

Litigation Industry Snapshot:
Participants' Report

**Perceptions and Observations of Senior Industry Chief
Litigation and Claim Officers
On the Subject of
Third-Party Legal Bill Review (LBR) Services**

Winter 2017

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Introduction

A Thank You to Our Participants

We would like to thank the 54 senior claim and litigation executives who participated in this Industry Snapshot. These studies, and the information produced as a result, would not be possible without your participation.

CLM Advisors conducts these periodic Snapshots to capture how industry executives feel about different litigation and claim strategies. Your willingness to spend a few moments sharing your thoughts is a reflection of your commitment to the industry, and supports our efforts to promote and further the highest standards of claims and litigation management.

Please note that our Snapshots, in contrast to our more formal Studies, are intended to serve as more informal, point-in-time, State of the Unions on particular aspects of our industry. In our Snapshots we provide no analysis and commentary about the results, leaving each participant to draw what conclusions they wish from the raw data presented.

We trust you will find this information to be both interesting and helpful, and we look forward to including you in future Snapshot surveys.

About This Industry Snapshot

Insurance claim organizations have focused intensely on the management of outside legal expenses for approximately two decades. Third-party legal bill review (LBR) auditing services first gained real traction in the late 1980s and early 1990s. Software-driven e-billing solutions began to be deployed in the late 1990s and early 2000s. Now, according to some estimates, those two industries combined account for a market of roughly half a billion dollars.

In the current environment, legal and claim executives seeking to ensure that outside law firm invoices are compliant with billing guidelines have a myriad of options before them. They can:

1. Leave the compliance validation in the hands of their front-line litigation claims professionals;
2. Centralize internal expertise by building and maintaining an internal team of invoice review experts(an internal LBR Unit);
3. Use the services of independent third-party legal bill review auditing companies (outside LBR services).

Almost without exception, organizations deploy advanced legal e-billing software tools to support Options 1 and 2, above, and occasionally for Option 3 as well. Combinations of these resource sets and workflows are commonly used by claims organizations to achieve their varied litigation objectives.

This Snapshot focuses on the third of these modalities --- outside (third-party) legal auditing services. It was our intent to capture the observations and perceptions of senior claim and litigation executives about such services.

Snapshot Methodology

The information captured in this Snapshot was gathered primarily through online survey. Some executives provided the information verbally and their data was re-keyed into the online survey environment.

An e-mail invitation to participate in the Snapshot was issued to approximately 125 claim or litigation officers. Fifty-four (54) responded.

The survey instrument contained 38 questions, organized as follows:

- 14 questions were directed to all participants;
- 17 questions were directed only to those executives whose organizations currently use outside LBR auditing services;
- 7 questions were directed only to those organizations who do not currently use LBR auditing services.

All survey responses have been de-identified. Particular care has been taken to ensure that no specific responses or data elements can be attributed back to any specific organization or participant.

Questions About this Snapshot

This Snapshot was authored by Taylor Smith of CLM Advisors. Any questions or requests for more information can be directed to Taylor Smith, President, CLM Advisors, at 224-212-0134 or taylor.smith@clmadvisors.org.

Participant Demographics

Claims Organization Profile

Fifty-four (44) claim organizations participated in this Study, representing a myriad of lines of business, staff size, and litigation volume. So that readers can identify how their own organization compares to this participant pool, we provide this high-level profile of participant organizations:

	Litigation Spend (YR) (MM)	# of Outside Firms Used Annually Panel and Non	# of claims staff handling litigated files
Average	\$39.6	165	110
Median	15.5	80	19

Legal Spend

Combined, the respondents to this survey oversee \$2.14BB in annual outside legal spend. Legal spend volume ranged from \$500MM per year to \$.5MM (insurance start-up) per year. The average legal spend was \$39.6MM and the median response was \$15.5MM.

The average legal spend for those organizations not using outside LBR services was \$49MM; the average legal spend for those organizations currently using outside LBR services was \$29MM.

Outside Law Firms Used

Respondents were asked to identify the number of outside firms, both panel and non-panel, they use. The average response was 165; the median response was 80.

The average number of firms used by organizations not using outside LBR services was 193; the average response for those organizations who currently use LBR services was 131.

Litigation Staff Size

Participants were asked to quantify the size of their “internal litigation management staff,” defined as “all claims professionals who manage litigated files.”

The average response was 110; the median response was 19. The largest number of claims handlers working litigated matters was 1,600; the smallest was two.

Among those organizations not currently using outside LBR services, the average staff size was 162; the average response for those organizations who currently use LBR services was 50.

Questions Directed to Current Users of Outside LBR Services

Twenty-nine (29) respondents, or 54%, reported that they currently use outside LBR services. Certain questions were exclusively directed to those executives. These questions, and the corresponding answers, are summarized below.

Percent of Spend Reviewed

Those using outside LBR services reported that they use them, on the whole, a lot. While some organizations use LBR services selectively, such as to review the legal invoices from non-panel counsel, the vast majority attempts to get as much of their legal spend to the outside LBR service as possible.

Q: Roughly what percentage of your legal spend does your LBR provider review? (All legal spend or just a subset?)

A: Average Response: 83%
Median Response: 95%

Satisfaction with LBR Services

Q: How would you rank (Scale of 1-10) your satisfaction level with your provider's services, and why? (1=not satisfied at all / 10= extremely satisfied)?

A: Average Response: 7.4
Median Response: 8.0

Relationship Tenure

Q: How long have you used your current provider's services? (In years)

A: Average Response: 6.2
Median Response: 6.0

Delivery on Promises

Q: How well do you feel (Scale of 1-10) your provider has “delivered on their promises to you”? (1=not well at all / 10= extremely well)

A: Average Response: 7.3
Median Response: 8.0

Primary Value Originally Desired

Q: What was the primary value you were looking for when you put the program in place?

A: Responses can be categorized into several primary values, as follows:

Primary Value Identified	Number of Mentions
Fee Reduction (Reduction in Fees Paid)	10
Billing Guidelines Compliance	15
Greater Access To Data, Data Analytics, Benchmarking	11
Verifying DCC LAE Reserve Accuracy	1
Ease of approving bills, improved efficiency, removing bill review from technicians	3
Identifying duplicate bills	1
Consistency in capturing legal functions across all firms	1
Consolidation of Billing Information	1
Improved litigation management	1

The Need for Savings to Exceed Costs

Q. How important is it to you (Scale of 1-10) that the amount of invoice reductions exceeds the fee paid to the LBR service (1=not at all / 10=very important)?

A: Average Response: 6.9
Median Response: 7.0

Missed Expectations of Service Providers

Q. What has your LBR services provider fallen SHORT on (failed to provide, that you wish they did)?

They have not always understood jurisdictional issues and legal issues which then create billing appeals that are unwarranted.	The firms complain of complex onboarding issues that need IT to resolve.	They have not completed the merger of their organizations
They didn't provide any value that we couldn't provide for ourselves	Substantive Law Firm Claim file audits	Ease of integration with web based claims systems
Ad hoc reporting. They are improving with every update iteration to their software	flexibility in providing management reports	Reporting has been problematic
ease of data reporting/analytics	Analytics (pivot table spreadsheets don't exist).	Poor customer service, promised items not delivered
Reporting	legal spend analytics are complex and labor intensive	inflexible with data needs
	Better Reporting on trends	

Major Risks of Using Outside LBR Services

Q: What is the major risk (if any) of using LBR services in your view?

Lack of knowledge of legal and jurisdictional issues. The overriding issue of the Bill review company trying to maximize the reduction to help their billing	Relationships with panel counsel may be eroding.	Panel counsel billing department learning workarounds to the system to maximize billing
lack of expertise in types of litigation for which they are auditing bills	Disillusionment of panel counsel	Adds a unnecessary middleman that gets in the way of direct communication between the parties to the transaction
Using a vendor that is not aligned with our company and department strategy re: litigation	Claim staff disconnecting from managing legal expenses themselves.	relationship disruption with partner law firms
One of the major risks my team was concerned about was a backlash from current counsel who would be resistant to the implementation of such a system during a time of increasing litigation for us	inability to really track firm billing habits	Complacency with program; billing rules/audit practices are learned and firms circumvent or avoid detection
		Alienation of counsel relationships

Use of Software by 3rd-Party LBR Providers

Q: Does your LBR provider use software as part of their review process?

A: All of the respondents who answered this question affirmed that their LBR services provider uses software to facilitate their review of legal invoices.

95.8% of the respondents who answered said that the software being used is that of the

LBR Company; the remaining 4.2% said that the LBR services company uses software purchased separately by the claims organization.

Whether Software Matters to Buyers

Q: Does it matter to you what software they use? Do you care?

A: For 75% of the executives who responded to this question, it doesn't matter to them what software the LBR provider uses; for the remaining 25%, it does.

Several respondents added comments to their response, as follows:

Apart from the onboarding of law firms, the systems seems to work very well.	I want an electronic budgeting tool that will link to bill processing.	Software should be user friendly and effective
Needs to have credibility	We use a large, well-known vendor with national carriers as clients, much bigger than we are, so if there are issues or trends, we tend to benefit from what lessons they learn.	All that matters is that it works and our IT dept. approves of it
Must be capable of integrating with claim file data that we push in for analytics purposes	I want software that works well, is easy for our firms to use and provides meaningful data- I don't care what software this is	We wanted to make sure that we understood the system being utilized and felt comfortable that it was not too aggressive.

Individual Auditor Qualifications

Q: Do you know the qualifications of the individual auditors that review your firms' invoices? (Yes/No)

A: 76% of the executives who answered this question said that "Yes," they do know the qualifications of the LBR service's auditors. 24% said that they do not. In the comments section of this question, the most frequently noted comments suggest that attorneys are prevalent in the review process, but a factor of 2:1 over paralegals or claims professionals.

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Winter 2016**

Snapshot participants were asked if it mattered to them whether the auditors are attorneys or not. 60% feel that it is important. 40% responded by saying that the reviewer does not have to be an attorney, provided they are skilled at their reviewing.

Reporting: What do you Value the Most

Q: What do you value the most about the data or reports that your 3rd party LBR services provider gives to you? (What 2 or 3 major questions do the reports address)?

<p>Better metrics than was possible from my own IT department - graphs and trends can be viewed.</p>	<p>Average reduction, what category are the most reductions, budget compliance, average cost per Matter.</p>	<p>spend/reduction analytics; law firm specific metrics</p>
<p>Panel counsel compliance, budget information</p>	<p>Average cost per case</p>	<p>Determining which firms are most of out of compliance on a regular basis, outstanding budgets, percentage of reductions</p>
<p>Task break-down to monitor efficiency. Our LBR services has some proprietary metrics that are excellent.</p>	<p>Comparison of firms in specific jurisdictions, breakdown by type of work (for example, how much does a firm charge to answer standard interrogatories, and info as to amount of overrides by our own employees- who is ignoring the bill reviewer?</p>	<p>Trend analysis and the ability to see firm performance. An interesting consequence is seeing the connection in performance of a firm with its inability to accurately bill or comply with our guidelines. More often than not, those firms who struggle with timeliness of filing appeals or consistently mischaracterizing their services, are underperforming in their communication to and handling of matters for us. We have used it as a tool when we review firms for continued use.</p>

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timeliness and flexibility in presentation of data	Hours per day per biller across all matters Benchmark for activity vs similar firms	1. Efficiency 2. Effectiveness 3. Compliance
Annual spend by law firm	Firm contact info. Year to Year firm comparisons.	firm quality
total billing submitted, bill reductions, reasons for reductions		

Reporting: What are you Not Getting?

Q: What data or reports do they NOT provide to you that you think they should be? Anything?

Reports with Average Indemnity to ALE by type of claim. Average cycle time by type of claim. Make up of Partners to Associates by file. Comparison of firms by type of file. Within firms comparison by attorney	I am getting what I need. However, I have to impose my own knowledge of the complexity of the suit in order to conclude if the firm worked efficiently on the case.	As mentioned earlier, the majority of data points we need to analyze are captured, but not accessible by all leadership, unless you pay an extra fee. We do have a company person who has the ability to run ad hoc reports on the data.
the reporting capabilities are fine, but it the more reports you want, the more data you have to have company team members input and capture	I tend to want to view expenses on a matter basis, but much of the reports provided are on an invoice basis which is not useful (in my opinion).	The reviewer needs to be more proactive- come to use and see what we need, as opposed to us always going to them.
Key analytical data - time for a specific type of case, specifics by adjuster by firm	Better info regarding types of cases, resolution methods, plaintiff attorney involvement.	Peer reviews state by state
Suit duration	Names	

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Marrying loss and expense dollars on each case.	Insights into pattern or suspect billing practices, based on legal work submitted	
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Reason for Selecting Current LBR Provider

Q: What was the primary reason you selected your current LBR services provider (and not another one)?

One provider was [in place] when I came to the company and contractually bound for another year. One provider hired 2 ½ years ago and used due to their platform for bill review	The claims handlers were not reviewing bills before paying. Time constraints or just lack of confidence.	Prior experience but we also completed a survey of panel counsel and their billing department, they were involved in the selection of the vendor
We have a prior relationship with them on other products. Cross-marketing.	Leader in the space, tried in house review which did not work.	We coupled both the software review and the professional review with one vendor
The decision was based on a research and recommend project.	Ease of use	The ability to easily implement with our existing claim system
cost and ease of doing business	Prior experience	It worked for our entire department
We were looking for a standalone LBR service provider as we already have a litigation management system that does not include legal bill submission or review. The vendor we selected is a major player in the LBR space.	Flexibility and price	Cost, recommendations

Changing From One LBR Provider to Another – How Easy?

Q: On a scale of 1-10, how easy do you perceive it would be to move from one LBR provider to another? (1= not easy at all / 10= very easy)

A: Average Response: 4.6
Median Response: 4.5

Several executives added comments on the issue of transitioning from one provider to another.

I have used 3 different providers during my career, and all seem to provide the same service, although the current one has the best metrics.	Would have to transfer all current Matters to the new system. Also, loss of historical data from the old system	Not that easy due to IT integration, training and cost
Mechanically it would be easy. Practically, however, it is fraught with peril because we are building a data base over time and would potentially lose 3 years' worth of important data	Having just completed implementation of our system, I would think it would be fairly easy to do it so long as the new provider was using standard LEDES codes. Our implementation was completed in about 30 days.	Would need to have a compelling reason. A fair amount of work from contracts and recalibration of the data
Hassle for firms and us to make the change. Not insurmountable but not very easy.	Very difficult to replicate the data exchange and EFT systems we have in place with our current provider.	Onboarding counsel again, massive admin to work through switchover
System integration work.	We switched providers three years ago- it took a lot of work.	Difficult due to reliance on IT resources.

Questions to Executives Currently NOT Using Outside LBR Services

A number of questions were posed to executives whose organizations are currently not using outside LBR services.

Prior Exposure to LBR

Q: Have you ever (personally), in any prior role, used 3rd party LBR services?

A: 59% of the executives who answered this question said that they have, in prior roles, used outside LBR services. 41% said they have not.

Do You Maintain an Internal LBR Unit?

Q: Does your organization currently maintain an internal Bill Review Unit with centralized invoice review experts?

A: 32% of the respondents not using outside LBR services do have an internal LBR unit. 68% said that they do not have such an internal unit in their organization.

Considered Use of Outside LBR

Q: Have you ever considered the use of outside LBR Services?

A: 57% of those not using outside LBR services said that they have considered the use of such services; 43% said that they have not.

Several executives added comments to their response.

<p>Too labor intensive to manage; additional, we budget by tasks; in comparison to the industry average, litigations file supervisors individually reviewing each invoice and budgeting by task has kept total litigation expenses and percentage of increase at a very modest level.</p>	<p>Would consider it for data accumulation more than for legal expense savings.</p>	<p>We use a software provider. We have considered going outside for some of our larger bills on complicated cases but have not tried that yet.</p>
<p>but don't feel appropriate at this time</p>	<p>Considered only...</p>	<p>The current process has been in place for over 10 years with consistently superior results.</p>

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In addition, several Snapshot participants made comments about why their organization has chosen not to use outside LBR services.

<p>We don't find that we get true value from LBR Service providers. To truly review and evaluate a legal bill, you need to understand the case and the agreed strategy being employed and there is nobody better positioned to do that than the claim professional who is handling the claim on a day to day basis and coordinating directly with outside counsel.</p>	<p>We require our adjusters to review all legal billings as to work performed and time billed. The adjuster has the authority to reduce specific charges after discussion with counsel. We require legal budgets on all litigated claims. The adjuster monitors this budget closely and will hold counsel accountable for any deviation.</p>	<p>We prefer to take a partnership approach with our law firms in an agreed upon Memorandum of Understanding and Litigation Management guidelines that require a Relationship Manager within the firm to self-police. Our expectation of their work is solely for their legal fees based on agreed activities we ask them to do and sign off on. Activities not agreed upon, and billed will be removed from payment as per our Memorandum of Understanding. With this comes a fair hourly rate for "expertise" not rudimentary legal work or administrative work that can be done by a paralegal or adjuster.</p>
<p>Too labor intensive in comparison with the purported savings.</p>	<p>1) have an internal team 2) concerns about ensuring relationship with counsel stays positive 3) attorney-client privilege issues</p>	<p>Viewed as incompatible with carrier/firm relationship</p>
<p>Do it internally</p>	<p>Internal Staff meets expectations</p>	<p>Maintaining relationship with firms.</p>
<p>Too cumbersome, bad reputation for reducing bills at 10% or more, difficult appeal processes</p>	<p>many carriers unwilling to use, seems to put our attorney partners into an adversarial position</p>	<p>Relationships with outside legal claim partners and our established fees. Pilot use of LBR services proves (historically) that our current approach more cost effective.</p>
<p></p>	<p></p>	<p></p>
<p>Potential damage to close relationship with majority of panel counsel</p>	<p>Understanding of business needs for different departments, ability to leverage review team's insights to support litigation</p>	<p>We rely heavily on communication and collaboration with our adjusters and claims management, and</p>

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	management efforts of claims adjusters	greatly prize access to claims files. We believe accurate audits and realized, end-result savings are maximized by internal review
We have a sophisticated litigation management process in place that continues to place value on relationships with approved defense counsel.	We have not found value over and above using software provider and our litigation specialists on over 80% of our cases. We mostly have PIP Cases.	Haven't been big enough to justify the hassle of setting a system up-not ultimately convinced of their value

Industry Perceptions – Questions Posed to ALL Participants

Is the Outside LBR Industry Growing?

Q: Do you perceive that the 3rd party LBR industry is growing or shrinking or staying the same?

A: More than half of the respondents (55%) believe that the industry is growing. 35% indicated that they do not know; only 10% believe that the outside LBR industry is shrinking.

Q: What Should New LBR Players Offer?

Q: If there were a new entrant into the LBR industry, what is the one thing you believe they could provide that would be innovative, new, different --- and valuable to you?

Ease of integration into claim management system for payment options.	Incorporate the LBR into the day-to-day file handing duties.	Focus on an efficient workflow construct that is seamless to the client and law firms involved and ensures appropriate relationship development while executing necessary review/adjustment/appeal discussion
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Relationship and communication with insurance carrier. We receive invoicing for cost share purposes from third party reviewers and application of guidelines appears to lack relationship/knowledge of file handling.	Advanced analytics	The bill review system needs to provide better access to the adjuster to lay out the budget versus a template. Most importantly, the software needs to be intuitive and get better with data and submissions depending on the reductions or no reductions.
Real time bill review that is online and interactive with the budgeting process	Simplicity of implementation and execution, as well as flat fee pricing	Client-configurable analytics
Data points to best help me show objectively who my best outside counsel is.	Bridge the relationship/gap issue	This would have to be some type of innovative metric or data effort, but not sure what that could be
Timely reviews.	A platform that could do all the things that the others cannot. Some providers are better at reporting, others at bill review and others are good at integrating with claims systems.	Bill review is just a process - but standardizing guidelines and feedback on what the rest of the industry is doing is so valuable. Am I the only carrier that does not pay for local travel? The firms tell me I am, but the LBR says it is standard. Valuable feedback. Would love to have a LBR company suggest/write guidelines.
Ability to store legal documents in the application so that there is easy communication between claims and defense counsel- like SharePoint.	Ease of integration into in-house systems and standard suite of customizable monthly reports	immediate access to point in time data
Include case management component with the bill review.	Partner with the carrier and select attorneys to review best practices and acceptable billing practices/value together.	integration with the software at the law firm to automatically calculate work time spent versus manual capture

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data analytics	Proof of product differentiation that adds value others have missed	Real-time data, easy to use dashboards, and proactive service
Real time analysis of law firm performance as bills are presented and paid.	dashboard analytics	Better understanding of my particular book of business.

What Executives Would Recommend to Others

Q: If an industry colleague called you for advice and if they had no program in place now (no central LBR or any process at all) how would you be most likely to advise them to proceed?

A: Across all executives who responded to this question, the answers were as follows:

31% -- Contract for Outside LBR Services

52% -- Create an Internal LBR Unit

17% -- Leave bill review in the hands of front-line adjusters

However, when looking more closely at the answers provided, and when segmented against whether the executives are currently using outside LBR services, the answers are heavily affected by current practice.

For example, among those executives who do not use outside LBR services, 60% recommend an internal LBR unit and 32% recommend leaving review in the hands of adjusters.

Among those executives currently using outside LBR services, more than half (55%) would recommend contracting with an outside LBR provider. However, interestingly, a full 45% said they would recommend creating an internal LBU unit.

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Several comments were added by those responding to this question.

Comments from those who do not use outside LBR services:

<p>This is because I'm most comfortable with this approach. And because I really have little experience with LBR services.</p>	<p>Selected based on our positive experience with internal review to date</p>	<p>Combination of one and three; I audit and/or review the invoices the file supervisors approve for payment.</p>
<p>either internal or external but should discuss with a vendor</p>	<p>Try using a software first.</p>	<p>Somewhere in between centralized internal and retaining with front line adjuster. Need support team to give you metrics and track KPIs for comparison but claim handler needs ownership as they are closest to the individual claim in question being billed.</p>
<p>Depending upon the size of the organization, large ones should grow their own, small ones should contract it out.</p>	<p>Completely depends on the size of the department, and what their ultimate goals are - how are they defining a successful program?</p>	

Comments from those executives who do use outside LBR services:

<p>But only for bill automation, as we've done. I'm opposed to outside auditors doing critical analysis of activity</p>	<p>The key is the size of the program.</p>	<p>I highly recommend the LBR as a time saver for the claims handlers.</p>
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Final Comments

Q: Do you have any other observations or perceptions about LBR services in the claims industry that you'd like to add?

<p>Many of these services make it more difficult both for front line adjusters, and outside counsel, increasing frictional costs (time, money) in trying to simply get paid.</p>	<p>prefer to use only on an as needed basis for unique situations</p>	<p>Again, our program is unique in that many of the firms we associate with view their work as supporting [our unique policyholder base]</p>
<p>nobody makes it truly easy</p>	<p>Available technology lags other industries.</p>	<p>My exposure to individuals marketing for LBRs is that they want to treat all firms as offering the same service, and I don't believe all firms are equal, even if all are properly educated and licensed.</p>
<p>I have heard the defense attorneys loath this process. I think if you have a good relationship with defense counsel with honest discussions about billing practices LBR is not necessary</p>	<p>Based on the firms pushing back and our costs decreasing--the program has value.</p>	<p>Litigation management professionals should be cautious about challenging time on task. There are other places to look for efficiency/savings in the LBR process. Also, create value for the law firm within the LBR process (i.e. assured timely payment of approved invoices).</p>
<p>Using LBR services allows our file handlers to focus their work on their highest and best use--working with counsel to set strategy on files. Bill reviewing is best left in the hands of experts (LBR services) provided you find the right one</p>	<p>If you can't trust your firms you should fire them. If they rip you off, you should fire them instantly.</p>	<p>We are leaving our LBR vendor and moving to an internal model. We'll continue to use the LBR software, but no actual review by LBR employees. In the end, the cost doesn't justify the value for the review process. The LBR bill review staff aren't any more capable of reviewing invoices than company employees.</p>

About CLM Advisors

CLM Advisors is the consulting and advisory arm of the Claims and Litigation Management (CLM) Alliance, an organization of 35,000 members and fellows focused on promoting and furthering the highest standards of claims and litigation management. We provide advisory, market intelligence, and talent acquisition services — including the provision of industry surveys such as this one. Any questions about this Snapshot can be directed to:

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