

eLawForum Litigation Portfolio Insurance

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eLAWFORUM

More plaintiffs are suing corporate America and winning large recoveries. Plaintiffs enjoy a competitive advantage: they don't pay lawyers by the hour. Plaintiffs' bar is compensated on a contingency basis, only taking cases where the plaintiff has a good chance to win.

The Fortune 500 spends the equivalent of one-third of shareholder profits on litigation. This cost and the associated risk are not transparent to investors (*See Fortune 500: The Total Cost Of Litigation Estimated At One-Third Profits, The Metropolitan Corporate Counsel, February 2008, p. 28.*). There is little likelihood of legislative relief. Over the past few decades, Fortune 500 corporations have increasingly opted to self-insure, with retentions of at least \$3 to 5 million per occurrence, and often \$25 million or more. They have looked to insurance companies only for coverage of catastrophic events. The insurance industry is not seen as offering cost-effective first dollar or low-retention coverage.

Since they are insuring themselves, Fortune 500 corporations have had to become their own claims managers, expanding their law departments to manage the risk. Even though defending lawsuits is not a core function, corporations are making a "make" rather than a "buy" decision. Fortune 500 corporations retain and compensate lawyers case-by-case and arbitrage different hourly rates over dozens of law firms. Paying lawyers by the hour leads to higher total cost by rewarding inefficiency and encouraging delayed resolution. This is true whether lawyers are paid \$135 per hour or \$1,000 per hour. (*See The First Step in Reducing Litigation Cost: Widen Focus to the Portfolio with a Litigation Scorecard, The Metropolitan Corporate Counsel, March 2008, p. 26.*)

The best way Fortune 500 corporations can bring cost down is to outsource litigation risk and management. Transferring risk requires a portfolio approach. By combining fixed fees and results compensation for a portfolio of cases, eLawForum transfers a substantial amount of risk to outside counsel. (*See Litigation Portfolio Risk Transfer, The Metropolitan Corporate Counsel, April 2008, p. 22.*) To outsource the remaining risk and management, corporations must buy insurance.

Litigation Portfolio Insurance

To illustrate why Fortune 500 corporations self-insure, let's review an example: On 1,500 new cases, the corporation's projected spend was \$100 million to defend and \$400 million for settlements and judgments. Internal law department claims management will add \$100 million or more to this cost. Self-insured, the corporation will retain substantial risk: the final cost may exceed the projection by 10 percent – \$50 million. Thus, the self-insured cost will be \$600 to \$650 million. (*See Chart 1.*)

Without eLawForum, if the corporation chose to fully insure the cost of this litigation (both the \$500 million projected cost and \$50 million excess coverage), the premium would be at least \$655 million. At the same time,

because the risk is transferred to an insurer, litigation management can also be transferred, and law department costs are reduced by 75 percent to \$25 million. The total cost of a traditional insurance solution would be \$680 million. (*See Chart 2.*) Since \$680 million is more than \$650 million, and much more than \$600 million, self-insurance appears to be a sound business choice.

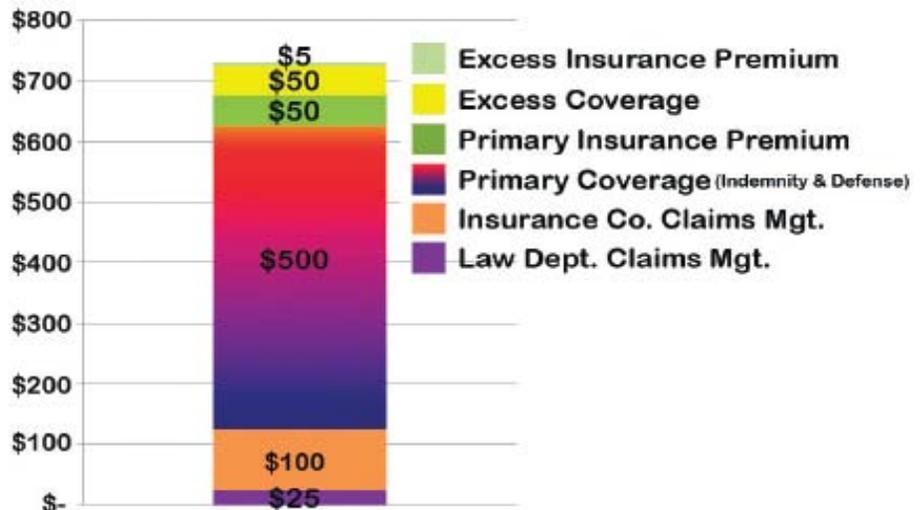
eLawForum Changes The Economics Of Litigation Management

eLawForum's innovative business model reduces litigation cost substantially, while transferring litigation risk from corporations to outside counsel. Instead of sole-sourcing multiple law firms case-by-case and paying hour-by-hour, eLawForum pays a single, com-

Chart 1. Self-Insured Portfolio Cost: \$600M - \$650M (in millions)



Chart 2. Fully Insured Cost Without eLawForum: \$680M



petitively-sourced national law firm fixed fees and compensation based on overall results. Fixed fees transfer defense cost risk. And results compensation transfers a portion of the liability cost risk to the law firm. Inside oversight cost is also cut dramatically. (See *Litigation Portfolio Risk Transfer*, The Metropolitan Corporate Counsel, April 2008, p. 22.)

With defense cost fixed, and one-third of first-dollar liability cost risk transferred to outside counsel, insurance companies can fully insure litigation portfolios cost-effectively. Working with eLawForum, insurance companies will offer first-dollar coverage at a 15 percent discount to self-insured cost. Insurer confidence is based on eLawForum's track record of saving hundreds of millions of dollars. As with traditional insurance, the insured corporation avoids the high internal cost of managing self-insured risk.

Returning to our example, under the insured eLawForum model, the premium covering the projected \$500 million self-insured cost is reduced to \$425 million. The corporation can also insure the \$50 million excess risk for an additional \$5 million. As with the traditional insured model, internal costs are reduced to \$25 million or less. Thus, the portfolio can be fully insured to an aggregate limit of \$550 million for a total cost of \$455 million, a savings of \$145 million. (See Chart 3.)

A Comprehensive Solution: Insured Litigation Cost Savings

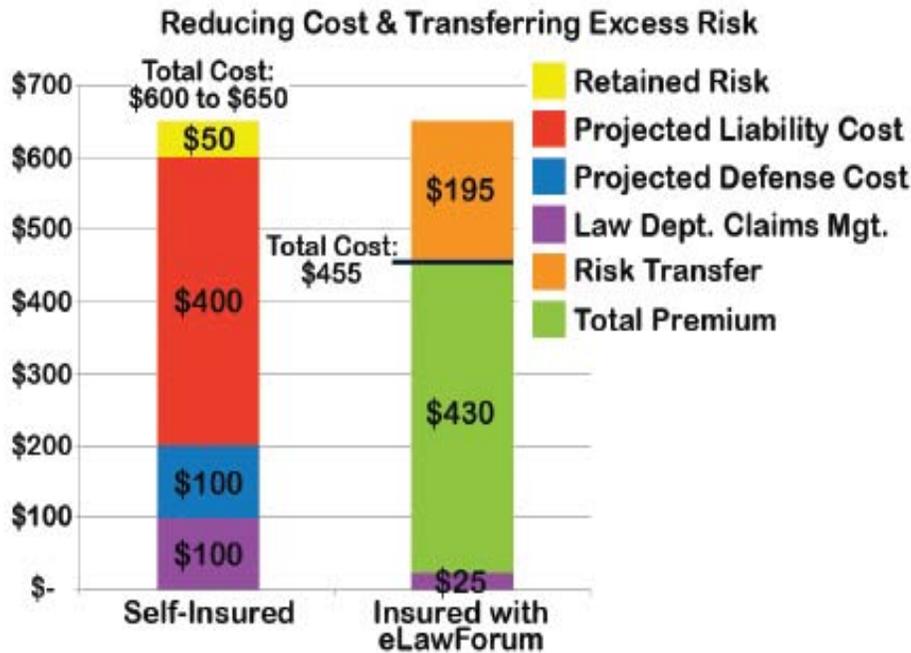
eLawForum offers corporate clients a range of cost savings and risk transfer solutions. By requiring fixed fees, including all expenses, eLawForum lowers defense cost, shifting all defense cost risk above the fixed fee to law firms. Through its proprietary competitive process, eLawForum exchanges risk-free fixed fees for at-risk results compensation based on overall liability reduction. Each

dollar converted transfers an additional dollar of defense cost risk, and \$0.33 of liability cost risk to outside counsel. The winning law firm usually expects to reduce payout by 25 percent to 33 percent.

eLawForum works with major insurance underwriters and brokers to extend risk transfer. Where a corporate client wants guaranteed savings, eLawForum can provide a complete solution: first dollar insurance coverage at a 15 percent discount to what the corporation would otherwise pay. eLawForum contracts with the insurance company to manage and resolve all cases in a corporation's litigation portfolio. The corporation pays a fixed premium 15 percent below current cost. If costs exceed the premium, the insurance company pays the excess. This insurance transfers the litigation portfolio's self-insured operational risk and removes any associated reserves from the balance sheet.

John B. Henry is President of eLawForum. Further information about eLawForum can be found at www.elawforum.com.

Chart 3. Fully Insured Cost With eLawForum: \$455M



Please email the author at jhenry@elawforum.com with questions about this article.