category, we believe the more relevant question is why. That is, to what do executives attribute this talent for closing files. Is it a skill or something else?

57% of the respondents believe that this talent is a skill. 10% believe this is a skill that is innate and that an attorney either has or doesn't. 47% agree that it is a skill but they believe it is a skill that can be taught.

However, we were not surprised to see that 43% of the respondents believe that it much more about process than skill. **This, for us, is a critical finding, and one that we encourage law firms to think about when they are describing the competitive aspects of their law firm and its processes.**



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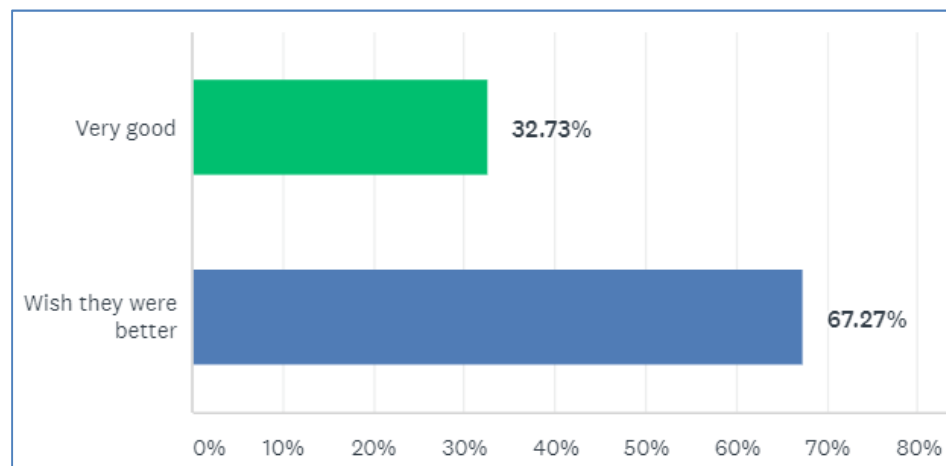
Just as most executives prefer to “hire the attorney” and not the firm, we asked, **“Thinking very broadly, is it more common that you associate high performance with the attorney or the firm?”**

Only 7% think of the firm first.

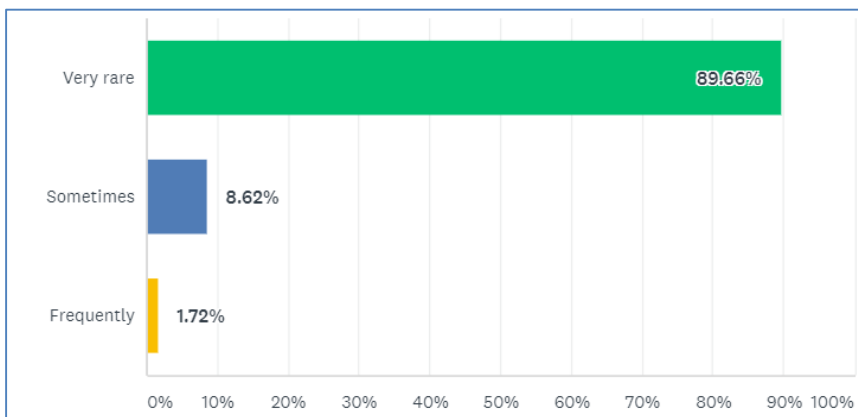
93% associate high performance with the attorney.

Given that executives are searching more for individual attorneys than for firms, and given everyone believes some attorneys are better at closing files than others, we asked, **“How good are your current metrics at identifying those attorneys?”**

A third (33%) of the respondents feel their metrics are pretty good at this. However, two thirds (67%) wish their metrics were better in this regard.



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### Should Firms Present Their Own Metrics?

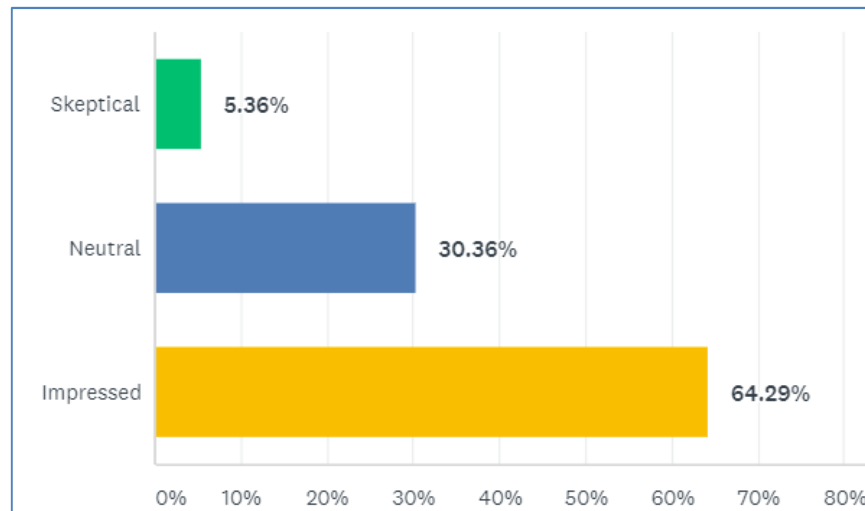
Executives were asked the following question: **How frequently do your panel firms and attorneys present to you metrics that they maintain about their own, or their Firm's, performance** (i.e., cycle time, average costs, average settlement, etc).

Only 2% said frequently. 9% said "sometimes." The remainder said "it is very rare" for a firm to present their own metrics in support of their firm.

We were curious as to the reactions that executives when firms present metrics about their firm. Are they skeptical of the data and don't believe it? Are they impressed that firms seem to be tracking the same types of metrics they track? Can it hurt a firm to present metrics?

We were pleased to see that the vast majority (64%) are impressed when a firm does this. 31% are neutral on the idea; Only a very small percentage (6%) are skeptical about the data.

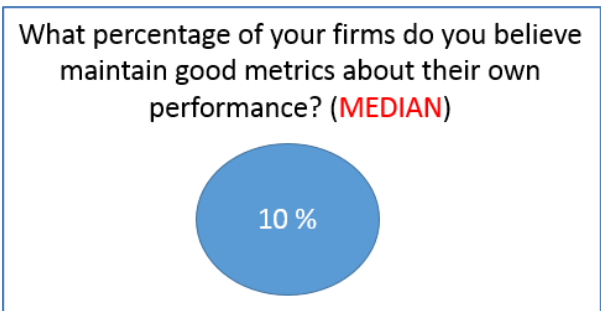
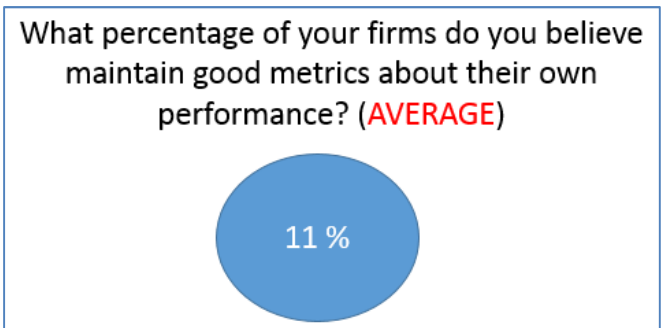
Said another way, for 95% of the executives, have a law firm present data does no harm, and there's a 64% chance of impressing the executive being given the data. We think those are good odds.



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We asked executives to estimate the percentage of their firms that they believe maintain good metrics about their own performance. Their answers suggest a tremendous opportunity for law firms.



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**Most Interesting Ideas Presented By a Law Firm**

We asked each executive to share the most interesting thing presented to them by a law firm in the last year; something that innovative, new, impressive or interesting to them. Here is a sampling of responses.

Most Interesting Idea Presented By a Law Firm in the Past 12 Months		
A 5-year YOY history of their internal metrics and their other P&C clients	<b>The idea of suing first in situations in which we believe there is no liability</b>	<b>An alternative fee arrangement proposed by a panel firm</b>
Offering to assist our company with marketing	Various presentations on changes in the law that matter to us	Using a mock jury to evaluate a high-exposure BI claim
A presentation on how to expedite the resolution of a claim	A presentation on how their lawyers are incentivized to resolve cases early	Presentation of an online negotiation tool
How to respond to reptile theory using Craig’s list as a resource for Mock Trials	Any and all favorable jury verdicts and wins at the higher court levels	Presentation on how to present a reasonableness defense around medical specials
Utilizing a vendor’s software to conduct a virtual jury evaluation	A new strategy for jury selection	Knowledge sharing resource between firms

**There were also these answers:**

Nothing (multiple	Nothing comes to mind	Nothing stands out; maybe an AFA
Law firms rarely provide anything	Nothing new presented that seemed impressive or interesting	Sadly, nothing new, innovative or overly impressive.
I can’t think of anything!	I am at a loss on this one	Cannot think of anything



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## STAFF COUNSEL

Approximately one quarter (26%) of the responding organizations reported that they maintain a staff counsel operation. We defined Staff Counsel Operations carefully, including only policyholder litigation and excluding law departments, coverage counsel, claims technical counsel and other operations where the legal work is not non-policyholder-centric.

22% of the respondents provided detailed information about their operations. We have summarized much of that information in table form below. However, as a primary objective of the 2019 Study is to identify the core industry opportunities and challenges between claims organizations and outside counsel, we have highlighted some of the staff counsel questions below in greater detail.

### High-Level Summary

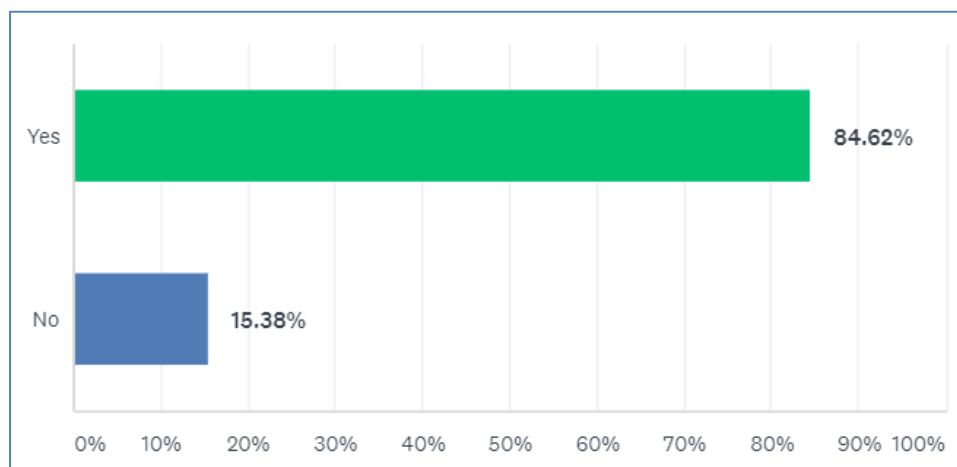
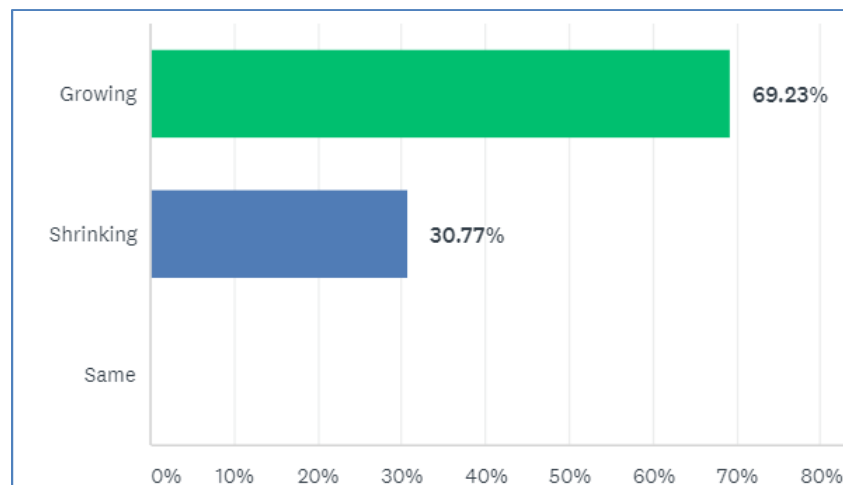
HIGH-LEVEL STAFF COUNSEL DATA POINTS			
To whom does the staff counsel operation report?	CLAIMS – 54%	General Counsel – 39% Other – 8%	2015 Results: Claims – 50% / Gen. Counsel 50%
Number of attorneys in staff counsel operations	94 (average)	50 (median)	2015 Results: 87 (average); 12.5 (median)
Ratio of clerical to attorneys	1:3 (average)	1:2 (median)	
Ratio of paralegals to attorneys	1:6 (average)	1:5 (median)	
% of policyholder litigation handled by Staff Counsel	62% (average)	70% (median)	
Who decides staff vs. outside counsel?	Claims – 39%	Staff Counsel – 54%	Other – 8%

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We asked those executives with staff counsel operations whether the use of staff counsel has grown or shrunk within their organization over the past 3 years.

For 69% of these organization, staff counsel has grown (2015 results: 53%).

We do not attribute this change in numbers to a larger industry trend, given the size of the data pool.



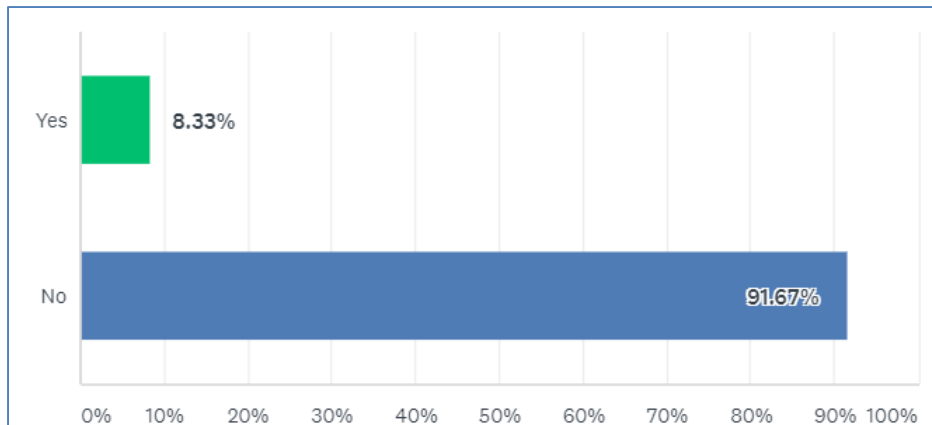
### Efficiency and Outcomes

For those executives with staff counsel, we asked, “Broadly speaking, do you believe that the use of staff counsel is more efficient in terms of cost per case than the use of outside counsel?” (Think only of costs to handle the case.)

85% said they believe staff counsel is more efficient than outside counsel. (2015 results: 90%)

Please note that these are answers of those with a staff counsel operation.

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We also asked whether they believe that outside counsel get better results than staff counsel. Again, those with staff counsel operations appear to like them a lot.

92% do not believe outside counsel gets better results than staff counsel. (2015 results: 83%)

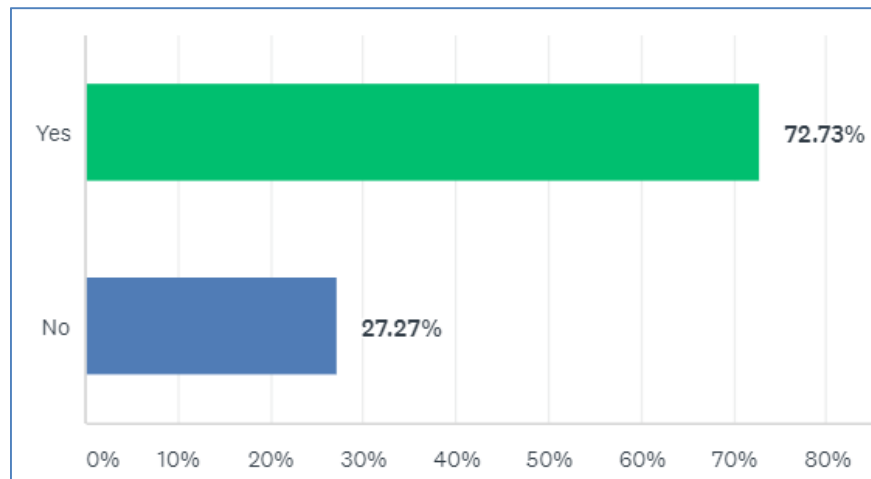
Please note that these are answers of those with a staff counsel operations.

73% of these organizations use staff counsel for trials.

27% do not.

10% of those who use staff counsel for trials will assign an outside attorney to co-chair or monitor.

90% do not use outside counsel to co-chair or monitor at trial.



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62% of those with staff counsel operations maintain scorecards for the attorneys or offices in their operations. (2015 results: 56%) We were interested in the types of information captured in these score cards. Some of the more common responses included:

<b>Cycle times</b>	<b>Closure rates</b>	<b>Production Rates</b>
<b>Recorded hours</b>	<b>Wins and losses</b>	<b>Date to initial file review</b>
<b>Quality scores</b>	<b>Indemnity paid</b>	<b>Customer Surveys</b>

### Process and Vendor Requirements

**We also asked several questions about how staff counsel might be treated differently than outside counsel:**

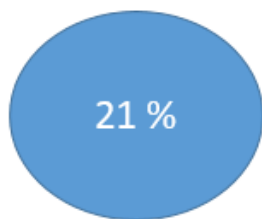
Process and Vendor Requirements			
Do you require staff counsel to track time?	<b>Yes – 53%</b>	<b>No – 47%</b>	<b>2015 Results: Yes – 42%</b>
Are staff counsel required to follow the same reporting and process guidelines to claims handlers?	<b>Yes – 85%</b>	<b>No – 15%</b>	<b>2015 Results: Yes – 79%</b>
Do you require staff counsel to use the same litigation support vendors you require outside counsel to use?	<b>Yes – 73%</b>	<b>No – 18%</b>	<b>Sort Of – 9%</b>

## LITIGATION PROGRAMS AND VENDORS

### Value of Non-Legal Fees

The management of non-law firm expenditures has become increasingly important as we've conducted our three national litigation management studies.

What percentage of your total litigation expenditures is spent on non-law firm litigation vendors?



Respondents identified on average that 21% of their total costs related to litigation are spent on costs other than legal fees.

For this reason we examined a number of litigation management programs designed to bring efficiencies to the process.

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**Court Reporting Programs**

**Court Reporters** - Does your organization maintain a pre-approved panel of court reporting companies? i.e., do you mandate the use of one or more pre-approved court reporting companies?)

	% of Companies With an Established Panel of Pre-Approved Providers	# of Companies on Panel (AVERAGE)	# of Companies on Panel (MEDIAN)
<b>2019 Study</b>	57 %	<b>1.7</b>	<b>1.0</b>
<b>2015 Results</b>	57%	<b>1.43</b>	<b>N/A</b>

Please rank the top 3 reasons you have a deposition program with approved vendors. Please select up to three.

Court Reporting Program Primary Benefits	Weighted Average
Cost	2.41
Metrics	2.29
Quality	2.20
Other	2.00
Convenience for attorneys and firms	1.69
Consistency	1.68

We also asked, “In what percentage of your depositions does your company utilize remote deposition technologies?” Respondents provided an average score of 4% and a median response of 5%.

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**Mediator Programs**

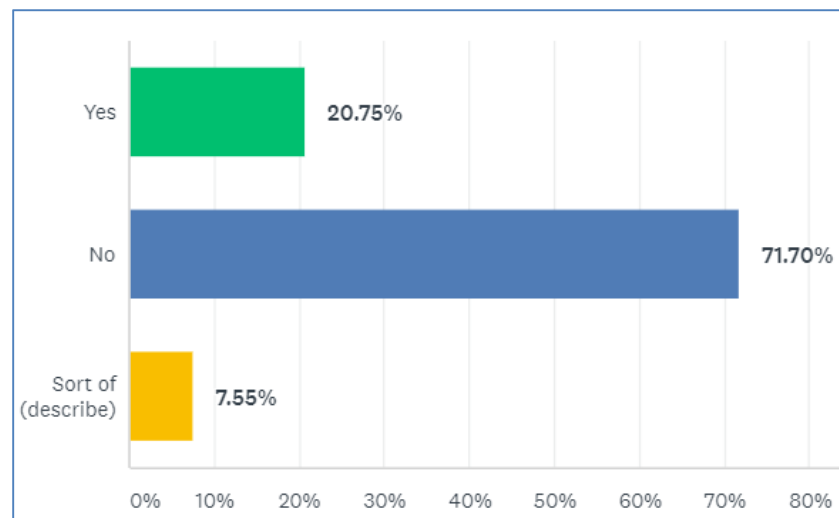
**Mediators** --- Does your organization maintain a pre-approved panel of mediators? i.e., you mandate the use of one or more pre-approved mediation companies or networks).

	% of Companies With an Established Panel of Pre-Approved Providers	# of Companies on Panel (AVERAGE)	# of Companies on Panel (MEDIAN)
<b>2019 Study</b>	14 %	<b>5.0</b>	<b>5.0</b>
<b>2015 Results</b>	23%	<b>1.77</b>	<b>N/A</b>

Because we view the role of mediators to be so critical to the resolution process, we asked whether organizations “objectively track the performance and effectiveness of specific mediators.” (i.e., how many files settled at mediation, within 30 days of mediation, etc?)

We were pleased to see that 21 % of organizations responded in the affirmative and an additional 8% have some sort of mechanism for gather mediator performance data.

We continue to view this specific area as a critical opportunity.



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**Records Retrieval Programs**

**Records Retrieval** - Does your organization maintain a pre-approved panel of records retrieval companies? (i.e., you mandate the use of one or more pre-approved companies to retrieve all records).

	% of Companies With an Established Panel of Pre-Approved Providers	# of Companies on Panel (AVERAGE)	# of Companies on Panel (MEDIAN)
<b>2019 Study</b>	42 %	<b>2.0</b>	<b>2.0</b>
<b>2015 Results</b>	38%	<b>1.69</b>	<b>N/A</b>

Please rank the top 3 reasons you have a records retrieval Program with approved vendors. Please select up to three.

Records Retrieval Program Primary Benefits	Weighted Average
Record Organization	2.70
Metrics	2.25
Cost	2.14
Convenience for attorneys and firms	2.00
Speed of Retrieval	1.87
Consistency	1.70



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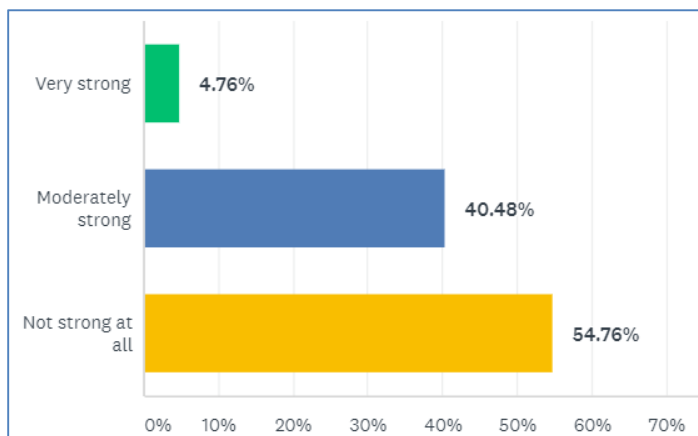
**Expert Programs**

**Experts** -- Does your company maintain a list of pre-approved experts (who will give testimony)?

% of Companies With an Established Panel of Pre-Approved Providers	# of Companies on Panel (AVERAGE)	# of Companies on Panel (MEDIAN)
<b>32 %</b>	<b>N/A</b>	<b>N/A</b>
<b>2015 Results: N/A</b>	<b>N/A</b>	<b>N/A</b>

We asked respondents to identify how strong they believe their measurement of experts’ effectiveness is. They were given these choices:

- Very strong – we formally measure each expert when they are used
- Moderately strong – we do capture some information but it is mostly anecdotal and word of mouth
- Not strong – I wish we had a mechanism for better measuring expert effectiveness



Only 5% feel their process for this is very strong.

The vast majority (55%) feel that their measurement of expert effectiveness is “not strong at all.”

**It should be noted that 25% of the respondents identified that they use formal external resources to vet experts before their use.**

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**E-Discovery Programs**

E-Discovery – Does your organization maintain a pre-approved panel of e-discovery companies? (i.e., you mandate the use of one or more pre-approved companies for e-discovery services)?

	% of Companies With an Established Panel of Pre-Approved Providers	# of Companies on Panel (AVERAGE)	# of Companies on Panel (MEDIAN)
<b>2019 Study</b>	21 %	N/A	N/A
<b>2015 Results</b>	19%	<b>1.81</b>	<b>N/A</b>

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**Structured Settlement Programs**

**Structured Settlement Companies – Do you maintain a panel of structured settlement companies to assist in resolving cases?**

	% of Companies With an Established Panel of Pre-Approved Providers	# of Companies on Panel (AVERAGE)	# of Companies on Panel (MEDIAN)
<b>2019 Study</b>	62 %	<b>2.1</b>	<b>2.3</b>
<b>2015 Results</b>	72%	<b>1.28</b>	<b>N/A</b>

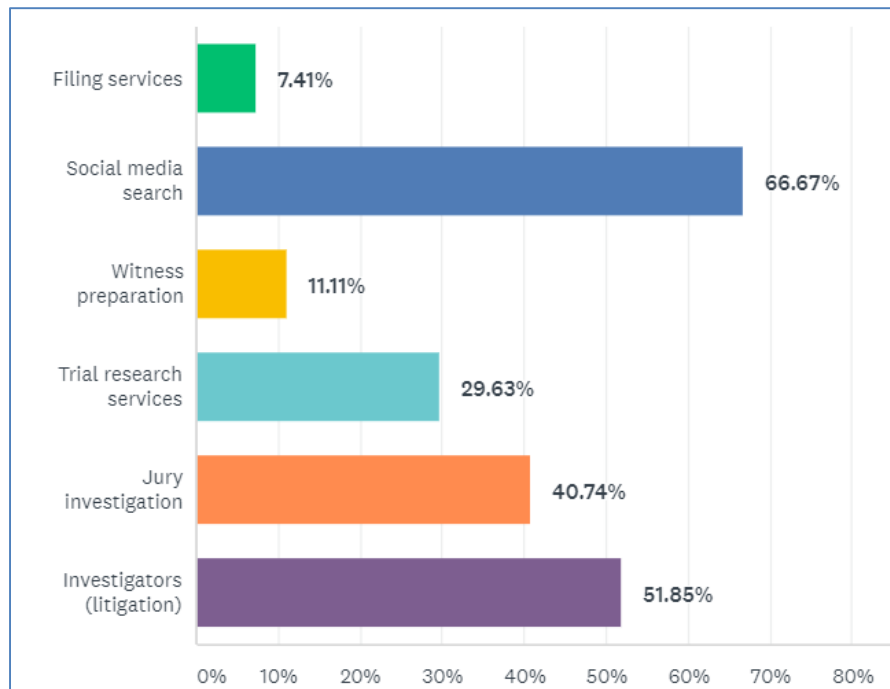
Please rank the top 3 reasons you have a Structured Settlements Program with approved vendors. Please select up to three.

Structured Settlements Program Primary Benefits	Weighted Average
Helps to address claimant needs very specifically	2.32
Is cost effective in terms of ultimate settlement value	2.17
Is a tool that can move negotiations along effectively	1.92
Shows we are serious about resolving the case	1.75

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### Other Litigation Support Programs

**Other Services** – please indicate which additional services types your organization maintains a formal vendor program in (mark with an “X” all that apply).



We take note of the high number of mentions of Social Media Search (67%) and the new entry of Filing Services (7%)

Investigators, Jury Investigation, and Trial Research Services were also mentioned by the respondents in sizable numbers.

Other litigation support programs these executives mentioned to us include E-billing for workers compensation and medical records, Subpoena vendors, engineers, and public records vendors.

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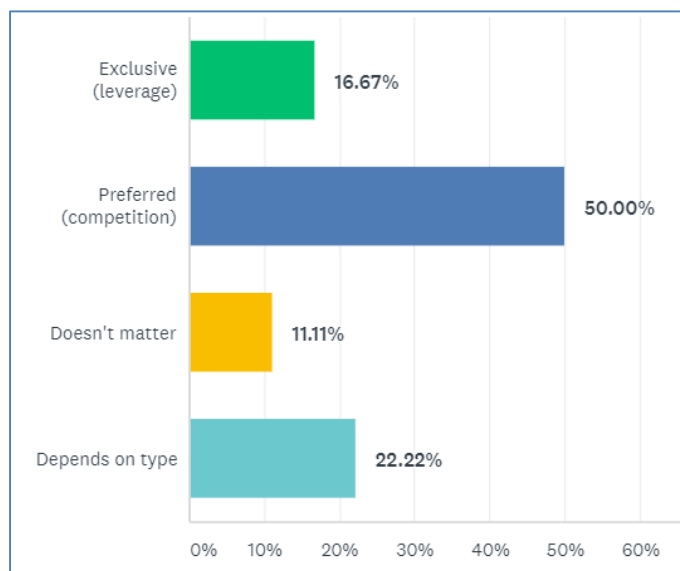
### Use of Procurement Resources

With the recognition that more than half of the Study participants reported outside legal expenditures of less than \$20MM per year, we were curious as to the growing level of involvement by procurement departments when it comes both law firms and non-firm litigation support providers.

Overall, 7% of the respondents reported that their procurement department now gets involved to assist in the selection of law firms. This is exactly the same percentage (7%) reported in 2015.

However, 22% reported that procurement gets involved to assist in the selection of non-firm litigation vendors. This is a significant increase from the 13% reported in 2015. We take note of the fact that those figures suggest that procurement will be involved in at least one of five sales cycles for litigation support providers.

### Preferred vs. Exclusive Relationships



In fashioning their litigation support programs, organizations have a choice between working with one exclusive vendor and maintaining a panel of several.

Exclusivity can provide greater leverage, more consistency and improved metrics. Having a preferred panel generates competition and gives law firms users more choice.

50% of the respondents indicated they prefer a panel approach with several vendors. (2015 results: 47%). 17% enjoy working with one exclusive vendor. (2015 results: 21%)

22% accurately point out that this choice might be best made in the context of the specific services being discussed (i.e., type of program).

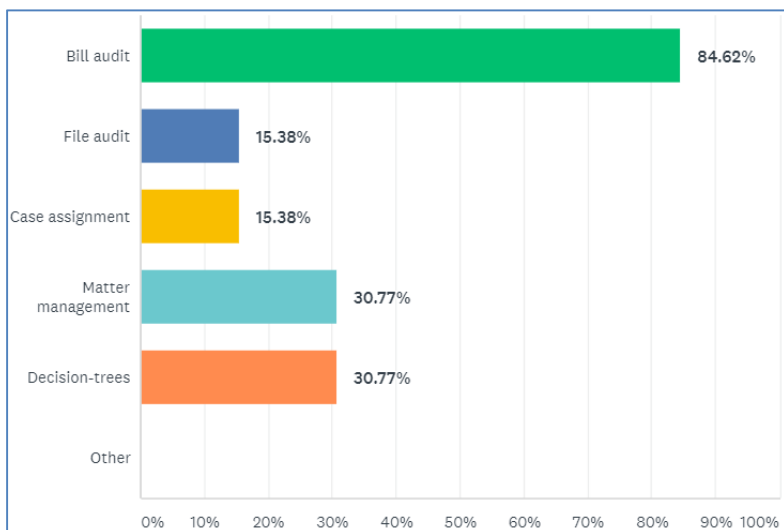
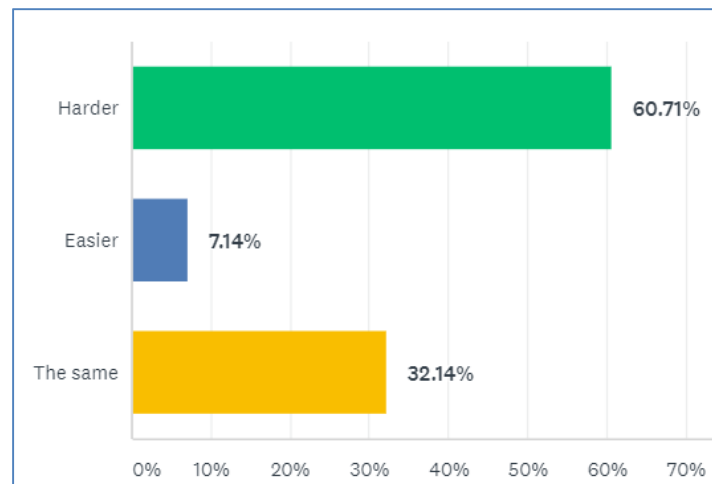
## TECHNOLOGY AND TRENDS

### Finding Expert Litigation Staff

We asked respondents to comment on the difficulty they're having in finding qualified, expert claim staff to handle litigated matters (claims) within your organization.

61% stated that, in their view, this is harder than it was five years ago. (2015 results: 51%)

Only 7% suggested that this is an easier task. (2015 results: 9%)



### Artificial Intelligence

Artificial intelligence (AI) and machine learning are two important concepts that are heard often within the insurance claims industry now. We were curious whether AI is making its way into the litigation arena.

24% of the respondents said they are using AI in the litigation operations. Bill audit received the most mentions in this context (85%), but we noted its use in decision-trees and matter management tools as well.

Importantly, 34% of these executives said they have plans to incorporate more AI into their litigation program in the next 18 months.

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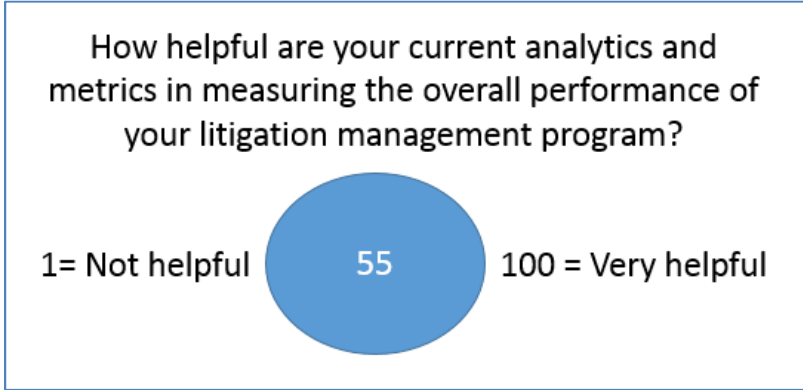
Comfort with Current Metrics

The average score provided by respondents to this question suggests that current metrics and analytics are helpful, but that there is significant room for improvement.

**Single Most Important Metric**

We asked the responding executives to identify the single most relevant metric they use in measuring the overall performance of their litigation management program. We recognize that there is no “one” metric that best works but forced respondents to identify just one.

We summarized those free-hand responses as follows, in the order of mentions:



SINGLE MOST RELEVANT METRIC	
#1 -- Average costs per file / Cost per closing / Expense to indemnity ratio / Expense vs. loss	# 2 -- Cycle time, close lag length of time before settlement discussions
#3 – Total case cost, Average paid loss, Outcomes, Result	#4 – Performance, Quality, Quality audit results, Best practices
# 5 – Closing ratio, Closed vs reported and open	#6 – Total spend of program
#7 – Adherence to budget, Adherence to Litigation Plan Quality of Plan	#8 – Evaluation accuracy, Reserving accuracy
#9 – Claims handler rating of counsel	#10 – Dispositive motion success

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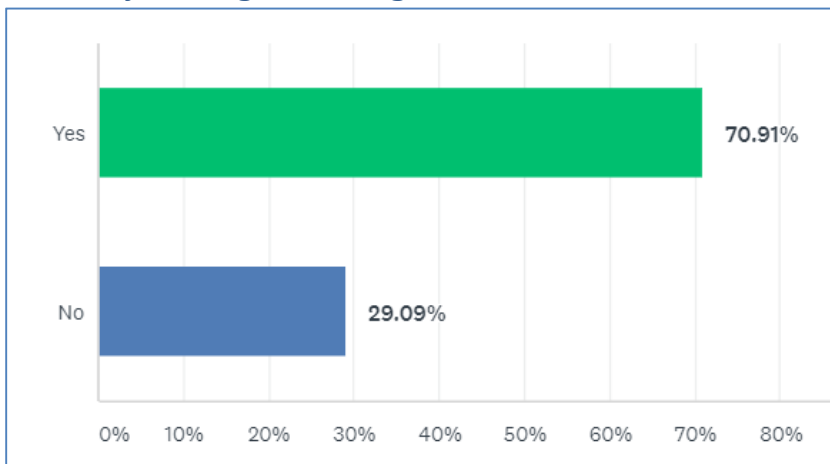
We also asked what single metric the executives currently cannot obtain and that they wish they had better access to. The simplicity of some of these desired metrics may surprise you. Others are quite interesting. A representative sampling of those responses is as follows:

METRICS EXECUTIVES WISH THEY COULD HAVE BUT DON'T	
Resolution to case value ratio	Measurement of negotiating skill
Whether pre-suit retention of counsel improves indemnity outcome	Cost per file to result ratio; leakage
Correlation of performance, closing timeframe, and phase timeframe to legal rate	Improved data to assist with better case assignment
Average legal fees by line of business across the industry	Average cost of defense by attorney for similar case types
Time elements related to each phase of discovery	Overall outcome
Trial results in terms of verdict value vs. settlement demand and offer	Indexing cost to indemnity success
Relationship between legal fees and loss results; Indemnity delta impact from legal costs spent	Defense vs. plaintiff verdicts for specific judges and counties
Average legal spend per case	Metrics on plaintiff attorneys – including cycle time use of doctors, number of surgeries
The heart, tenacity, and effort of our defense counsel	Relationship of attorney and litigation personnel
Production based on specific claim types per law firm	Cycle time at each key juncture of litigation
Legal cost by line of business	Average indemnity



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Visibility of Litigation Program Effectiveness



Historically, the effectiveness of litigation management programs within claims organizations has been highly visible. For an increasing number of claims organizations, the amount spent on legal fees alone can dwarf the entire costs of maintaining a claims department.

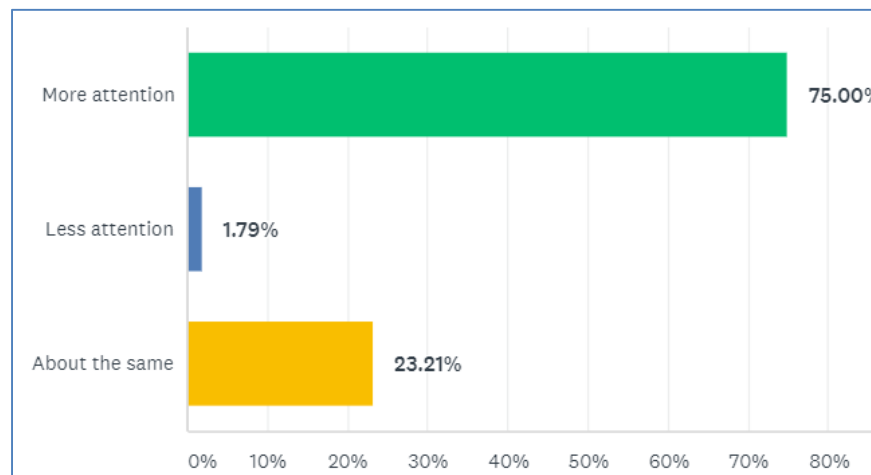
One measure of visibility is whether such effectiveness has been raised by or discussed with the organization’s CEO in the past 12 months.

71% of the respondents said that it has. In 2015, 77% reported this to be the case.

In a similar vein, we asked whether, when compared to three years ago, “litigation management effectiveness” was getting more or less attention from the organization’s senior management.

In 2015, 75% said “more attention.” Remarkably, this year, the exact same number of respondents (75%) agreed.

We did note that in 2015, zero respondents said it was getting less attention. This year, 2% said less.



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### Core Philosophical Considerations

As with prior studies, we feel it is helpful to highlight some core philosophical beliefs held by many industry litigation and senior claim executives. This is helpful to all organizations who work with these executives in terms of better understanding their framework and their needs.

We asked three core questions:

1. Does spending more money on the defense of a lawsuit generally reduce the indemnity costs in that lawsuit?
2. Does paying higher compensation to law firms generally translate to better attorneys and a better result?
3. Do you feel that a majority of litigated claims settle later in the process than is necessary?

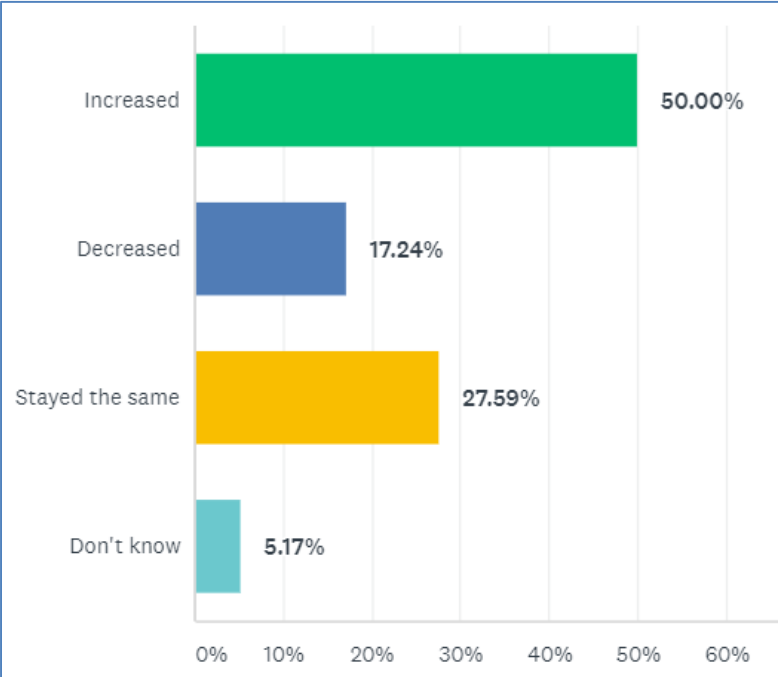
The answers were as follows:

QUESTION	2019 Answer	2015 Answer
Does spending more money on a lawsuit generally reduce indemnity costs?	NO – 79%	NO – 84%
Does high compensation to firms translate to better attorneys and outcomes?	NO – 84%	NO – 92%
Do a majority of litigated claims settle later in the process than necessary?	YES – 80%	N/A

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**Increasing or Decreasing Costs per File**



50% believe they've increased, when compared to three years ago. (In 2015, this number was 44%).

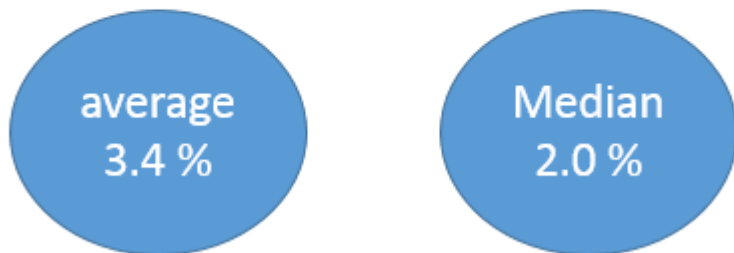
28% feel they are the same, when compared to three years ago. (In 2015, this number was 20%).

Only 17% feel they are less. (In 2015, this number was 32%).

In our view these are materials changes.

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Please estimate the percentage of BI lawsuits that resolved with a verdict rather than a settlement in the past year.



Responding executives said, on average, that 3.4% of their BI litigation “resolved with a verdict.”

The median response was 2%.

We did not ask this question in 2015.

### Staff vs. Outside Counsel

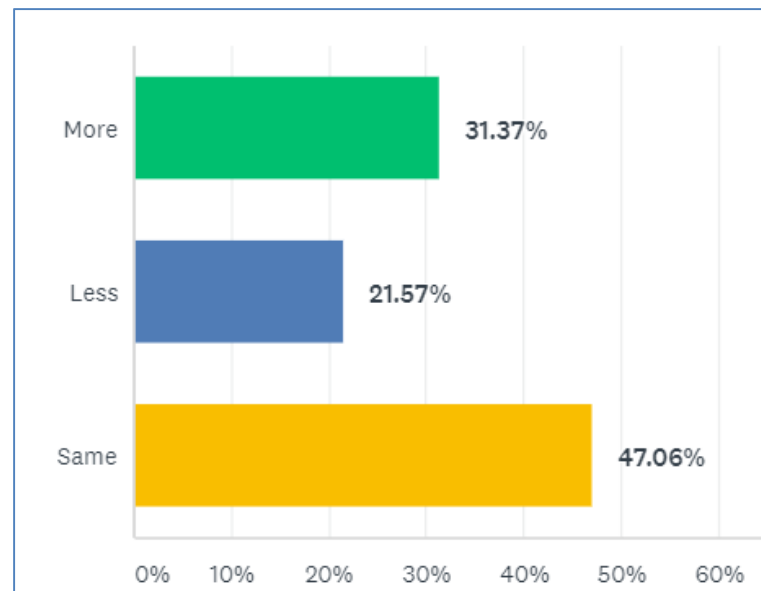
We asked Study participants whether, “Over the next five years, they believe that the claims industry as a whole will use more staff counsel resources or less?”

These responses were from all participants, not just those who current have staff counsel operations.

In the current Study, 31% said more. (2015 results: 53%); 47% said the use of staff counsel would “the same.” (2015 results: 47%).

22% said the use of staff counsel would “less.” In 2015 no one felt the use staff counsel would be less.

We view this to be a material change.



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Our survey concluded by asking each executive to highlight “the most important or relevant change, initiative or program they intend to put in place in their litigation management program in the next 12 months. This is a sampling of responses:

Most Important Change, Initiative, or Program in the Next 12 Months		
Improved panel counsel oversight program fed by more detailed analytics	Detailed metrics on firm comparisons	Deeper training for internal staff on how to manage litigation, review legal bills, evaluate existing counsel, hire new panel counsel
AFA's, early pay discounts, improved analytics around firm outcomes and efficiency	Legal Bill Vendor Selection	Revised survey for adjuster completion which lends itself to more objective firm performance measurement
Add to our litigation examiner staff with more specialization	Dedicated internal legal bill reviewer	“Bottom line” litigation management
Utilization of preferred vendors for both court reporting and mediation	New model to rate firms by legal spend and claim outcome	New plans for budgeting and collaborative mediation
Evaluate our national vendors for e-billing, record retrieval and matter management	Procedures and programs to better identify cases for early resolution	Create several captive law firms
More predictive claims analytics and better claims data analytics	Predictive analytics	Use of predictive models
Put in a legal bill review service	Implement metrics for panel counsel	Implement very defined litigation handling philosophy for adjusters
Early mediation and case evaluation	Law firm scorecards	Tracking software to better dissect where legal expense is incurred.

## Please Thank Our Sponsors

We want to thank each of the Study Sponsors whose contributions have made this Study possible. Each of these organizations is both a thought-leader and important participant in our Litigation Management Community. Please take the time to learn more about them.

Our Sponsors are:

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### **Esquire Deposition Solutions**



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McAngus Goudelock & Courie is a metrics-driven law firm built specifically to meet the needs of insurance companies and their customers. With approximately 200 lawyers, the Firm serves clients across the Southeast. Its core insurance defense focus uniquely enables the law firm to target client-specific end results by capturing a wide array of metrics used to align expectations and performance. More information can be found at [www.mgclaw.com](http://www.mgclaw.com).

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## Conclusion

We trust that participants and general readers find the information outlined in this Report to be helpful. We believe these data points, this “State of the Union,” can be conducive to facilitating conversations in which all members of the litigation management industry participate.

Claim organizations, outside law firms, staff counsel, legal departments, and the service and technology providers that serve each of those constituencies, all benefit from collaborating and exchanging ideas about how to promote the highest standards and best practices in our industry.

### Questions about the Study

A copy of this report can be requested, without charge, by writing to: [clm.study@suite200solutions.com](mailto:clm.study@suite200solutions.com), or by asking any the Study’s Sponsors (listed above) for a copy.

Any questions about this Study may be directed to:

**Taylor Smith | President | Suite 200 Solutions | 224-212-0134 | [taylor.smith@suite200solutions.com](mailto:taylor.smith@suite200solutions.com)**

### About The CLM

The CLM, a member of The Institutes, is dedicated to meeting the professional development needs of the claims and litigation management industries. Founded in 2007, CLM’s membership of more than 45,000 industry professionals benefits from the CLM’s networking events, continuing education programs, and a wide variety of industry resources. More information can be found at [www.theclm.org](http://www.theclm.org).

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