

The Importance of Early Case Assessment

According to the 2007 survey by LexisNexis® on “Case Assessment & Analysis,” more than three-quarters of litigators believe that early case assessment is beneficial in the formulation of litigation strategy and in the accurate setting of client expectations. Respondents noted that case assessment had a **positive effect on case outcome** in three-quarters of cases and **reduced litigation expense** by 50% on average.

Despite the acknowledged value of case assessment, only two-thirds of litigators perform some type of early case assessment, with only 13% of those doing so as part of a formal process. As a corporate counsel, how can you ensure that your outside counsel is adequately and consistently examining the impact that a given case might have on your company (and its bottom line)?

According to the survey, it is rarely law firm policy to perform early case assessment. The main barriers that outside counsel reported to performing more formal case assessment were time (64%) and cost pressure (41%), as well as a lack of available tools (40%). This is puzzling since early case assessment, on average, is likely to save clients both time and money in dealing with their litigation. It appears that early case assessment is more likely to be performed, and performed in a standardized fashion, if the law firm client requests it or has it written into their company policy.

With the rising importance of settlement as the preferred outcome for litigation (only 1.4% of cases reach trial in Federal District Court according to recent Federal Judiciary statistics), and the recent revision of Federal Rules of Civil Procedure to incorporate some aspects of early case assessment into the normal judicial process, the big question is, why do so few companies have formal case assessment policies? Could it be that corporate counsel are unaware of the proven benefits of such policies or is there a fundamental disconnect between corporate and outside counsel on their perceived value? Hopefully, you can tell us!

Whichever way you come out, having a frank discussion with your outside counsel about the tools they have available for early case assessment, and their potential cost/benefit in your case, is of the utmost importance.

Sandra Nudelman is the CEO of Judicial Intelligence, which provides litigators and their corporate counterparts with tools to optimize their litigation and settlement strategy by enabling the statistical analysis of case outcomes. She can be reached at sandra@judicialintelligence.com.

For more information, please contact Thomson Financial at 866.915.9891 or tfcorporate@thomson.com.