

Maximizing The Utility Of Law Department Metrics

The Editor interviews **Jeffrey W. Carr**, General Counsel of FMC Technologies, Inc.; **Steven A. Lauer**, Corporate Counsel of Global Compliance Services and Co-Chair of the Open Legal Standards Initiative; **Albert C. Peters II**, Assistant Chief Counsel of the Pennsylvania Turnpike Commission, and **Meredith B. Stone**, Vice President and General Counsel Americas of NACCO Materials Handling Group.

Editor: What types of legal matters does your law department handle?

Stone: From our division office in Greenville, North Carolina, we handle the majority of the legal matters associated with the company's operations in North and South America, including employment law, transactional documentation such as customer and supplier agreements and operating agreements, import/export compliance, non-products liability litigation and a great deal more. We are not generally involved, from the division office, in product liability, insurance, intellectual property, corporate and tax matters.

Lauer: Besides the usual corporate matters, the legal issues here at Global Compliance involve privacy matters, regulatory matters, some litigation and counseling.

Carr: The in-house lawyers at FMC Technologies are responsible for all of the company's legal matters except tax. We outsource litigation and intellectual property preparation and prosecution.

Peters: The lawyers at the Turnpike Commission advise and counsel our clients and

handle general commercial and technology matters, litigation management, employment and labor law matters and property acquisition.

Editor: Do you use metrics to manage those matters?

Peters: Yes, we do. The organization is in the midst of implementing enterprise resource planning software, but that software does not include a matter management system, so we have to "start over" with new processes and metrics.

Carr: We use metrics vigorously in the FMC law department.

Lauer: Having joined Global Compliance only recently, I have not begun to use metrics in my work. I've used metrics in previous in-house positions to a limited degree. In addition, during the time that I consulted with law departments, I worked with clients on projects that had metrics-related components and that experience provided me with insights into this topic.

Stone: We don't use metrics in the formalized sense of the term that many people use. We do, however, collect and review data on different items at different times. For example, we track the cost to defend particular types of litigation, the turn-around time for processing contracts, the number of contracts reviewed in a particular time period and other metrics-related data.

Editor: How do you determine which metrics to apply?

Carr: We focus on two types of metrics. We look at benchmarking data to see how we're doing in comparison to companies that we think of as our peers. We also analyze our operations to determine what metrics would assist us to drive performance improvement. Our driving focus is on metrics that matter – metrics that are meaningful from a performance standpoint.

Peters: We use inventory, cycle time, and productivity to give us a "snapshot" of operations, but we deal with a small and varied inventory of matters so we haven't gone beyond that point. Our use of metrics is therefore somewhat limited.

Stone: In determining what data to collect and how to conduct metrics analysis, we first need to understand why we want that analysis. For example, do we need to fill a corporate request, determine cost structures, establish or demonstrate service levels, etc.? We also consider who will see the data. Will that information remain in the legal department? Will we share it with others in our company and, if so, with whom or which departments and why? Will we share it with individuals outside the company? We need to understand how the data we might collect could implicate any privileges we might have.

Lauer: The metrics that I used previously came from surveys and some internal analysis. Based on some individual benchmarking with attorneys in other law departments, the other in-house attorneys I worked with, I determined how best to

measure our work. I also worked for over five years as a consultant to law departments and had occasion to conduct benchmarking research for clients for a number of projects.

Editor: How do you collect the data for your metrics analysis?

Stone: We may collect data in different ways, such as by reviewing outside published surveys, reviewing internal data or by reviewing budget information and conducting reviews of litigation and other projects which involve outside counsel on a regular basis.

Carr: We collect some data from various external survey sources, like Hildebrandt, the General Counsel Roundtable, Altman Weil and Serengeti. Internally, all our metrics come directly from our Serengeti matter management system ("Tracker").

Lauer: For many law departments, the e-billing capability built into their matter-management systems or that they have on a stand-alone basis provides them most of their metrics-related data.

Peters: We use data that we can find in our internal files.

Editor: Do you find useful information in surveys that are available from other sources?

Peters: To some extent we do.

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Partners Notes

Cozen O'Connor Names 17 Partners

Cozen O'Connor has announced that 17 of its associates have been named members of the firm.

"We are extremely proud to welcome these highly qualified attorneys into membership in the firm," said Patrick J. O'Connor, president of Cozen O'Connor. "Their individual and combined contributions reflect the talent and strength of our firm."

The Cozen O'Connor associates who were promoted to firm members, and the offices in which they practice, are: Eric J.

Berger (New York Downtown); S. Ellyn Farley (Chicago); Angela M. Hahn (Dallas); Marco A. Hazan-Cohen (Dallas); Maya Hoffman (Chicago); Megan A. Lammon (Charlotte); Stacy A. Mitchell (Cherry Hill, NJ); F. Alec Orudjev (Washington, DC); Theodore W. Pannkoke (Chicago); Cavas S. Pavri (Philadelphia); Jennifer A. Poynter (Denver); Suzanne C. Radcliff (Dallas); Glenn W. Reimann (Philadelphia); Rachel Robbins (Philadelphia); Carrie B. Rosen (Philadelphia); Ilan

Lowenstein Partner Confirmed As NJ Superior Court Judge

Rosemary E. Ramsey, a partner in the Lowenstein Sandler PC Products Liability Practice Group, recently was confirmed by the New Jersey State Senate as a Superior Court judge assigned to Morris County.

Judge Ramsey has extensive experience representing corporations and individuals in complex litigation primarily involving products liability, mass torts, toxic tort and environmental science. Her experience includes representation of clients in single plaintiff and mass tort

actions involving explosions, chemicals, pesticides, medical devices, pharmaceuticals, breast implants and latex gloves in state and federal consolidated actions, MDL proceedings, coordinated multi-state litigation and civil, criminal and administrative investigations and proceedings.

Judge Ramsey's experience also includes matters involving crisis management and critical incident response in the chemical, pharmaceutical and other manufacturing industries.

CSC, FTF Technologies Release New Document Management System

Corporation Service Company (CSC®) and FTF Technologies Inc. (FTF) jointly announced today the release of the First to File EFR™ document management system integrating patent management workflows.

The new First to File EFR system contains new features to assist corporate patent lawyers with their document management needs. These include document staging capabilities and WebDAV access, as well as instant case and document searching capabilities using its InstantOCR technology. The system also integrates the new FTF ServerSecure Technol-

ogy™ (SST) for additional security as opposed to traditional hosted solutions. In addition, the First to File EFR application integrates with the USPTO PAIR system, providing critical data updates to patent case files, and streamlines electronic filing with the USPTO via its proprietary eFiling package and auto-population of critical forms. The First to File EFR management system provides an innovative reference library and repository that is fully integrated with its workflows and allows users to search, cite, manage and use their reference documents, especially critical in the filing area.

White Plains Group Joins Amper

Amper, Politziner & Mattia, certified public accountants and consultants, has announced that Martin I. Blaustein and the staff of Blaustein and Co. LLP have joined Amper.

Blaustein & Co. LLP has been actively involved in the areas of litigation support, business valuation, income and estate tax and financial planning and has offices in White Plains and New York City.

As an officer in Amper's Litigation and Valuation Department, Mr. Blaustein brings more than 36 years of experience in forensic accounting and litigation support, valuations of professional and commercial entities, planning for businesses, professional persons, and estate planning and taxation. He is an accredited business valuator through the American Institute of Certified Public Accountants.

Metrics

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Carr: Yes, we review surveys from the sources that I named a moment ago.

Stone: Some information from external surveys may be useful sources for certain "big picture" metrics.

Lauer: Speaking from my prior experience and my consulting work, I found existing surveys to have very limited utility. Often, the age of the data that underlay a survey's conclusions was not easy to discern. Second, I frequently could not determine whether the law departments that responded to the surveys uniformly or consistently interpreted the questions and some of the terms used. For example, how does an in-house attorney qualify as a "management" attorney? If the answers to that question differed among respondents, the results of the survey would not provide reliable information.

Those issues led Nena Wong and me to found the Open Legal Standards Initiative a couple of years ago. We hope that OLSI will develop common metrics for corporate law departments to enable in-house lawyers to more comfortably and reliably determine their success in managing their companies' legal affairs. Law departments will have more comparable information and be better able to correlate their own efforts with those of other departments.

Editor: Can you reliably use data from those external sources to manage your law department? Are those data consistent with the types of information you need in your department's practice?

Stone: I think this type of data may be useful for comparison purposes, some level of benchmarking, but internal management of the legal function is very specific to your own company and its own

operations. Only to a limited extent are those surveys relevant to our needs.

Carr: Yes and no. The formats and questions differ from survey to survey, as Steve suggested, which really impairs their utility. Also, the scope of an outside survey can be too limited for our purposes.

Peters: We use the data from such surveys on an aggregate level for comparison purposes, but our organization's operations, like those of Meredith's, are unique on some issues so we can't make very detailed comparisons using that information.

Lauer: I agree with Al and Meredith that the reader must apply the results from a survey to his or her own department very carefully, especially in light of the uncertainty about definitions, etc. Many in-house lawyers have told me that they find some of the survey information useful, usually in terms of things like the number of administrative staff per attorney and other, clearly objective numbers.

Editor: Are existing surveys consistent with respect to the types of metrics that they report and how they present the information? Should surveyors try to maintain more consistency in their efforts in order to provide more useful information to corporate law departments?

Peters: Our basic challenge is that we handle a small number of matters but those matters vary tremendously. For that reason, we find it hard to generalize from those surveys. Analyzing the Commission's legal service also presents other challenges and opportunities. We face difficulties demonstrating the benefits of our preventive law efforts, though we analogize from the estimating experience of accountants in valuations and appraisals. Second, we face the difficulty of finding

the "right" metric: sometimes you need to create specialized metrics because standard ones don't fit your needs. Finally, we try to remember that one of our roles is that of an advocate for our department, our work and even our careers. We try to determine the role that metrics can play in telling those stories.

Carr: In the order of your questions: no and yes. Unfortunately, the proliferation of surveys steals time away from me and my people. The most useful thing that can be done from the perspective of metrics would be to develop a single source for data input. This would allow us and other in-house lawyers to contribute data one time. The various consultants could then pull the information that they need from that pool. We would input data once and only once.

As the data collection system is currently structured, there is a real risk that law departments such as ours will refuse to participate, undermining the utility of the surveys created. The other critical factor is that we need to focus on the metrics that truly matter – a survey with 100 data points is neither useful nor likely to be filled out. On the other hand, certain areas are not probed at all – outside counsel evaluations, real settlement/judgment costs by case/jurisdiction/type of case; legal expenses by type of matter/location/complexity.

Stone: Survey results may not be consistent. The way a question is worded, the types of responding companies, the demographics of those companies and other factors impact the survey results and the value of that information. Formal surveys of this type may be helpful for benchmarking, to see if your company is away from or near the "norm," but not necessarily definitive to a company or a legal department's own operations. There are too many subjective factors unique to each of our companies.

It might be more useful to develop sur-

veys by industry, geography and/or by size of law department. For example, metrics from large law departments may not be that useful to small departments and vice versa. More targeted surveys for small law departments and small departments (but not small companies) without consistent repetitive litigation would probably add more value.

Lauer: Many in-house attorneys find it hard to determine whether various surveys are consistent. They find that the surveys' users are at the mercy of the survey respondents' interpretations of the definitions in the surveys, which can vary in ways that are not apparent. Greater consistency among surveys would render them all much more useful and provide much more valuable information than they do now.

OLSI will tackle those difficulties in developing consistent approaches to the measurement of corporate legal service. With the many substantive challenges that in-house lawyers face in their companies' legal matters, they don't need additional difficulties when they try to manage those matters more closely.

Editor: What does OLSI do?

Lauer: Last year, with the support of the Association of Corporate Counsel and the help of the Practising Law Institute and West Legal Ed, OLSI put on a series of online symposia on metrics. Jeff, Nena and I wrote an article about metrics that appeared in the ACC Docket that described OLSI's efforts. OLSI also launched a survey on metrics for corporate law departments to establish some common language and understanding of the subject. We are putting together an in-person conference on the topic for later this year. If anyone has questions about OLSI and its activities or wants to get involved in its various committees and activities, I urge them to contact us at info@openlegalstandards.org.

For further information, please email info@openlegalstandards.org.