Technology and Litigation Management

Litigation and Dispute Resolution

For some of us, litigation management is a necessary evil; for others, it's work we love. Either way, it's no surprise that technology can dramatically improve litigation management. In fact, litigation has spurred the creation of some of the best legal technology at our disposal. Here's an overview:

Litigation risk analysis (LRA) — This is a time-tested but underused technique. Typically, it starts with creating a "decision tree" using probability mathematics to map and then evaluate all the possible outcomes (branches) of litigation in terms of risk and reward. You can supplement decision trees with other decision support techniques, such as Multi-Attribute Utility Theory (MAUT), which can be used to measure the more subjective consequences of litigation.

A good LRA will not only provide the most accurate settlement value for a given piece (or group) of litigation, but will also provoke the most effective discussions about the case with all stakeholders. Developing an LRA in collaboration with your outside counsel will ensure that everyone has a better understanding of the hidden assumptions that affect expectations, and help avoid unexpected settlement recommendation surprises on the courthouse steps.

LRAs are conceptually easy to make and take relatively little training. Although there are a number of apps that can help build LRAs, the easiest and, in many cases, most helpful approach is to simply build it into a spreadsheet program such as Excel. Spreadsheets have the advantage that if your case develops unexpectedly, you can easily add branches, change the outcome values or probabilities, and otherwise adapt the LRA to those changing conditions or information, which will

automatically recalculate probable outcomes on the spot.

Litigation project management — Many of my ACC Legal Ops colleagues have already extolled the virtues of legal project management in other contexts, but it is especially valuable in managing complex or high-stakes litigation. Outside counsel are usually great at explaining what pleadings and discovery and litigation support and other elements are likely to be necessary for a successful outcome of your case. They are not so good at developing a comprehensive plan that describes in detail their proposed action steps, the responsible individual for each step, and budget costs.

Once again, although specialized software can be purchased to help manage litigation projects, I recommend using a more generalized program such as MS Project, OmniPlan, or Zoho Projects, because they are less likely to put "the rabbit in the hat" by building in assumptions that may not be applicable to your case.

Billing management — This is an area that has matured wonderfully over the past several decades, to the point where entire books are devoted to the subject. Modern billing management software can not only audit and enforce outside counsel billing guidelines, it can also provide an alert if actual-to-budget expenses are going off the rails, help compare outside counsel expenses to those charged by other firms, aggregate litigation expenses by type, compare year-over-year expenses, etc. Some of them also integrate fully into case management software. If litigation management is a substantial expense, purchasing good billing management software is a great investment.

Case management — The days of hunting through poorly lit file rooms to locate casework, only to fail because someone else had the files and had forgotten to return them, are over. Thanks to case management software, most corporate counsel can now peruse any case from a computer. There is also the benefit of word search, a uniform, and systematic approach to file management, ease of collaboration and communication, and many other advantages.

Discovery and technology assisted (document) review — Tech has spectacularly transformed this area. The way software can now scan and "review" massive document productions can seem magical. While some might dispute whether this should be considered true AI or Machine Learning, this is a case in which the rose by any other name still smells just as sweet.

Most "documents" produced in litigation are digital, and in some cases can comprise formerly unimaginably large volumes. Paying humans to review these masses of data not only isn't cost-effective, but it may not even be possible in the truncated time frames we sometimes now face. Fortunately, very smart people have developed algorithms that allow computers to process enormous volumes faster, more effectively, and far cheaper (some say by factors of 50 or more), and courts have explicitly acknowledged the incredible performance of these tools.

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