MIM Reporter

THE REVIEW OF
MEDICAL INFORMATION MANAGEMENT
FOR LITIGATION

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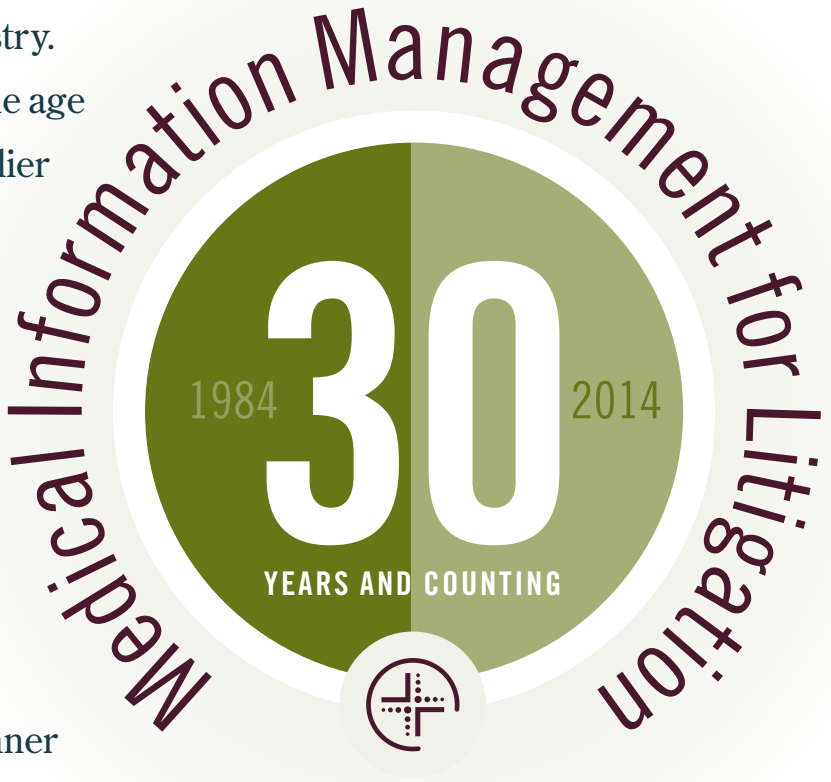
The sports axiom "the best defense is a good offense" certainly rings true within the legal industry. The age of trying cases has turned into the age of resolving cases, with cases settling earlier than has historically occurred. Despite this shift, the medical information management principles on which LMI was founded 30 years ago still hold true in today's litigation climate (see inset box for specific principles). In particular, the need for early case analysis has been recognized for many years, yet actually doing so in a formulaic or structured manner is a recent development in the legal industry.



Products Liability Timeline

As the world of products liability litigation in the U.S. evolves, LMI was, and will be, able to partner with defense counsel to create successful outcomes for a variety of litigations.

1965
American Law Institute [ALI] publishes the Restatement 2nd of Torts; Section 402A covering strict liability is born.

1968
The United States Judicial Panel on Multidistrict Litigation [JPML] is created by an Act of Congress.

1973
First major plaintiff asbestos verdict is affirmed on appeal, triggering thousands of individual lawsuits and waves of class actions, making asbestos the first modern mass tort litigation.

1977
Jacoby & Meyers becomes the first plaintiff firm to utilize TV to advertise its services in the mass tort arena.

1982
Almost 6,000 cases are pending against Johns Manville Corporation (asbestos manufacturer), who files for bankruptcy this same year.

CELEBRATING 30 YEARS

LMI

Litigation Management, Inc.

From the Desk of Elizabeth B. Juliano

I'm not able to look over my shoulder at 30 years of history all at once. When I try, what comes up are thousands of mental snap shots of people, places, and events, along with the emotions they evoke: joy, anxiety, elation, disappointment, determination and most of all – gratitude. I remember, in 1983, explaining the concept of LMI to the senior partner of the law firm where I was employed, and separately to my uncle who generously cosigned the small line of credit that got me started. I remember sitting at a McDonalds, because it was next to a printing company, with my closest friend as we designed the first version of LMI letterhead. The paper stock was off white, and the logo was maroon and black. At that time, the services LMI provided were new to the legal industry, mainly because they weren't needed until the Restatement of Torts opened up the door to product liability litigation in 1965, and asbestos litigation escalated in 1982.

On the first day of business, March 16, 1984, I was LMI's only employee. It remained that way for a year. I worked in a tiny rented office within a law firm. During the first year, I prepared medical summaries by spreading the records out on a large desk and using a technique I developed, dictating the medical summary into a hand held Dictaphone machine, and then transcribing my own dictation using an IBM Selectric II typewriter. If additional records arrived, which was inevitable, the entire document would need to be retyped, because this was in the era *before* computers and word processing.

Until the early 1990s, LMI's clients were attorneys working in the defense of asbestos and other pulmonary disease litigation. But, in 1992, LMI was given a large assignment by the Dow Corning Corporation. Dow Corning was in the throes of defending nationwide silicone implant litigation; its in-house attorney chose LMI to summarize all of the medical records for all pending cases. For LMI, this assignment was enormous. For the in-house attorney at Dow Corning, this was a huge risk: no one had heard of LMI. The firms that were defending Dow Corning were not used to the concept of outsourcing this function. But, the quality of our work and client service turned doubters into believers. In the implant litigation, we provided medical record summaries for dozens of defense law firms across the country.

Although word processing programs had come on the scene, they were not sophisticated. All records were still in paper form. For the Dow Corning project, each set of medical records needed to be copied 5 or 6 times, and placed into tabbed binders. Sometimes the tabs went up to ZZZ. (Remember, this was at a time *before* email, fax machines or imaging.)

During this assignment, which lasted over 2 years, LMI staff produced medical record summaries 7 days a week, 24 hours a day. We worked like crazy, but winning the respect of Dow Corning and the attorneys who represented it was a significant reward, positioning LMI for a bright future. Many of the attorneys are still friends and clients of LMI. Equally as important, the work done by our staff in the implant litigation put LMI on the map as a company that could handle medical information management in large and complicated litigation.

After the silicone implant litigation we were given assignments in tobacco, IBM clean room cases, and a great deal of pharmaceutical litigation. Year after year, our LMI staff became more efficient, technology became more effective, and our positive reputation grew. Also, during the past and now, LMI has been privileged to attract employees who possess exceptional talent and dedication.

Technology, economic pressures and changes in the law have caused enormous shifts – some good, some challenging – during the past 30 years. In spite of this, what has impressed me most is the grace and competence with which each and every member of our staff has embraced change and worked to improve LMI. As I said earlier in these comments, the strongest emotion I feel is gratitude: to our clients who have provided us with tremendous opportunities, and to the many friends and family members who support us all. It has been a privilege to know and serve you.

Thank you,
Elizabeth B. Juliano

"Early Case Analysis" (ECA) is a term of art that has been usurped by the e-discovery process, even though the concept itself is not necessarily about electronic evidence or document management. Numerous current legal trends support implementing an ECA program:

The past 30 years have seen an increase in claims and litigation, specifically an increase in complex claims and litigation. This increased complexity has contributed to higher legal fees and settlements and/or verdicts. Likewise, the threat of losing compensatory and punitive damages, combined with the high cost of defending cases, results in more than 95% of all cases being settled or otherwise resolved prior to trial.[i]

Given the current climate, implementing an early case analysis program offers the defense several advantages, including:

- The ability to uncover and understand the substantive issues in the case, and how to deal with good and bad facts.
- Risk identification and assessment at the outset, which can be useful in developing future measures to avoid similar claims.
- Early evaluation of desired solutions, including creative or "out of the box" solutions, since there is time to brainstorm.
- Ability to project and even reduce overall legal spend, including settlement payouts and expenses.
- Reduction in overall matter lifecycle.

Implementing an ECA program within 30-60 days of receiving the first notice of actual or anticipated claims or litigation allows a company to reap maximum benefits.

The "business of law" favors resolving viable claims

Altman Weil's "2013 Chief Legal Officer Survey" found that, in terms of law department management and creating efficiencies, early case analysis was one tool credited with driving improved efficiencies. Responding general counsel noted that "improved budget forecasting" was the improvement or innovation they would like to see their outside counsel deliver.[ii] Other improvements cited by general counsel in the Survey include "better application of real risk analysis [as opposed to hypothesizing] to avoid unnecessary actions and associated costs" and "thoughtful and early strategies to resolve legal issues quickly and cheaply."[iii] Early case analysis, when done correctly and thoroughly, allows one to achieve these deliverables. First and foremost, in-house counsel and outside counsel must abandon the notion that resolving or settling matters early on somehow disadvantages a defendant; in practice, the ECA process actually makes fighting unreasonable claims easier.

Early analysis of the possibility of settlement helps a company avoid the proverbial black hole of litigation that frequently traps resources and dollars that could be better used elsewhere; stated differently, a company using an early case analysis program creates for itself an opportunity to be proactive rather than reactive.

1983
Rose Cipollone files and wins the first successful tobacco lawsuit against Liggett Group.

1984
Elizabeth B. Juliano founds Litigation Management, Inc. in response to the growing number of mass tort litigations and changing product liability landscape.

1986
Congress passes the National Childhood Vaccine Injury Act in response to large number of suits against vaccine manufacturers.

1987
In conjunction with the Nuclear Waste Policy Act, Congress designates Yucca Mountain, Nevada, as the sole, permanent geologic repository for the nation's most highly radioactive nuclear waste.

1988
Elizabeth B. Juliano serves on a NIOSH-sponsored international committee of specialists that defines hallmark standards for diagnosis of fibrous material exposure diseases. LMI applies this expertise to develop cost-effective medical-legal work products for all phases of silica litigation.

1991
The Federal Asbestos MDL, MDL 875, is established by the JPML as a way to manage this mature and growing litigation.

1992
JPML creates the Silicone Gel Breast Implants MDL, a major MDL of this decade.

In formulating an ECA, both inside and outside counsel must consider the company's overall business objectives, how litigation has been previously handled by the company (if it has occurred at all), and the relationship between the company's business plan and litigation plan. Further, a company's risk-tolerance level must be assessed: a cost/benefit analysis should be performed, and consideration must be given to the impact early settlement may have on corporate issues beyond the scope of the litigation matter at hand. Examples of factors to consider independent of litigation include general public relations, whether early settlement will encourage other plaintiffs to make claims, and the overall financial health of company in terms of being able to tolerate settlement.

A currently pending litigation taking advantage of early settlement is the Stryker Rejuvenate hip litigation, centralized in both a federal MDL and New Jersey state coordinated proceeding. Approximately 650 state cases were consolidated in 2013 in Bergen County, New Jersey, before Judge Brian R. Martinotti. In an attempt to see whether cases could resolve before the parties engage in lengthy and expensive discovery, Judge Martinotti established a mediation process almost as soon as the litigation was coordinated. As part of the first phase of mediation, a group of 10 cases was selected for early settlement negotiations, and, to date, seven of the 10 cases have settled. Getting ahead of the discovery process by engaging in early case analysis will likely result in these initial settlements serving as the benchmark for a more global settlement.

Fully engaging in the mediation/resolution process by no means makes Stryker appear weak; rather, Stryker seems to be applying good business judgment to a legal problem, allocating resources where appropriate.

Again, correctly implementing an assessment plan early in the litigation process allows outside counsel to meet inside counsel's requests. Focusing on a proactive litigation strategy, and determining the individual and global strengths and weaknesses of the issues at hand, allows counsel to design an ECA program aimed at better business outcomes.

ECA objectives are best achieved via team effort

The saying "there is no 'I' in 'team'" wholly encompasses ECA planning and implementation.

"Perhaps the most important component of an effective ECA strategy is the team that will develop and implement the process. An ECA team draws from a variety of disciplines to ensure that the ECA represents a comprehensive resolution strategy."[iv]

Members of the team should include in-house counsel who oversee and implement the ECA plan, outside counsel, both national and local, who develop ECA components, and a legal vendor who works with both sets of counsel to develop all facets.

A. Partner with the "most valuable" vendor

Value has most recently been defined as "efficiency, predictability, and cost effectiveness in the delivery of legal services, quality being assumed."[v] Ultimately, the vendor involved in ECA must provide sufficient value to counsel,

1993

SCOTUS decides *Daubert v. Merrell Dow Pharmaceuticals,* creating the expert witness reliability criteria reflected in Federal Rule of Evidence 702.

1994

LMI is awarded a project involving preparation of all medical summaries for the silicone breast implant litigation. LMI summarizes over 1.5 million pages of medical documents (15,000 cases) on behalf of Dow Corning and outside counsel.

LMI creates a medical information management program and reviews records on approximately 700 temporomandibular joint (TMJ) implant cases.

1995

LMI provides medical information management services to defense counsel in national DES litigation.

LMI creates chronologies and executive summaries for defense counsel in various asbestos matters, including case severity rating for quick ranking by counsel.

1996

President Clinton vetoes a bill that would cap punitive damages awards to greater of $250,000, or 2xs the combined economic and non-economic damages.

and outside counsel in turn must provide value to in-house counsel, to make the process worthwhile. "Developing a solid base from which to make long-term strategic decisions at the beginning of the case allows the legal team to plan for and focus on those activities that will have the most influence over the outcome."[vi] Separating liability issues from damages issues, and considering each separately and together, helps develop this solid base, and often time drives successful outcomes earlier in the litigation lifecycle.

Money spent at the outset of a matter is often money well spent. That being said, in order to ensure that money is spent wisely, it is important to partner with vendors who can guarantee specific budgeted results to enable a more precise budgeting process for the matter as a whole; historical budgets should be used as benchmarks to budget for future litigations. The selected vendor must assist counsel with intelligently managing gathered information, and synthesizing the information to formulate a strategic litigation or claim resolution plan. Counsel should align with knowledgeable partners who can support this approach on every legal matter. Likewise, the selected vendor should embrace technology and have flexible capabilities to service a variety of matters; the vendor must offer a web-based system that counsel can securely access from anywhere, at any time. The technology systems offered by the vendor should promote dynamic reporting, which in turn allows counsel to more quickly analyze available information.

Over the past 30 years, LMI has partnered with counsel to develop and implement a variety of Early Case Analysis programs aimed at managing the costs and outcomes of multi-plaintiff litigation.

The framework of each ECA program involves LMI providing counsel with a high-level understanding of plaintiff's alleged injury and current health status, exposure history, pre-existing injuries/risk factors/social history/alternative causation, and an understanding of the entire plaintiff population in order to set reserves and formulate overall strategy.

For example, in a community class action in Louisiana, thousands of residents claimed a spectrum of medical conditions resulting from over 40 years of airborne, surface water, and direct contact exposures to creosote, CCA (chromated copper arsenate), and penta (pentachlorophenol) utilized by a wood preservatives company. LMI supported development of the insurer's defense strategy through several initiatives, including epidemiologic mapping to identify the actual extent of various types of cancers and any clustering of these cancers, and mapping of residence and school exposure histories for each claimant to identify the true duration and intensity of exposure for each plaintiff. Also included was a review of published research documenting medical outcomes from exposure to these chemicals. LMI prepared single-page case overviews on Bellwether claimants to survey the nature of the medical allegations, and prepared Chronology work products on claimants alleging more severe injuries. Then, using the totality of available information, LMI developed a probability rating system to evaluate the effect of variables such as exposure time, proximity, and alternate causation for the most severe, final medical diagnosis for each plaintiff. This work at the outset of the class action allowed the insurer to set reserves and work with counsel to formulate a realistic resolution plan.

1996

SCOTUS decides *BMW v. Gore*, showing there are constitutional limits to amount of punitive damages awards, and establishing 3 factors for trial judges to use in deciding whether award is excessive.

1997

LMI conducts detailed reviews for a number of cases within the acetaminophen litigation in order to determine the presence of liver toxicity as well as alternative causation for the alleged condition.

LMI first partners with Merck to design a medical information management program, including creation of an expert witness database, related to encephalitis claims and cases.

Within the nationwide pedicle bone screw litigation, LMI reviews medical records and conducts a very focused record acquisition program, resulting in significant savings (up to 60%) in acquisition and copying expenses.

LMI performs data abstracting, pulmonary function testing validity reviews, and diagnostic criteria reviews on over 600 asbestos plaintiffs for a major insurance company, allowing defense counsel to prioritize the cases.

1998

ALI publishes the Restatement 3rd of Torts, setting out 3 main types of potential product defect claims (manufacturing, design, warning).

From this baseline information, ECA may be used to quickly evaluate and identify those cases that may be the strongest trial picks. ECA has also been used to gather data and statistics across all plaintiffs to determine which plaintiffs are candidates for in-depth work-up/full discovery, helping counsel manage data collection and the overall discovery process. In the same vein, ECA alerts counsel to which cases are least in need of their attention, positioning them to focus their resources on other critical matters.

Case in point is the Fen-Phen diet drug litigation: LMI developed a decision tree to structure medical record review and analysis for each case. Two variables, product identification and diagnosis, determined the extent to which record review was undertaken for each plaintiff. In the first level review, analysis was limited to establishing product identification. For plaintiffs with confirmed product identification, the second level review involved deeper analysis of each plaintiff's most severe diagnosis and associated case severity rating, which was used for statistical summaries of each plaintiff and the population as a whole. Evaluating information gathered from the varying levels of review enabled counsel to decide which plaintiffs would undergo a more thorough discovery work-up. This decision tree model of analyzing potential outcomes was both useful for managing the complexity of litigation alternatives and for bringing a measure of objectivity to the ECA.

B. Don't shy away from settlement

As indicated above, there exists in today's legal world a misconception that trying to settle a matter early in the litigation process makes a defendant appear weak; however, settling legitimate claims or cases at the right time builds credibility that may assist the defense with resolving unrelated future matters.[vii] When the time is right to begin settling cases, engaging the services of a settlement firm often makes good sense. Counsel can continue to work with its legal vendor to evaluate plaintiffs, and the amassed data can be used to audit settlement program participants.

The legal vendor continues, on behalf of the defense, its analysis of each plaintiff as settlement documentation is received, and basic case data, such as jurisdiction, filing date, and alleged injury, may be simultaneously shared with plaintiff counsel and the settlement administrator, resulting in a streamlined resolution program.

This foundational data culled by LMI helps establish a mass tort or class action settlement program – the settlement administrator can build from the base created by LMI and incorporate additional diagnostic information as agreed to by the parties to determine whether benefits should be paid.

A prime example of using the ECA process to fuel settlement administration is the Vioxx litigation: LMI, as the exclusive legal vendor for Merck, worked with Merck and counsel at the outset of the litigation to analyze the entire plaintiff population. As the litigation progressed and record

1998

U.S. Chamber Institute for Legal Reform is formed in order to "neutralize plaintiff trial lawyers' excessive influence over the legal and political systems."

Various state attorneys general and private plaintiff's counsel join together to bring a series of cases against cigarette manufacturers. Big Tobacco ultimately offers $246 billion to settle these cases, paid out over 25 years, thus funding future lawsuits.

1999

LMI reviews records for over 100 school children with alleged medical injuries due to creosote exposure.

LMI completes over 100 medical record reviews regarding isocyanate exposure; reviews include residency maps to alert counsel of the proximity of the claimants to a local manufacturing plant as a possible alternate causation.

In support of tobacco companies' defense efforts, LMI creates a medical information management program and provides services that span well over a decade.

2001

Congress creates the September 11th Victim Compensation Fund to provide compensation for economic and non-economic loss to individuals, or the personal representative of individuals, who were killed or physically injured as a result of the terrorist-related attacks of September 11, 2001.

collection was performed, a plaintiff counsel repository was created that allowed both sides of the litigation to access the same medical records. When settlement was announced, ample information had been collected across the entire plaintiff population. Rather than beginning from square one, Merck was able to transmit basic information gathered by LMI to plaintiffs' counsel and the parties' chosen settlement administrator, and the collected records and foundational data provided a base from which the settlement administrator could focus on efficiently and seamlessly managing the settlement process.

As evidenced by the above Vioxx example, developing and implementing an ECA program, and developing a relationship with opposing counsel, allows for meaningful conversations on how a matter/case may be resolved early on in the process, which ultimately is the key to creating an effective settlement program. Subscribing to these principles will save both sides money in the long run by avoiding costly, unnecessary discovery.

Conclusion

A recent article in The American Lawyer magazine succinctly summarizes the current state of civil litigation:

"The Federal Rules of Civil Procedure allow notice pleading, virtually unlimited discovery, and a set of pretrial motions designed to be effective only in rare situations, e.g., where (despite notice pleading and a presumption of truthfulness) the plaintiff has failed to state a claim, or (despite whatever state of affairs has brought the parties to court) there really is no genuine issue of material fact. This setup guarantees that the parties will spend a lot of money getting nowhere. This may make settlement look attractive, but only in comparison to a system spinning its wheels at huge expense."[viii]

A "spinning system" is exactly why early case analysis makes so much sense. Analyzing a litigation matter at the outset, and designing and implementing a strategic information management plan soon thereafter, assures successful business outcomes.

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2002

Within the Fen-Phen diet drug litigation, LMI reviews the medical aspects of hundreds of cases, and develops a diagnosis decision tree within which counsel may evaluate the severity of each case.

LMI serves as Merck's exclusive record acquisition and medical analysis service provider for the Vioxx litigation. LMI's work includes significant document management of more than 300 million pages over a 4 year period. Targeted collection and processes implemented early in the litigation result in nearly a 65% savings to Merck.

2004

LMI completes chronologies and executive summaries, including multiple graphs and charts, relative to a number of Thimerosal cases.

LMI collects and reviews medical, employment, IRS, and SSI records for several hundred plaintiffs claiming cancer and other injuries related to alleged exposure to vinyl chloride.

2005

Congress passes the Class Action Fairness Act of 2005 (CAFA), aimed at reigning in state court class actions by allowing an easier removal process to federal court for adjudication.

LMI partners with defense counsel to collect and review records, and develop a case severity rating classification system, relative to alleged silica exposure claims within the Yucca Mountain litigation.

Medical Information Management
CHECKLIST

As LMI reflects on 30 years of service, a review of the following checklist indicates that, while litigation has significantly evolved over the past 30 years, ideology relied on in 1984 remains instructive and valid in 2014. The principles contained in this checklist provide the platform from which LMI has grown; the checklist was "officially" distributed to the corporate, insurance, and defense legal community in the first issue of the MIM Reporter, April 1998:

What follows is a recommended procedure for development of an effective medical information management program for litigation. The review of these items, in the order in which they are presented, will guide a party through the thought processes necessary to develop an effective program. This list is not meant to be exhaustive, but displays the issues most often confronted during management of medical information in litigation.

- Establish a medical information strategy as early as possible, knowing that the strategy will change over the course of the litigation. Don't operate in a vacuum. Consider how aggressively one will defend/pursue each case.
- Determine how and what quantity of information is required. Consider records to be obtained by local counsel or acquisition service[s]. Does one want all plaintiff records? Determine when one will want records.
- Determine how medical information will be used (discovery preparation, database information management, FDA reporting, setting reserves, settlement negotiations, trial strategy).
- Identify "focus" issues within the medical information and watch them over the course of litigation. Consider what information the decision maker will need to prepare for trial or case resolution. Focus issues include:
  - Product exposure
  - Latency
  - Diagnostic criteria to support/refute allegations
  - Symptoms/diseases potentially mitigating damage claim
  - Life expectancy
  - Pre-exposure and post-exposure health histories
  - Lifestyle issues, i.e. substance abuse
- Be certain one's technology is flexible – that the database can grow with changes in technology and litigation, and hardware can expand with litigation. Beware of proprietary hardware and software systems.

2007

SCOTUS decides *Bell Atlantic Corp. v. Twombly,* an antitrust case, holding that plaintiffs must give defendants more than fair notice of a claim and its grounds; the complaint must contain enough facts to show the claim is "plausible on its face."

LMI reviews all medical, employment and educational records for several hundred residents of two reservations who allege cancer and other injuries related to PCB exposure through ground water contamination.

2008

In *Riegel v. Medtronic,* SCOTUS holds that individuals cannot sue medical-device manufacturers under state law.

LMI provides analysis services to various members of the defense group in the World Trade Center litigation. This litigation involves a wide array of alleged injuries related to exposure to toxins encountered during search and rescue, search and recovery, and clean up efforts.

2009

SCOTUS decides *Ashcroft v. Iqbal,* applying the stricter Twombly standard to all federal civil cases, not just antitrust claims.

SCOTUS rules in *Wyeth v. Levine* that individuals may sue a brand-name pharmaceutical manufacturer under state law. SCOTUS refuses to grant preemption to a brand manufacturer even though the brand manufacturer had requested a modification to the label, and the FDA had not approved or acted upon the request.

- Utilize services ... provided in "modules" [that] build upon each other. Such services range from simple and inexpensive to complex and expensive, and might include:
  - Organization of records and assignment of case severity rating.
  - Screening for product identification.
  - Abstracting pertinent information from records for inclusion in database.
  - Manipulating information to search for key phrases or words.
  - Development of "key word" reports based upon specific diagnostic information.
  - Development of a comprehensive medical record summary.
  - Development of an analysis of the medical aspects of the case.
- Determine how information will be delivered and accessed. Consider who will receive documents, and in [what] format (paper, diskette, etc.). Also determine what type of case management information will be needed, i.e. status reports, and decide whether anyone will require dial-in capability, etc.
- Develop management reports and methods for determining if a program is working. These could include:
  - Benchmarks: How much did this cost the company before?
  - Milestones: When does one reassess the program?
  - Projections: How much does the company think this will cost per case, per month, per hour, etc.?
- Focus the education of counsel and examine the possibility of developing a pretrial training program for counsel. Establish guidelines for medical literature research and education regarding medical issues. Consider development of a medical reference manual to avoid redundant education efforts by outside counsel.
- Centralization of medical information management functions will yield benefits inherent with control over activities; product consistency regardless of case jurisdiction; no duplication of effort; budgeting and workload projections; efficient execution of client instructions; and lowered communication costs.
- Apply economies of scale to processing of medical information. Cost share with appropriate parties when possible. Establish review and analysis protocols that will result in building upon previous experience and eliminating the learning curve. Using the above strategies, attorney and paralegal time is utilized efficiently.

CELEBRATING 30 YEARS

LMI®

Litigation Management, Inc.

2010

With regard to intraarticular pump litigation, LMI creates a record repository to house expert reports and transcripts. In addition, LMI performs record acquisition and analysis services tailored to individual defendant manufacturer requirements.

2011

In litigation related to cold therapy device usage, LMI performs record acquisition and analysis services, and hosts an on-line repository for plaintiff counsel to access collected records.

2013

SCOTUS decides *Pliva v. Mensing,* ruling that individuals could not sue the manufacturer of a generic drug under state law under a "failure to warn" theory.

SCOTUS decides *Mutual v. Bartlett* in favor of the pharmaceutical industry, holding that avoiding liability under New Hampshire law would require the manufacturer to either alter the composition of the drug or alter its label (both of which federal law prohibits). The Court applied *Mensing* to hold that federal law preempts certain state design defect claims.

2014 >

Litigation Management, Inc. celebrates 30 years of serving the legal defense industry.

(Endnotes)

i See e.g. Kenneth Ross, "The Origins of Products Liability," *Medmarc Products Liability 360*, February 5, 2013, January 27, 2014, < http://www.medmarc.com/Life-Sciences-News-and-Resources/Products-Liability-360-Newsletter/Pages/The-Origins-of-Products-Liability.aspx>.

ii Altman Weil, Inc., "2013 Chief Legal Officer Survey," October 25, 2013, November 6, 2013, < http://www.altmanweil.com/dir_docs/resource/4d12f27b-5e52-46b3-8a70-6372f360a85c_document.pdf>.

iii *Id.*

iv Stephen M. Prignano and Matthew Murphy, "Take Control of Litigation with Early Case Assessments," *Association of Corporate Counsel,* January 7, 2013, January 9, 2014, < http://www.lexology.com/library/detail.aspx?g=6a0822b7-f53e-4d30-99b5-bfc0aee1f5da>.

v "2014 Report on the State of the Legal Market," The Center for the Study of the Legal Profession at Georgetown Law, January 2, 2014, http://www.law.georgetown.edu/news/press-releases/2014-report-state-of-the-legal-market.cfm.

vi Stephen M. Prignano and Matthew Murphy, *supra*.

vii "Deep, Early Analysis of Cases Can Reduce Litigation Costs," Lexis-Nexis Corporate Counsel Newsletter, March 23, 2011, January 10, 2014, < http://www.lexisnexis.com/communities/corporatecounselnewsletter/b/newsletter/archive/2011/03/22/deep-early-analysis-of-cases-can-reduce-litigation-costs.aspx>.

viii Stuart Gasner, "The Litigation Settlement Machine," *The American Lawyer,* December 2013, p.S18.