

Knowing Your Profile: Why Litigation Portfolios Matter for Legal Ops

Litigation and Dispute Resolution





Reviewing your overall litigation portfolio is critical for legal ops to control legal spend and understand your risk profile. A comprehensive review can empower you to successfully bucket matters for Alternative Fee Arrangements (AFAs), discover trends in your matter volume, identify case types ripe

for bill review, and generate additional costs-savings initiatives.

This article discusses strategies to help legal ops build a more complete mapping of their companies' litigation portfolio, along with methods to leverage their portfolio to derive added benefits and more effective costs-savings initiatives. This article will also review the importance of legal ops expanding beyond their own immediate purview to examine the litigation portfolios of similarly situated companies to uncover trends impacting their industry and incorporate peer strategies for managing litigation.

Mapping your portfolio

To accurately map your company's litigation portfolio, you need to ask the right questions at the outset. Whether your company is a regional hospital system in Florida, or an international bank operating across the European Union, the foundational questions you need to ask and answer remain largely the same.

The basic questions you need to answer concern the black and white numbers behind the volume of litigation your company is handling. How many cases did you handle last year? The last three, five, and 10 years? What are your overall trends (increases/decreases)? In what jurisdictions are your cases filed? What is the average cost of your cases (increases/decreases in the last three, five, and 10 years)? What jurisdictions have the highest costs per case? In what percentage of your cases are you the plaintiff? The defendant? How many open cases do you have? How long do your cases remain open, on average? How many of your cases close within the first year? How many have been open for over 10 years?

With these and other basic questions, you can gauge where you are and where you might be going litigation-wise, but you also need to break down your portfolio by practice area and case type. Take the example of a legal ops team within a large hospital system in Miami. Your company may face medical malpractice cases, but you may also handle contract litigation with medical supplies vendors, slip-and-fall cases at your hospital locations, and, depending on the size of your system, a steady stream of employment litigation or human resource related cases.

Breaking your portfolio down by practice area and case type can provide greater insight and value to the basic questions underpinning your portfolio. You can then begin to see which practice areas are busting your budget, which types of cases quickly resolve, and downward and upward trends on a more granular level. With better segmentation (and regularly refreshed data), legal ops can confidently forecast legal spend trends to the business, backup new AFAs with better data, and set pragmatic goals for savings initiatives.

Framing your portfolio

To see the complete picture of your litigation portfolio, legal ops need to obtain outside legal data. This includes scouring your competitors' portfolios to compare how your case volume and strategies stack up against others in your industry.

Think of your competitors' portfolios as the frame bordering your own picture. By framing your litigation portfolio, you can see the surrounding litigation impacting your industry and plot a course to avoid potential risks that your company may face now or in the future.

For legal ops working in legal departments with any significant volume of litigation, managing your litigation portfolio and getting reliable data for reporting can be such herculean tasks that it prevents more than an afterthought of looking at peer competitors' portfolios. And even if legal ops or in-house lawyers do talk with competitors and hear murmurings about caseloads or litigation trends, without real data, it's still exceedingly difficult to see the forest for the trees and avoid or mitigate any oncoming forest fires.

When considering how to obtain outside legal data, legal ops — especially smaller teams with few resources or manpower to spare — are often presented with two diverging paths: (1) assign internal resources to obtain the data, or (2) purchase access to the data.

[Legal Ops Can Transform the Practice of Law, but Only if Everyone Embraces It]

Assigning resources to engineer, develop, and maintain an automated process for sourcing outside legal data, such as court data made publicly available online, is an unrealistic proposition for most legal departments. In addition to the technical competence required and time-consuming nature of maintaining access to data sources, there is also an ongoing need to plan for and address any data quality issues that arise. Though possible with great effort, it is likely unsustainable for most legal ops teams to build their own access pipelines to court records and devote significant continuing engineering resources to maintain that access.

The second option of purchasing access to outside data requires much less effort for legal ops teams and does not require large scale tech talent development, nor long-term dedicated project management resources. Whether receiving bulk data downloads on a regular basis or obtaining real-time access through API integrations, legal ops can seek to develop a steady and reliable pipeline of clean, normalized data on their peers' litigation portfolios and the general state of play in the larger market. For some legal ops, just knowing they can access already structured data sets may tip the scales heavily in favor of purchasing vs. insourcing.

No matter what path is taken, legal ops seeking to become proactive partners for in-house counsel need access to outside data sources. Framing litigation portfolios with outside data helps remove underlying risks, validates savings initiatives, and, most importantly, builds a culture of data-driven decision making.

Leveraging your portfolio

Once you have mapped out your portfolio and framed it with data on the litigation impacting your industry, the fun begins. One of the tried and true methods for introducing quantifiable savings and encouraging outside counsel efficiency in litigation is bundling recurring types of litigation into well-framed AFAs.

Consider how legal ops can handle the litigation portfolio of a multinational financial institution with thousands of consumer collections cases per year. Rather than individually paying for each new collections case as it pops up, legal ops can leverage data from their portfolio to find the average cost per case over the last few years, forecast the expected increase/decrease in caseload, and then calculate a reasonable overall price for the anticipated volume of cases for a certain time period, which would include a savings discount.

Equipped with a price point in mind and data to support their analysis, legal ops can better negotiate new AFA structures with outside counsel (and educate in-house counsel if needed), while avoiding

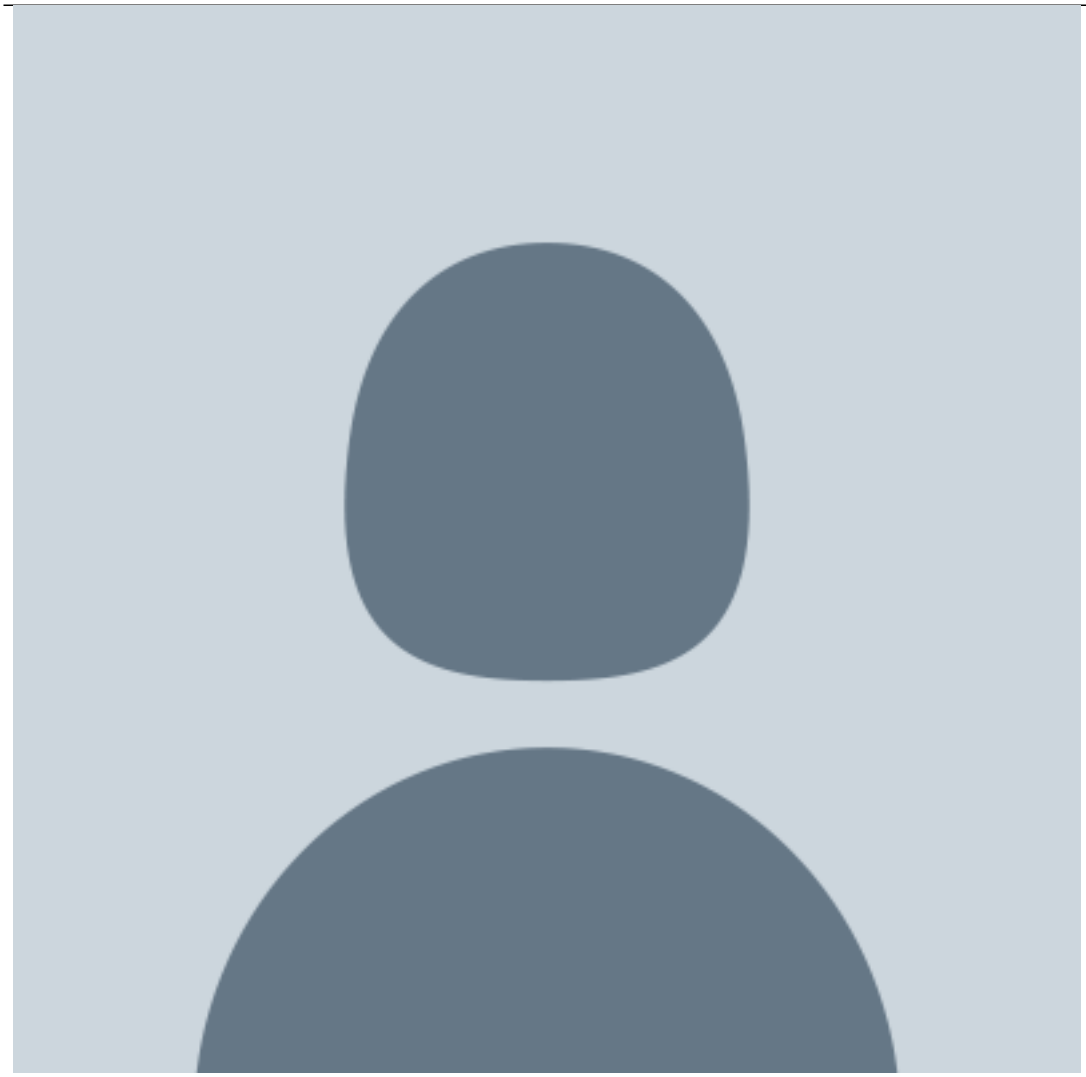
debates over hourly rates and also capturing tangible savings.

Legal ops can also leverage the data within their litigation portfolios to conduct enhanced RFPs and build detailed legal analytics on participating firms. Using outside data sources, legal ops can verify how many cases a law firm has handled within a particular practice area, what clients a law firm represents in that practice area, and even drill down on the average time it takes a law firm to close a specific case type. With few exceptions, the longer a case is open, the more it will cost.

For legal ops interested in doing a deep dive into their data, seeing how your outside counsel perform compared to law firms hired by peer competitors can also produce meaningful insights. Continuing with the general metric of time taken to close a case, do your panel firms take longer on average to close cases? And if so, why? Do they file the same motions? Do they not win on summary judgment as often? Depending on the depth of your data (and your resolve), legal ops can answer these questions and bring added value to conversations with in-house counsel.

Understanding where and how your company fits into the body of litigation impacting your particular industry is pivotal for legal ops positioning to move past anecdotal evidence to data-driven insights. While it may require setting aside precious time to accomplish, constructing your litigation portfolio and knowing your overall risk profile is a pragmatic and indispensable exercise that helps legal ops stay in the driver's seat.

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UniCourt is a SaaS offering using machine learning to disrupt the way court records are organized, accessed, and used. Cox is a Florida attorney who loves all things legaltech and volunteering with local legal aid programs in Tampa.