



Evolving partnerships in litigation support

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Medical Research Consultants (MRC) has worked on some of the largest mass tort litigations in history and has been at the forefront of a shift toward comprehensive service offerings at controlled and business-like pricing. MRC's experience yields unique perspectives on the evolving partnerships among litigation support companies, attorneys and their corporate clients. Having learned "under fire", MRC's professional nurse staff offers the following recommendations on how to achieve the greatest efficiencies in mass tort litigation. This article also offers ideas for assessing potential litigation support partners.

Benefits of early association with litigation support companies

Increasingly, lead counsels are partnering with litigation support providers in the early stages of a project. MRC's Nurse Project Managers have a wealth of experience that can aid attorneys as they strategize and prioritize cases at the start of litigation. Their combined experience includes toxic tort, environmental, and products liability litigations.

Importance of single-point contacts

Christine Johnston, nurse project manager for MRC, has noticed a trend of earlier involvement between law firms and litigation support firms. "The single most important influence on efficiency is the upfront work," she says. She has found the best working relationships are established when an attorney opens up a direct line of communication with a nurse consultant early in the process. This may prompt strategic planning by conducting a quick initial assessment of large numbers of cases, then working in greater depth. In addition, it is beneficial for attorneys to keep their consultants in the loop as they evolve medical-legal theories, select priority or bellwether cases, and focus on the science of the allegations.

Project Manager Diana Randolph agrees with the need for direct communication. "It is important to have a single point of contact within a law firm; if not an attorney, then with a senior level paralegal." Questions often arise during project

start up, and open communication between law firms and litigation support companies results in quicker and more accurate development and turnaround of work product. In addition, clear communication on timelines helps ensure that deadlines are met

Sharing of clinical data

Charlotte Evans-Lynn supports the exchange of clinical information at project start-up. Attorneys frequently have already researched clinical aspects of the litigation, and may come to the table with considerable information and an idea of what they need to see in a work product. “If clients provide us with scientific data, or information about allegations or prior litigations at the outset, we are able to arrive more quickly at a work product that suits their needs,” says Ms. Evans-Lynn. On the flip side, litigation support consultants can help educate their clients on aspects of injuries and exposures new to them, drawing on their own clinical and litigation experience. Ms. Evans-Lynn adds, “Attorneys are more confident when nurse consultants share their knowledge and expertise...Good litigation support can offer guidance, as well as willingness to customize product according to litigation-specific needs.” She also stresses the need for nurses to have a “clinician” law firm contact available to guide research efforts.

In Ms. Johnston’s opinion, the least cost-effective strategy is requesting nurse review of a large number of cases without a method for prioritizing them. Although each case must be examined, not all will require the same amount of attention. The science, or clinical information can draw from medical research findings, clinical trials, FDA adverse event reporting, etc. As more information becomes known about the science surrounding a substance and the interplay with plaintiffs’ history and allegations, the nurse review product evolves to provide clients with the most relevant information. A sound scientific foundation strengthens legal strategies and focuses practice.

Designing the best method for first-pass information gathering

A “triage” process provides a quick overview of large numbers of cases and is helpful in identifying bellwether cases. If available, Plaintiff Fact Sheets offer nurse reviewers the first glimpse of an individual’s personal and family history, medical providers, and treatment history. Ms. Johnston offers, “Questions in a Plaintiff Fact Sheet should be asked clearly and specifically.” The more specific the questions, the more useful the information revealed, and the easier to categorize plaintiffs for more in-depth medical chronologies and summaries. It may be worthwhile for law firms to consult with medical professionals in preparation of these critical data tools.

Technology

Litigators increasingly make use of new technology for access, storage and classification of case-related documents. Advanced databases are now available that provide customized reporting features. MRC has found that time spent in the early stages of development proves an excellent investment in the cost savings and management potential for the project. One important consideration is making sure that fields are uniform across all data: this might include plaintiff questionnaires, medical records, company documents and online databases. Also, adds Dora Velasquez, "Good information during the development of a database allows us to create fields that will later yield the most useful reports." She advises working closely with advisors to design a database that is also capable of pulling statistical information.

As Ms. Velasquez describes, when determining the worrisome cases among large numbers of claims, "The bottom line is ' Do these allegations hold water?' What factors will help us determine whether there is a case?" She recommends setting systems in place that help identify basic parameters for assessing cases; these might include determinations of whether the alleged injury actually occurred prior to the date of the exposure for which they claim the injury. A well-designed database can quickly isolate those cases from those requiring further analysis.

Full Service Litigation Management Support

Over the past few years, several companies that previously specialized in a single aspect of litigation support have broadened their service offerings. It is convenient and cost effective to seek record retrieval, nurse analysis and database access and storage from one full service provider.

Full-service companies are most valuable when they are able to coordinate litigation support activities. The typical work flow may develop as follows: record retrieval efforts bring in the documents for scanning and uploading into an electronic format, from which nurses analyze the documents and conduct medical record reviews. When all services are based from a single location, work proceeds with fewer delays and less expense.

On the surface, price comparisons may seem to be the obvious starting point for assessing a potential vendor. Keeping litigation costs low for the client is always a top priority. However, as litigation support is still a developing industry, there are few standards in terms of what services are covered for a set price. Company A may bid a low base fee for retrieval of a record, but there may be additional charges for research, expedited retrieval, communication with custodians, mining for additional providers and shipment costs. Determining the value-added aspects as well as the "a la carte" items associated with a service allows attorneys to make the most informed decisions.

Determining the capacity of a vendor to accommodate increased volume is also important. Does the company have a flexible workforce? What amount of lead-

time will they require to recruit, hire and train new employees? What quality control is in place? If offering a new service, what expertise do the employees have in their departments?

Electronic document management and access to work product is quickly becoming industry standard, and there is an ever growing number of software and database solutions from which to choose. The challenge for counsel lies in determining the best fit for their needs.

When assessing litigation management software, some features to look for include:

- Security of information. In addition to electronic information being appropriately encrypted, what disaster recovery measures are in place? Does the system comply with HIPAA regulations?
- Ability to track status of record orders and work product completion through a web browser
- Customizable template design, fields and reporting features to capture and report information key to the litigation
- Varying levels of access. It is important to determine whether or not the software can accommodate user names and passwords that differentiate varying levels of access – this is essential when multiple parties will require access to records and reviews.
- Stability, reliability and the minimum “routine maintenance” downtime.
- Customer service and training at no additional cost for new users.

Complimentary partnerships between multiple service providers

When high-volume litigation is moving quickly and time is of the essence, another option is for law firms to outsource to several companies with more specialized areas of expertise. Litigation support vendors are frequently willing to partner with complimentary service providers to present a “package deal” that accommodates high volume and quickly approaching deadlines.

There are risks and benefits to this approach.

Risks:

- By outsourcing or partnering, the litigation support firm may worry they have less control over workflow. It may be more difficult to track all efforts across all phases when juggling multiple vendors. It is important in this instance to appoint a manager of the project who will oversee and coordinate efforts.
- It is essential to insist on the same standards of confidentiality and quality to outsourcing partners.

- Uniformity of work product may be compromised; one standard should be determined and expected from all vendors.
- Multiple locations can increase time and expense of coordination and distribution of data, if not professionally managed

Benefits:

- If the litigation support firm is approaching capacity in one area of their service offering, they can still accommodate increased workload without requiring ramp-up time for additional staff. If an outsourcing partner is reliable, everyone benefits.
- Vendors can play to each other's strengths. For example, one vendor may be able to expedite requests from certain custodians due to prior relationship that another vendor cannot leverage. Another firm may have a strong nurse team to guide both record retrieval and analysis.
- By diversifying resources, vendors are accountable to their highest standard of delivery. The client benefits through the synergy.

A quality litigation support service is a valuable partner to corporate counsels. Experienced consultants provide depth of knowledge and strategic assistance in medical litigations, while comprehensive service offerings contribute to increased efficiencies, lower costs, and centralized management.

For more information about MRC, please consult our website at www.mrchouston.com, or contact Doreen Wise, R.N., Ed.D., founder and CEO at dwise@mrchouston.com.