

Chicago Daily Law Bulletin®

Volume 159, No. 229

Assessing early, predicting often

Duane Morris LLP launches new software as general counsels rethink litigation expenses

BY ROY STROM

Law Bulletin staff writer

It's a complicated process. There are a lot of unknowns. It's unpredictable.

Those aspects of litigation are all classic reasons why law firms have shied away from offering concrete, project-based budgets.

Now, though, general counsels want to make litigation more predictable as they seek more certainty about the cost and end result of lawsuits facing their companies.

Thus, a growing list of service providers — from technology consultants to law firms — are providing a more comprehensive, often software-based approach to take the unknown and unpredictable out of resolving lawsuits.

One recent example of innovation in litigation risk analysis comes from Duane Morris LLP.

On Monday, the 700-lawyer firm announced an early case-assessment software tool that it says uses data, such as the previous cost of similar cases and the tendency of judges, to help general counsels better manage litigation.

"It's not just that the market needs it. It's that the market demands it," said Paul E. Chronis, a Duane Morris partner who helped develop what the firm calls its Dispute Navigation Analytics (DNAsm) tool.

Duane Morris, which has 40 lawyers in Chicago, describes the DNAsm tool as a way for general counsels to control costs and manage risks.

It does that, the firm said, through a step-by-step analysis of

the factual and legal issues in the litigation combined with a detailed process for better predicting costs, risk exposure and outcome probabilities.

The tool identifies the issues that most influence probable outcomes. It then applies a "cost-impact evaluation" for each successive phase of litigation.

It also accounts for potential damages based on existing precedent; the identities of the adversaries and their attorneys; jury dynamics and demographics; the number of potential key witnesses; cost of discovery and e-discovery; result and cost outcomes of similar litigation; and any available information on the local bench.

"This product brings efficiency to an incredibly complex, incredibly cumbersome litigation process," Chronis said. "That's not easy to do. That's why a lot of lawyers don't do it."

Chronis said general counsels increasingly demand efficiency from their law firms. While that edict may have been met with resistance by law firms in the past, Chronis said today's law firms will be forced to adopt more streamlined and transparent practices.

"Modern businesses require efficiency," he said. "The law is no exception to that rule — and I

“It's not just that the market needs it. It's that the market demands it.”



Paul E. Chronis

believe it's a rule."

Chronis' view is supported by local general counsels and by legal industry surveys.

"Anything that can make the process objective and factually based is a useful tool, although not everything can be so easily quantified," said Joshua J. Mintz, general counsel of The John D. and Catherine T. MacArthur Foundation.

"I think in-house counsel are looking for outside firms that can analyze the litigation risk objectively and thoroughly and that understand the culture and risk tolerance of their client."

Audrey H. Rubin, chief operating officer of Aon Service Corporation's 150-attorney law department, said early case-assessment software tools are not necessarily new, but they can be used by clients who demand regular budgets from law firms.

"They can be a neat tool if used properly," Rubin said.

A March survey by BTI Consulting Group says general counsels have widely adopted early case assessments to create what it calls a "resolution revolution."

Since 2009, resolution rates — the percent of active matters that general counsel have resolved — was projected to rise to 44.5 percent in 2013. In 2009, that number was 22.2 percent.

The resolution rate nearly doubled in just three years for a number of reasons, according to the survey.

Few cases are outside the purview of early case assessment.

More litigation data is being captured and technology is being created to transform that data into predictive models. And clients are taking an "all things considered approach" to resolve cases and cap litigation spending.

"No longer the legal world's equivalent of the Wild Wild West," the survey says, "litigation holds the promise of a new frontier: A chance to transform the legal department from a soaring cost center to a strategic asset designed to reduce risk and contain costs."

An October legal department survey released by law firm consultancy Altman Weil showed that nearly 30 percent of its 207 respondents planned to decrease outside counsel spending this year. A comment by a survey respondent said more efficient legal processes were sapping the demand for outside counsel.

"We use process control and project management to limit legal work to what lawyers should do — not what they have done," the survey respondent wrote. "In addition, proactive, risk-based counseling limits the need for reactive fire-fighting legal services — thereby reducing overall demand."

Litigation risk-assessment tools are typically offered by legal vendors — companies such as Serengeti Law, Project Leadership Associates or Lex Machina.

Those services depend in large part on comparing data they capture from a number of law firms. Duane Morris' DNAsm tool relies on the firm's interior knowledge of its own costs, experience with similar cases and other factors.

Chronis, the partner involved in developing the tool, said it would be a way for his litigation practice to set itself apart from other law firms.

He said the tool is heavily weighted to consider the various business objectives that may be at stake in any given client matter. For instance, it can factor in the reputational risk of a lawsuit — something a longstanding outside counsel may better identify than a generic software product.

"This tool really does focus on the relationship of the case to the business objectives and goals of the company," Chronis said. "I think that's one thing that differentiates it among others."

Duane Morris LLP