



Friday, Nov. 8, 2019
9:15 AM — 10:30 AM

Session 102 | How to Become Insurance Panel Counsel & Tips on Ethical Issues Arising in Representing Clients

Many firm attorneys rely upon business from insurance carriers and have insurance carriers as clients. To obtain business from carriers, attorneys and/or firms typically have to be on a carrier's approved list or on the carrier's insurance panel. How do attorneys get on those panels and once on the panels, what is the dynamic in the dual roles insurance defense attorneys play in having a carrier as a client, but also representing the carrier's insured? From an ethical standpoint, what is the attorney's responsibilities to the insured client, to the adjuster/carrier client? How do attorneys with insurance clients balance the needs of the insurance client versus the needs of the insured clients? As an extension of that, what is the dynamic or relationship between staff counsels for carriers vs. conflicts counsels or outside counsels? If both parties to a litigation are insured by the same carrier, what ramifications are there? How do carriers avoid potential conflicts in such a situation?

Moderator:

Alston Lew, *Murphy, Pearson, Bradley & Feeney P.C.*

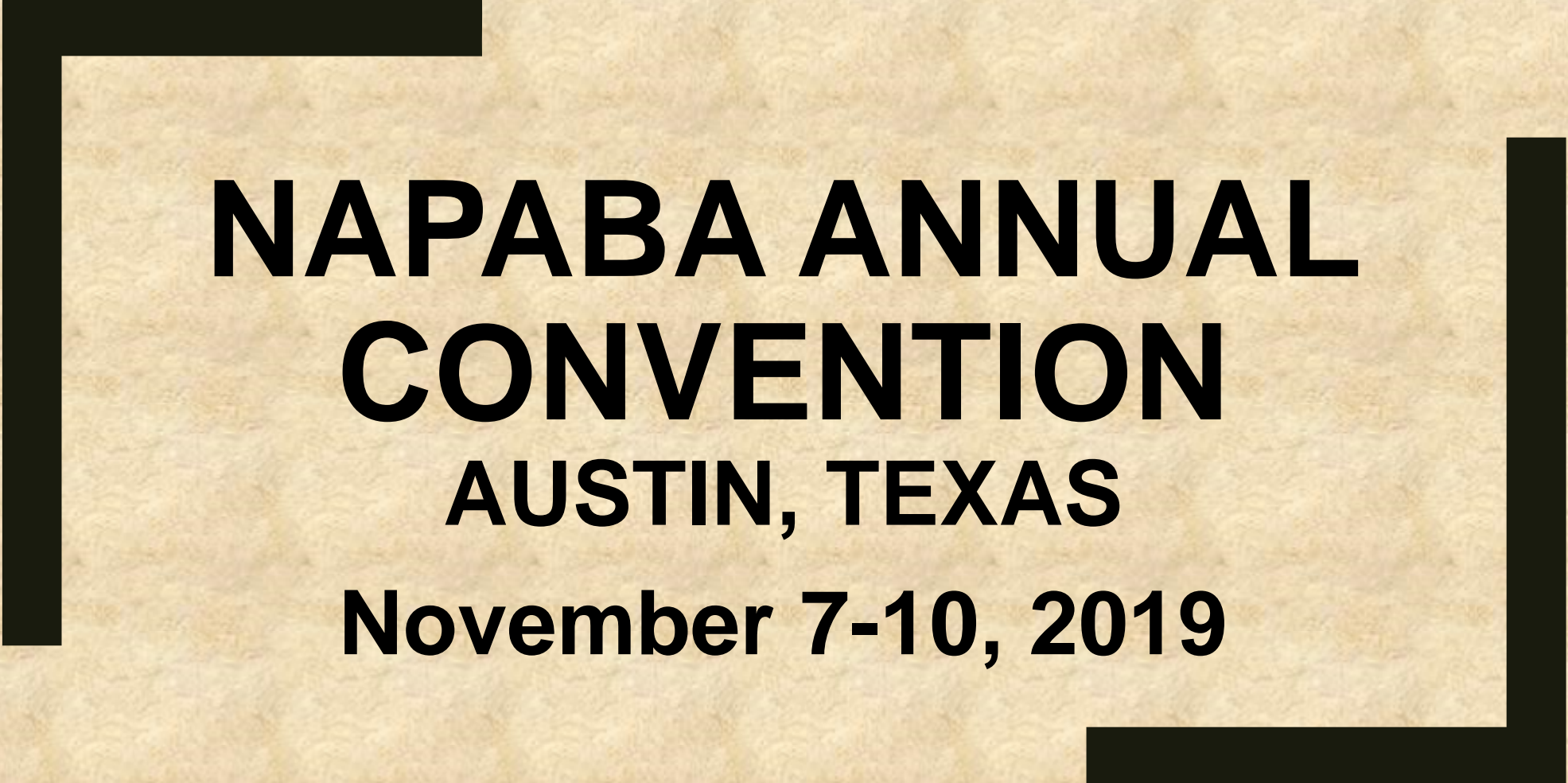
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**NAPABA ANNUAL
CONVENTION
AUSTIN, TEXAS
November 7-10, 2019**

102 – HOW TO BECOME INSURANCE PANEL COUNSEL AND TIPS ON ETHICAL ISSUES ARISING IN REPRESENTING CLIENTS

**Presented by NAPABA Insurance Law Committee and
Mass Torts & Class Action Committee**

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Peter C. Kim is a partner at Litchfield Cavo LLP. He concentrates his practice in labor and employment, aviation litigation, and general product liability litigation. He has extensive experience representing clients in both state and federal courts, as well as various state and federal agencies, in matters involving employment discrimination, wage and hour dispute, wrongful death, product liability, premises liability and professional liability. Mr. Kim is a graduate of the University of Illinois at Chicago (B.S., 1997) and Loyola University Chicago School of Law (J.D. 2003), and was admitted to the bar of Illinois, the U.S. District Courts for the Northern District of Illinois and the Central District of Illinois. He is an active member of legal and non-profit communities, having served on executive positions and as board member. For several years now, Peter has been serving low income families and individuals through pro bono legal clinics in housing, family law, real estate and similar matters. Mr. Kim is a member of the NAPABA Insurance Law Committee, and serves as its Membership subcommittee chair



W. Alan Chong has been in the insurance and legal industry since 1991. Initially, he was a claims representative for a national carrier, while simultaneously attending law school in the evening. He then transitioned over to a private defense firm as a law clerk and eventually as an associate attorney after obtaining his law license. In a desire for more hands-on litigation work, Alan transitioned to staff counsel for a national carrier and its subsidiary companies. Valuable hands on experience was gained with over 10 years of discovery, depositions, law & motion, alternative dispute hearings, and first chair trial work. He was eventually promoted to managing attorney. Alan then decided to transition back to non-direct litigation with positions as D&O examiner, litigation manager, claims counsel and product liability counsel dealing with various high exposure claims and lawsuits. Alan's current role is Product Liability Counsel with Tokio Marine and his duties include managing national and international product liability lawsuits and claims.



Kristy M. Gonowon is in-house counsel at Allstate Insurance in the Claim Litigation Department within the Law & Regulation division. She focuses on providing oversight and approval of matters concerning bad faith, extra-contractual liability, excess verdict, and coverage issues, as well as provides legal opinions on pending legislation for the Southern region (KY, AR, TN, MS, and LA) and the NY region. Kristy is the department's subject matter expert on diminished value claims. Within Allstate, Kristy is a member of the Women's and the Asian-American affinity networks. Kristy is active with the National Filipino American Lawyers Assoc. (NFALA) and was recently elected as President-Elect. Kristy graduated from Duke University with a B.A. in Pol. Sc. and a certificate in Markets & Management. She received her J.D. from Loyola University Chicago School of Law. Kristy is a member of the NAPABA Insurance Law Committee and is serving her second year as a NAPABA At-Large Board Member.



Randy Aoyama focuses his practice in civil litigation with particular emphasis in commercial litigation, product liability defense, construction defect, transportation law and personal injury defense. In addition, Mr. Aoyama provides strategic planning, counsel and advice on high-exposure litigation matters. Prior to joining Hinshaw & Culbertson LLP in March 2014, Mr. Aoyama was a partner in a defense litigation firm in Phoenix and served as Assistant General Counsel at U-Haul International. He was selected by his peers for inclusion in The Best Lawyers in America® for Product Liability Litigation – Defendants for the years 2019 and 2020.

The Panelists are expressing their own ideas, thoughts, and opinions, not those of their employers.

Also, to foster the free flow and exchange of information, we hope that you will not use our words against us or our employers.



TRIPARTITE RELATIONSHIP

What Is The Tripartite Relationship and How Does It Define The Attorney-Client Relationship?

- This is a relationship where panel counsel/independent counsel/staff counsel is appointed by an insurance carrier to represent an insured. The retained counsel maintains a relationship between the insured client(s) and the carrier with the common goal of resolving the litigation or claim(s) asserted against the insured.
- In such a relationship, the carrier pays the defense cost and the legal fees of the panel counsel. However, the panel counsel/staff counsel owes a duty of undivided loyalty to the insured as the client.
 - The scope of the representation is usually limited to the defense of specific claims under specific insurance policy. However, for corporate insureds, the representation may extend to other matters including other claims for litigation.

Tripartite Relationship — Continued

- These relationships are governed by individual state insurance laws consisting of statutes, case law and regulations.
 - Approximately 35 states acknowledge that counsel retained by the insurer to represent an insured has two potential clients: the insurer and the insured.
 - At least 2 states, California and Kentucky have articulated a clearly defined rule that the attorney-client privilege applies in a tripartite relationship.

Tripartite Relationship — Continued

■ California Case Law:

- A tripartite relationship exists between the insurer, the insured and defense counsel, and the “triangular aspect” of the representation has been described as a “coalition for a common purpose—a favorable disposition of the claim—with the attorney owing fiduciary duties to both clients.” ***Purdy v. Pacific Auto. Ins. Co.*** (1984) 157 Cal.App.3d 59, 76.
- Panel counsel cannot ethically offer any legal opinions regarding any coverage issues between his two clients. ***Gafcon, Inc. v. Ponsor & Associates*** (2002) 98 Cal.App.4th 1388, 1415 [counsel appointed by insurer to defend insured may not participate in any investigation or determination with regard to coverage].
- Held that both the insurer and the insured are the holders of the attorney-client privilege. The filing of a motion to quash by one of the clients (insurer or insured) a subpoena request based on attorney-client privilege constitutes the consent of the other client in filing the motion, and both parties are not required to file the motion. ***Bank of America, NA v. Superior Court*** (2013) 212 Cal.App.4th 1076.

Tripartite Relationship — Continued

- A minority of states including **Texas, Connecticut** and **Colorado** hold that appointed counsel to a claim only represents one client, the insured. These states take the position there is no attorney-client privilege between the insurer and appointed counsel. As a result, attorney-client privilege does not exist in communications between the insured, insurer and appointed counsel.
 - Counsels in these jurisdictions need to check up on their individual state laws because insurers will require information and documentation to assess allegations asserted against the insured, damages claimed and potential exposure. Communications held between defense counsel, their client the insured and insurers may not be considered privileged and could be disclosed.
 - Defense counsel can provide the insurer with information readily available to the public such as pleadings, motions and documents filed with the court from counsel without fear of the attorney-client privilege being waived.
 - Exploring mediation so client confidentiality can be asserted?

THE DUTY TO DEFEND



The Duty to Defend 3rd Party Liability

■ What Does the Duty to Defend Mean?

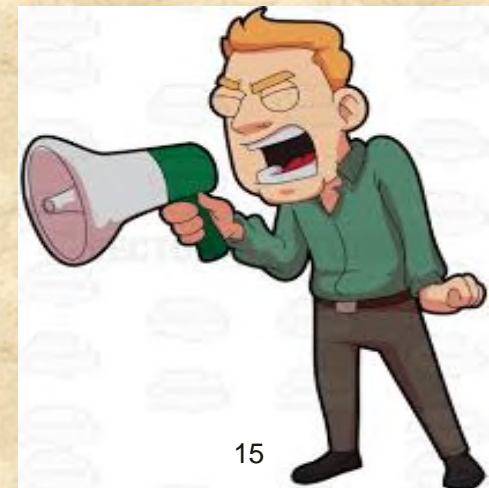
- Duty to Defend v. Duty to Indemnify
- Named Insured v. Additional Insured

■ Why Is Defense So Important?

- Cost of Defense v. Cost of Indemnity coverage (policy limits)
- Beware of Eroding Limits / Wasting Limits type policies

■ Get a Defense from the Carrier!

- Hello Plaintiffs! – Talking to you here!
- PLEAD INTO COVERAGE
- 4 or 8 Corners (usually)
- Alleging damages that would be covered:
 - “Property Damage” or “Bodily Injury”





RESERVATION OF RIGHTS (ROR)

Reservation of Rights (ROR)

- What is an ROR?
- Why do Carriers issue RORs?
- Who decides what goes into an ROR and which rights to reserve?
- What should an ROR contain, say, do?
 - What should be included in a PROPERLY DRAFTED ROR?
- Should there be a response to an ROR?
- Is an ROR good or bad?
 - Declaratory Judgment Actions

Who Selects Defense Counsel?

- Depends on State Law
- Generally, Mutually Agreeable Counsel or Insurer-Selected Counsel, Otherwise Policyholder Pays for Its Own Defense
 - E.g., Florida: Personal / Coverage Counsel – Policyholder may reject defense under ROR and resolve the case without the consent or permission of the carrier. *Taylor v. Safeco*, 361 So. 2d 742 (Fla. 1st DCA 1978);
- Exception in Some States Allowing Independent Counsel

Example of State Case Law Highlighting an Insurer's Duty to Defend Its Insured

- *EmbroidMe.com, Inc. v. Travelers Prop. Cas. Co. of Am.*, 845 F.3d 1099, 1108 (11th Cir. 2017):
 - ...“if the insurer offers to defend under a reservation of rights, the insured has the right to reject the defense and hire its own attorneys and control the defense,” without jeopardizing its right to later seek indemnification from the insurer for liability.
 - *Id.* (quoting *BellSouth Telecomm., Inc. v. Church & Tower of Fla., Inc.*, 930 So.2d 668, 671 (Fla. 3d DCA 2006)); *Travelers Indem. Co. of Ill. v. Royal Oak Enter., Inc.*, 344 F.Supp.2d 1358, 1370 (M.D. Fla. 2004) (citing *Taylor v. Safeco Ins. Co.*, 361 So.2d 743, 745 (Fla. 1st DCA 1978)).
- But the insured must actually reject the insurer's defense. *Aguero ex. rel. Iglesias v. First Am. Ins. Co.*, 927 So.2d 894, 898 (Fla. 3d DCA. 2005) (finding persuasive *Travelers Indem. Co. of Ill. v. Royal Oak Enter, Inc.*, 344 F.Supp.2d 1358, 1370–71 (M.D. Fla. 2004)).

EmbroidMe.com — Continued

- In addition, if an insurer provides a defense so inadequate that the insurer can be said to have “forced” the insured to obtain its own counsel, then the insured will be entitled to recover all reasonable costs and attorney's fees incurred at the trial level. *Travelers Indem. Co. of Ill.*, 344 F.Supp.2d at 1369 (citing *Carousel Concessions, Inc. v. Fla. Ins. Guar. Ass'n*, 483 So.2d 513, 517 (Fla. 3d DCA 1986))

Right to Independent Counsel

■ Who has the Duty to Defend?

- Illinois: Pepper's Counsel
- MD Cas. Co. v. Peppers, 355 N.E. 24 (Ill. 1976)
- Requires insurers to provide independent counsel for their insured when a conflict of interest arises.
- Balances the insurer's obligation to defend the insured with the ethical obligations of appointed attys, and is firmly grounded in the rules of professional conduct for atty.

Right to Independent Counsel

■ Who has the Duty to Defend?

- California: Cumis Counsel
- California Civil Code §2860
- Codified Cumis v. San Diego Navy Fed. Credit Union, 162 Cal.App.3d 358 (1984).

- This is the decisional and statutory law that creates the insured's right to have an independent counsel appointed, at the insurer's expense, when the panel counsel appointed by the insurer is in a conflict of interest.

Right to Independent Counsel

■ Who has the Duty to Defend?

- Cumis codified: California Civil Code §2860
- Other states with statutes that codified requirement(s) for independent counsel include:
 - Alaska (Alaska Stat. § 21.96.100)
 - Florida (Fla. Stat. § 627.426)
 - Oregon (ORS § 465.483)

Right to Independent Counsel

■ Who has the Duty to Defend?

- But see Restatement of Law of Liability Insurance § 16:
 - “When an insurer with the duty to defend provides the insured notice of a ground for contesting coverage under § 15 and there are facts at issue that are common to the legal action for which the defense is due and to the coverage dispute, such that the action could be defended in a manner that would benefit the insurer at the expense of the insured, the insurer must provide an independent defense of the action.”

Right to Independent Counsel

■ Who has the Duty to Defend?

- Restatement of Law of Liability Insurance § 16:
 - See *Outdoor Venture Corp. v. Phila. Indem. Ins. Co.*, No. 6:16-cv-182-KKC, 2018 U.S. Dist. LEXIS 167986, at *57 (E.D. Ky. Sep. 27, 2018) (“It is also unlikely that the Kentucky Supreme Court would presume that insurance defense counsel will behave unethically. Thus, the Court is unable to find that Kentucky courts would require that insurers pay for independent counsel anytime there is a potential conflict between a coverage issue and the merits of the underlying litigation.”)

The Duty to Defend 3rd Party Liability

- **What if a Carrier Refuses to Defend its Insured?**
 - Declaratory Judgment Action filed against Carrier
 - Legal Q – Summary Judgment
 - If there is no Duty to Defend, Carrier may be able to recoup defense fees and costs paid from its insured
- **What if a Carrier Defends its Insured under an ROR?**
 - Declaratory Judgment Action filed by the Carrier
 - Race to the Courthouse to file suit in state with most advantageous law

Q & A

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Insurance Defense Marketing E-Book



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Introduction

Do you ask yourself,

How can I get on more insurance panels?

Being named as panel counsel is not easy. In fact, we have found through hundreds of hours of research and phone calls that the panel counsel selection process can be extremely difficult to navigate.

Insurance defense law firms traditionally build client relationships with insurance carriers, self-insureds, and municipalities over many years. In today's rapidly changing legal climate, these relationships are increasingly being replaced with a formalized application process.

Many insurance defense law firms never needed a structured marketing program ... until now.



If you and other attorneys at your firm are not constantly focused on building new accounts, your law firm can suffer eroding revenues and profitability through normal attrition. The challenge is that while you are busy meeting the demands of current clients, you are not spending enough time developing new accounts.

This e-book offers some insight into the panel application process. Our goal is to help you plan and implement a business development campaign that works productively for your firm.

Remember, never stop marketing! The author welcomes your feedback.

Margaret Grisdela
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How to Become Panel Counsel For an Insurance Company

OK, so you want to get named as AIG panel counsel. Or perhaps you prefer the CNA panel counsel program, or the Liberty Mutual panel counsel list. Where do you start?

At one level, every insurance company panel is different. Listed below are the most common organizational variations that are used within insurance companies:

- National overseers may review all panel counsel applications
- Regional managers may have responsibility for multiple states
- State level coordinators may be the point of entry
- Panels for multi-subsidary insurance companies may be consolidated in one division
- Purchasing departments increasingly are screening interested vendors
- Online applications are also becoming popular

In some insurance companies, there may be multiple points of entry that could be used to gain consideration for a panel. Examples might include a separate EPLI panel counsel or a construction defects panel.

There are also many similarities in the panel application process:

- Personal referrals are the best way to gain panel consideration
- Periodic panel reviews (every 1-2 years) may be used
- Even if you get on a panel, it may take time to establish a consistent stream of new cases

Finding the Panel Manager

There are several ways to identify the best point of contact within an insurance company, including:

- Ask around within your network
- Attend industry conferences
- Conduct Internet research
- Review insurance company websites*
- Make telephone calls to the carrier

**Insurance company websites typically do not specifically identify an individual as the actual panel manager, but they might point you in the right direction.*

Adjusters used to play a significant role in panel counsel selection, but that is becoming less common. It may be worth exploring the network of adjusters in your area, however, particularly if there is an active claims association. A recommendation from your local adjuster can help to reinforce your panel application.

Chances are you have tried many of the above techniques. If so, you know that this can be an extremely time consuming and frustrating process. Trying to balance this research with the demands of a very busy law practice is challenging.

Business Development is a Numbers Game

As mentioned above, a personal introduction to the panel manager is your most productive approach. In today's world of carrier consolidation and litigation centralization, however, it can be difficult to stay abreast of panel managers.

It is unreasonable to expect that you can get on one or two panels by simply reaching out to five panel managers. If that does happen, consider yourself to be very lucky!

Here are some of the responses you are likely to get from panel managers:

- Request for more information about your rates and services
- Agreement to set up an in-person meeting (be prepared to travel, if needed)
- Notification of the panel review cycle, with a promise to notify you of the next cycle
- Indication that the panel is full, but you will be contacted if there is a need or conflict
- Silence (meaning no response)

In reality, you are best served by constantly screening dozens of insurance carriers, self-insureds, and other prospective clients for business development opportunities. Look for firms that are expanding geographically or into new product lines. Try to avoid firms that are consolidating due to mergers, the growth of in-house counsel, or other factors.

Never Stop Marketing

Start looking for new clients before you need the business. The worst time to look for new business is when you are desperate.

Business development takes more time than you might expect, and you will need to reach out to more prospects than you initially anticipated.



The Imperative of Client Diversification

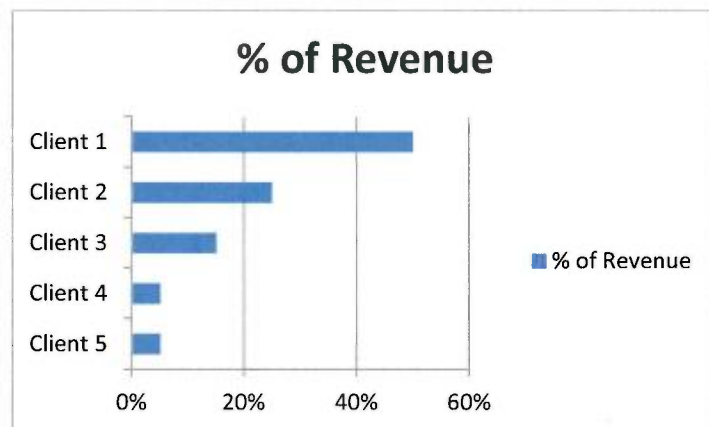
Insurance defense law firms that have been approved as panel counsel for multiple insurance companies can inadvertently find that their revenue base is increasingly dependent on a shrinking number of insurance companies over time. This section addresses why this happens, and what can be done to protect the revenue stream.

Risk #1: Revenue Risk in the Insurance Defense Law Firm

Insurance is about risk management, specifically the process of identifying, assessing, and quantifying risk. Attorneys practicing in the area of insurance defense may find it beneficial to apply some risk assessment principles to the business development efforts within their own law firm.

A leading risk facing insurance defense law firms is that a small number of clients may represent a large portion of the firm's revenue base.

In the adjacent chart, Client 1 represents 50% of revenue while Client 2 brings in 25% of revenue. Loss of either Client 1 or Client 2 would put the firm's continuation in danger.



Reliance on a handful of clients is a common situation early in any law firm's lifecycle. The same can be true later in the lifecycle, as natural attrition chips away at a previously robust client base.

Risk #2: Changing Dynamics within Insurance Panels

The times they are a-changin, as Bob Dylan warned in his well-known ballad. Here are several actual experiences where insurance defense managing partners either lost or risked losing a major insurance account.

The Industry Consolidation Scenario

"We were the lead insurance defense law firm in our state for a respected insurance company," recalls a managing partner for a California law firm. "Suddenly, without any advance notice, our insurance client was acquired by a larger insurance company. Not only did we lose the work, but many of the claims managers at our insurance client lost their jobs in the post-merger consolidation."

The “Out for Bid” Scenario

“Our law firm grew extremely rapidly after its founding in response to the needs of our primary client,” reports a founding member of a Northeastern law firm. “We opened new offices and added attorneys simply to keep up with the client’s case load. The quality and pricing for our legal services was widely acclaimed, but a new Vice President of Claims brought in after a reorganization decided that he wanted to put our work out for bid. We eventually retained our work, fortunately, but it was a hard-fought RFP process.”

The Attrition Scenario

“Our insurance defense practice has a twenty-year history of success,” explains the managing partner of a six-attorney firm who spends his work day as one of the lead litigators. “Over the years, however, I did not have the time to develop new business while also serving the needs of current clients. We found ourselves overly reliant on one client, and without the benefit of an established business development process.”

The “No One Told Me” Scenario

“I suddenly noticed that we were not receiving the same level of incoming cases,” reports a practice group chair with a long history of providing specialized legal services to one of the country’s leading banks. “In researching the problem, not even our internal contacts could tell us who was now responsible for panel appointment decisions. It took many days to identify the bank’s panel manager and realize that they had decided to favor regional law firms over single-location firms like ours. We ultimately got back on the panel, but it was a very nerve-wracking process.”

Insurance defense law firms also face more routine risks, including:

- Departure of a partner who leaves with their book of business
- Retirement of a founding member who served as primary rainmaker
- Insurance clients that decide to hire more in-house attorneys
- Centralization of the insurer’s litigation management team

The best defense is a good offense. Paying close attention to existing clients, while maintaining an active business development process, is an effective way to minimize revenue risk.

Risk #3: Lack of Time to Expand Your Insurance Defense Base

Once approved as outside panel counsel, law firms frequently enjoy a steady stream of cases that arrive at their doorstep with little additional business development effort.

Of course, panel members must perform satisfactorily, maintain good relations, be available around-the-clock for the (hopefully) infrequent emergency, and offer billing rates that are attractive to the insurance company.

The challenge is that existing clients, particularly large accounts, can easily consume all available capacity within a law firm, leaving little time for courting new clients.



It is indeed a juggling act to manage the day-to-day requirements of meeting court deadlines and responding to client requests, while also trying to devote time to business development.

Looking back at the risks mentioned earlier, however, it may be easier to make time for marketing after considering what would happen if you lost one of your largest clients. The loss of a major account could result in lay-offs, as well as possible difficulty making lease and other overhead payments. In an extreme case, a law firm may need to quickly affiliate with another firm, thereby losing its independent status.

Risk Avoidance with a Law Firm Marketing Committee

Insurance defense law firms or practice groups that plan for long-term success may find it helpful to create a Marketing Committee tasked with responsibility for establishing panel counsel relationships among a broader range of insurance companies and other entities.

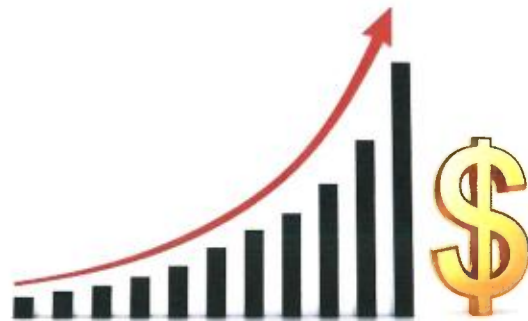
Marketing Committee members can address issues like the following:

- **Where to expand geographically.** This can be a difficult question, since it may involve an acquisition and/or opening up a new office.
- **Development of new insurance defense skill sets.** A firm that handles auto cases may want to expand into related forms of transportation, like trucking, railroads, or aviation.
- **Exploration of new market segments.** Staying with auto for the moment, law firms could try to create business opportunities with fleet managers or delivery services.
- **Growth in the self-insured market.** Many large retail, municipal, or corporate accounts self-insure up to a certain level.

The time to start looking for more clients now! Attracting a new account takes time, so it is advisable to work on business expansion while you have a satisfactory level of business already in place.

In Summary

Start early. Marketing for insurance defense success is a long-term process that benefits from a continuous focus on business development campaign



Set Your Firm Apart

The more successfully you can differentiate your law firm in the crowded insurance defense field, the stronger your ability to attract and retain clients. “Big firm experience at small firm prices” is popular, but not uniquely distinctive. Consider some of the ideas below.

How to Stand Apart in Objectively Verifiable Ways

There are many ways that a law firm can distinguish themselves in the market. Here are a few representative claims that can meet the need for “objectively verifiable” attorney advertising.

- ABC Law Firm has handled cases in every one of the (##) counties in the state of (State).
- All ABC Law Firm partners are AV Preeminent® Peer Review Rated by Martindale-Hubbell.
- Our lawyers tried (##) cases and won (##) in 201x.
- (##) of our (##) partners are Board Certified by (certification entity) in (practice area).
- (##) of our attorneys are licensed mediators, reflecting our commitment to alternative dispute resolution techniques.

More Distinguishing Characteristics

Law firms have many opportunities to differentiate their culture and values. Ideas include:

- **Diversity.** Many carriers and self-insureds (Wal-Mart being one) have strong commitments to diversity programs reflecting gender, nationality, and other measures.
- **Veterans.** Service to our country earns a deep respect from many hiring entities. Military service indicates integrity and discipline. Highlight attorneys with a military background.
- **Minority Owned Firms.** Some insurance carriers may have goals for MBE or WBE (Minority Business Enterprise/Women's Business Enterprise) firms. If your firm qualifies, it may be well worth your while to become certified. Consider also NAMWOLF membership.
- **Languages.** Insurance carriers who represent a diverse clientele in large metropolitan areas will appreciate your firm's ability to communicate with insureds in multiple languages.

Case Management Statistics

Promote investments your firm has made in its case management expertise.

- Technology infrastructure
- Reporting capabilities
- Favorable billing practices
- Specialized teams (fraud, EUO, etc.)



Read the following pages for ideas on attorney credentials and professional associations.

Attorney and Firm Credentials

Listed below are several of the leading law firm rating services well-known within the insurance defense sector.

A.M. Best

Founded in 1899, [A.M. Best Company](#) is a full-service credit rating organization dedicated to serving the financial services industries, including the banking and insurance sectors. They publish *Best's Directory of Recommended Insurance Attorneys*, with 2,600 law firm listings, available in print as well as online. Client references are required for initial approval, and accepted law firms receive an attractive "BestMark" icon for display on their website. There is an annual membership fee that varies with the size of your directory listing.

Martindale-Hubbell Peer Review Ratings

Martindale-Hubbell® is the preeminent source of information on law firms and attorneys in 160 countries worldwide. Started in 1868 and now owned by LexisNexis®, Martindale-Hubbell manages a powerful database of over one million lawyers and law firms.

All U.S. and Canadian attorneys are encouraged to participate in the Martindale-Hubbell Legal Network at no charge. A free basic listing consists of the attorney name, city, state, county, peer review rating, ISLN number, and disclaimer copy.

The prestigious "[Peer Review Rating](#)" system offered by Martindale-Hubbell was updated in September 2009 to include an alphabetical code accompanied by a numeric rating. New designations appear below; the previously used CV® mark is no longer in use.

AV® Preeminent™ (4.5 – 5.0)
BV® Distinguished™ (3.0 – 4.4)

Client Review Ratings are also now in use by Martindale to supplement peer review data. Use of these systems is governed by very specific guidelines.

You must submit a minimum of 18 reference names, some of whom can be judges. All of the attorneys submitted as references must be listed in Martindale themselves.

There is no charge to apply for or receive a Peer Review rating. If you wish to use the distinctive Martindale icon to promote your rating, however, the law firm must maintain an annual subscription with Martindale. Email ratings@martindale.com for more information.

An added benefit, law firms that achieve an AV® rating are included in The Bar Register. This is an annual guide to the attorneys and firms who have earned the highest rating in the Martindale-Hubbell Law Directory and are recognized by their colleagues as outstanding practitioners.

Super Lawyers

[Super Lawyers](#), acquired by Thomson Reuters in 2010, publishes annual state-level guides to the top 5% of attorneys within a state. Peer-nominations form the basis of the selection process, tallied from an annual mail ballot. Internal firm nominations are accepted but carry less weight than independent votes.

Ballots are monitored to ensure fairness and minimize deception. Selection to a Super Lawyers list cannot be purchased. The publisher emphasizes their rigorous process which includes: the creation of a candidate pool; candidate evaluation by Super Lawyers staff; peer evaluation by practice area; and selection based on firm size, numerical scores, and confirmation of a clean Bar record.

American Board of Trial Advocates (ABOTA)

[ABOTA](#) is a national association of trial lawyers (plaintiff and defense) and judges dedicated to preserving the right of a civil jury trial. Membership is by invitation only.

Board Certification

Several private organizations are accredited by the American Bar Association to grant certification programs for specialized areas of practice. The following groups may be of particular interest to insurance defense firms:

- American Board of Certification
- American Board of Professional Liability Attorneys
- National Board of Legal Specialty Certification

Many states, including California, Arizona, Florida, and New Jersey, also offer board certification programs in a range of practice areas. Florida, for example, offers a board certification in civil trial. Use of the term “expert” in law firm marketing is frequently limited to attorneys who are board certified. Additionally, a board certification is frequently accompanied by a distinctive icon to visually communicate an attorney’s accomplishment.

In Florida only six percent of attorneys achieve a board certified status. If this is representative of national numbers, it is definitely an advisable way for an attorney to stand apart.

Other Directories

There are many other lawyer directories, including [Chambers and Partners](#), [Best Lawyers in America](#). You can determine which directories are best suited to your law firm.

Professional Associations

The Claims and Litigation Management Alliance (CLM)

The CLM was founded in 2007 as a national organization designed to serve the needs of claims executives, litigation management professionals, and defense law firms. There are now 20,000 Members and Fellows. The group sponsors an annual Claims College, the Litigation Management Institute, an annual meeting, webinars, and local chapter events. www.theclm.org.

DRI

Originally known as the Defense Research Institute, DRI is the leading organization of defense attorneys and in-house counsel. In addition to an annual meeting, DRI sponsors many substantive conferences for its 22,000 members. www.dri.org.

Federation of Defense and Corporate Counsel

FDCC members pursue a balanced justice system and represent those in need of a defense in civil lawsuits. Members include corporate counsel, insurance claims executives, and insurance defense attorneys. www.thefederation.org.

International Association of Defense Counsel

IADC membership is by invitation only, and includes insurance defense attorneys, in-house counsel, and insurance company executives. Membership details at www.iadclaw.org/membership/requirements.aspx

State Defense Associations

Many states maintain a trade association representing the defense bar, including:

- Association of Southern California Defense Counsel
- Florida Defense Lawyers Association
- Texas Association of Defense Counsel
- The Defense Association of New York, Inc.

Industry-Specific Associations

Defense law firms that have developed a specialized industry niche, or want to do so, can find targeted trade associations that serve the needs of a particular market segment. Examples include but are not limited to:

- National Association of Railroad Trial Counsel
- National Retail and Restaurant Defense Association
- Trucking Industry Defense Association (TIDA)

You can determine which trade associations are most productive for your law firm.

Solo Law Firms and Insurance Defense

Many solo practitioners and small law firms find the steady stream of business available from an insurance carrier to be appealing.

Small law firms do, however, face potential obstacles in being named as outside counsel to a large insurance company. Carriers may be concerned about the firm's capacity to accommodate a large volume of cases, as well as a perceived limited ability to blend billing rates across a tiered structure of associates and partners.

Business Development Ideas for Small Insurance Defense Firms

Small law firms may find it most productive to identify prospective clients using the following marketing techniques:

- Target smaller insurance carriers
- Check out any local claims associations
- Focus on local self-insurers
- Explore the municipal market
- Network actively
- Pick a niche reflecting local needs
- Research the educational sector



Solo practitioners seeking to attract insurance carriers or self-insureds can emphasize the following advantages:

- Access to local courts
- Affordable billing rates
- Direct access to a partner
- Fast response times
- Specialized knowledge of local market conditions

Captive Law Firms

Some insurance companies employ a series of “captive” law firms to defend the interests of insureds when a claim or litigation arises. In this case, the lawyer is likely to be an employee of the insurance company, yet operating out of his or her own independent law firm.

Solo practitioners who wish to maintain an independent office while also being relieved of business development burdens may find this to be an appealing arrangement.

Check with your State Bar in regard to relevant attorney advertising and ethical considerations.

Risk Retention Groups

The National Risk Retention Association defines a risk retention group (RRG) as follows:

A Risk Retention Group (RRG) is a liability insurance company that is owned by the people it insures. The owner insureds of a Risk Retention Group must share similar business activities. For example, a group of nurses could belong to one RRG while a group of schools could belong to a different RRG. The owner insureds, or members, of the Risk Retention Group own and control the entity for the mutual benefit of the owner insureds.

A December 2011 report of the United States Government Accountability Office (GAO) provides some legislative background on RRGs:

Congress authorized the creation of risk retention groups ... to increase the affordability and availability of commercial liability insurance. Through the Liability Risk Retention Act (LRRRA), Congress partially preempted state insurance laws to allow RRGs licensed in one state (the domiciliary state) to operate in all other states (non-domiciliary states) with minimal additional regulation.

Some of the larger RRGs, as measured by assets, include:

- Attorneys Liability Assurance Society Inc. RRG
- First Medical Insurance Co. RRG
- Housing Authority RRG Inc.
- Ophthalmic Mutual Insurance Co. RRG
- United Educators Insurance RRG Inc.



Nationwide, there are approximately 250 RRGs in operation. Medical malpractice insurance is a leading industry sector covered by RRGs, and other specialized industries and/or geographic areas of coverage vary.

Risk Retention Groups and Panel Counsel Programs

RRGs can be particularly difficult to approach in the search for panel counsel appointments. Many do not maintain a website and are managed by third party intermediaries, making information scarce.

It is not unusual for multiple RRGs to be managed out of the office of one RRG management company. Nevertheless, some do maintain panels and should be considered as part of any business development campaign.

Working with Self-Insureds

Many corporations, from Fortune 500 companies to Mom-and-Pop shops, self-insure for certain levels of property, liability, and workers' compensation coverage.

Insurance defense law firms that wish to expand their client roster may benefit by exploring opportunities with corporate clients. Typically this hiring is done through the General Counsel's office.

Fewer defense law firms take the time to pursue self-insureds, which theoretically creates a less competitive environment. This may be changing, however, as the search for new legal clients intensifies. Corporations are changing also, with many GCs taking a more methodical approach to panel management in terms of issuing RFPs and implementing performance metrics.

There are also disadvantages to working with self-insureds. Some law firms report that the process can be more political, with a greater need for personal connections. Depending on the size of the firm, the volume of cases is likely to be less than a typical insurance client. This may translate into the need for a higher number of small volume clients.

Law firms seeking to break into the self-insured market could start by doing an assessment of prospective clients within their metropolitan area or the state at large. Self-insureds can be targeted in several ways, as outlined below.

By Industry

- Consumer products
- Food safety
- Manufacturing (auto, building products, etc.)
- Retail
- Sports and entertainment

By Practice Area

- Class action defense
- Commercial auto
- Employment practices liability
- Personal injury defense
- Premises liability
- Product liability

By Compliance Requirements

- Construction
- Healthcare
- Restaurants



Once you have a target list of prospects, the next step is to reach out and determine the best way to introduce your firm through networking, a mutual acquaintance, or the submission of introductory materials.

Social Media: Start with LinkedIn

There are many forms of social media marketing, but we will limit our focus to LinkedIn since it is the most widely used network that unites professionals in the legal and insurance industries.

10 Ways to Use LinkedIn

Whether you are a new user or an experienced LinkedIn networker, here are 10 ways you can make LinkedIn work for you:

1. Invite all business acquaintances to link to you. Make it a goal to grow your firm-wide LinkedIn connections from X to Y within a certain time period.
2. Post “status updates” that get distributed to all members of your network.
3. Expand your “company page” to include all service offerings, with supporting images.
4. Join groups and participate in discussions
5. Connect your blog, Twitter, and Facebook accounts (as relevant) to your LinkedIn profile
6. Look for prospects and identify any mutual acquaintances who can introduce you
7. Post presentations, articles, videos, or educational materials
8. Monitor job openings that might be of interest to network members
9. Post news of your firm’s upcoming events and share recent accomplishments
10. Add social links to your website

Tips and Traps

While you can open your personal contact manager (like Microsoft Outlook) to LinkedIn, we suggest adding contacts one-by-one.

Check with your state bar association for their guidance on social media sites. Florida and New York, for example, have taken positions against the display of endorsements and the “Skills & Expertise” section on an attorney’s LinkedIn profile.

Let’s Get Linked!

Connect with the author on LinkedIn at www.linkedin.com/in/legalexpertconnections



Summary: The Value Equation

Litigation panel managers spend a great deal of time and effort to insure that the law firms on their approved panel of outside counsel are highly qualified.

Our advice to insurance defense law firms is to focus on what we call the “value equation” as a means to stand apart from the competition:

- 1. Credentials.** Attorneys who have made the effort to become board certified or AV® rated demonstrate their commitment to quality legal representation. While attorney advertising rules generally prohibit lawyers from making qualitative or comparative statements (i.e., we are the best, or we are the most experienced), attorneys can factually describe most awards, credentials, or special recognition they have received. (Check with your Bar.)
- 2. Billing rates.** Competitive billing rates and experience with alternative fee arrangements, coupled with advanced electronic billing capabilities, helps to get the attention of panel managers who are judged in part on allocated loss adjustment expenses (ALAE), defense and cost containment (DCC) efforts, and related financial measures.
- 3. Representative cases.** Litigation experience is important, and you will never get into some carriers without it. Maintain a separate list of cases (and not just embedded in attorney bios) for use in business development pitches. If you do not have a long list of cases, you might want to emphasize attorney skills in negotiating settlements, handling depositions, or your firm’s ability to carefully track the progress of each case.

Motivated Law Firms Get the Business

The law firms that make a concerted effort to develop and maintain a finely tuned business development process have the best chances of getting new clients. Here are several action items needed for an effective lead generation program:

- Establish a Marketing Committee that meets at least monthly
- Create a “wish list” of firms that you want as clients (by name or characteristic)
- Establish a pipeline report, updated monthly, to monitor new business development
- Designate a lead business development person (consider a non-lawyer)
- Look for outside resources to help with the business development effort

Start Today!

It takes time to get a new client, so the best time to start looking for new accounts is when you are busy, not when you are desperate. Business development is a numbers game; the more prospects you have, the better your chances of opening a new account.

Never stop marketing. The author is available to assist with marketing ideas for your law firm.

About Us

About Legal Expert Connections, Inc.

Legal Expert Connections is a national legal marketing agency focused on business development for attorneys and experts. Our services include insurance defense marketing, outsourced legal marketing management, employment defense marketing, law firm proposals, minority firm marketing, and other business development campaigns.

You can focus on your law practice when we do the marketing and lead generation. Our clients frequently include small to mid-sized law firms that do not have an in-house Marketing Department but are in need of professional legal marketing assistance.

Legal Expert Connections, Inc.
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Visit our Websites

www.InsuranceDefenseMarketing.com
www.EmploymentLawMarketingPro.com
www.LegalExpertConnections.com

About the Author

Margaret Grisdela is president of Legal Expert Connections, Inc., a national legal marketing agency concentrating. She is one of the leading insurance defense marketing consultants in the country.

Ms. Grisdela is the author of "Courting Your Clients: The Essential Guide to Legal Marketing." She helps law firms identify qualified prospects and retain existing clients through marketing communications programs designed to increase firm profitability.

She holds an undergraduate degree from Wayne State University in Detroit, MI, and an MBA in Finance from The George Washington University in Washington, D.C. View her full resume and connect via LinkedIn at www.linkedin.com/in/legalexpertconnections.

The author invites your questions and comments, and can be reached at **1-866-417-7025** or mg@legalexpertconnections.com.

Remember, have fun and never stop marketing!

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Insurance Defense Marketing E-Book



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Introduction

Do you ask yourself,

How can I get on more insurance panels?

Being named as panel counsel is not easy. In fact, we have found through hundreds of hours of research and phone calls that the panel counsel selection process can be extremely difficult to navigate.

Insurance defense law firms traditionally build client relationships with insurance carriers, self-insureds, and municipalities over many years. In today's rapidly changing legal climate, these relationships are increasingly being replaced with a formalized application process.

Many insurance defense law firms never needed a structured marketing program ... until now.



If you and other attorneys at your firm are not constantly focused on building new accounts, your law firm can suffer eroding revenues and profitability through normal attrition. The challenge is that while you are busy meeting the demands of current clients, you are not spending enough time developing new accounts.

This e-book offers some insight into the panel application process. Our goal is to help you plan and implement a business development campaign that works productively for your firm.

Remember, never stop marketing! The author welcomes your feedback.

Margaret Grisdela
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Legal Expert Connections, Inc.
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How to Become Panel Counsel For an Insurance Company

OK, so you want to get named as AIG panel counsel. Or perhaps you prefer the CNA panel counsel program, or the Liberty Mutual panel counsel list. Where do you start?

At one level, every insurance company panel is different. Listed below are the most common organizational variations that are used within insurance companies:

- National overseers may review all panel counsel applications
- Regional managers may have responsibility for multiple states
- State level coordinators may be the point of entry
- Panels for multi-subsidary insurance companies may be consolidated in one division
- Purchasing departments increasingly are screening interested vendors
- Online applications are also becoming popular

In some insurance companies, there may be multiple points of entry that could be used to gain consideration for a panel. Examples might include a separate EPLI panel counsel or a construction defects panel.

There are also many similarities in the panel application process:

- Personal referrals are the best way to gain panel consideration
- Periodic panel reviews (every 1-2 years) may be used
- Even if you get on a panel, it may take time to establish a consistent stream of new cases

Finding the Panel Manager

There are several ways to identify the best point of contact within an insurance company, including:

- Ask around within your network
- Attend industry conferences
- Conduct Internet research
- Review insurance company websites*
- Make telephone calls to the carrier

**Insurance company websites typically do not specifically identify an individual as the actual panel manager, but they might point you in the right direction.*

Adjusters used to play a significant role in panel counsel selection, but that is becoming less common. It may be worth exploring the network of adjusters in your area, however, particularly if there is an active claims association. A recommendation from your local adjuster can help to reinforce your panel application.

Chances are you have tried many of the above techniques. If so, you know that this can be an extremely time consuming and frustrating process. Trying to balance this research with the demands of a very busy law practice is challenging.

Business Development is a Numbers Game

As mentioned above, a personal introduction to the panel manager is your most productive approach. In today's world of carrier consolidation and litigation centralization, however, it can be difficult to stay abreast of panel managers.

It is unreasonable to expect that you can get on one or two panels by simply reaching out to five panel managers. If that does happen, consider yourself to be very lucky!

Here are some of the responses you are likely to get from panel managers:

- Request for more information about your rates and services
- Agreement to set up an in-person meeting (be prepared to travel, if needed)
- Notification of the panel review cycle, with a promise to notify you of the next cycle
- Indication that the panel is full, but you will be contacted if there is a need or conflict
- Silence (meaning no response)

In reality, you are best served by constantly screening dozens of insurance carriers, self-insureds, and other prospective clients for business development opportunities. Look for firms that are expanding geographically or into new product lines. Try to avoid firms that are consolidating due to mergers, the growth of in-house counsel, or other factors.

Never Stop Marketing

Start looking for new clients before you need the business. The worst time to look for new business is when you are desperate.

Business development takes more time than you might expect, and you will need to reach out to more prospects than you initially anticipated.



The Imperative of Client Diversification

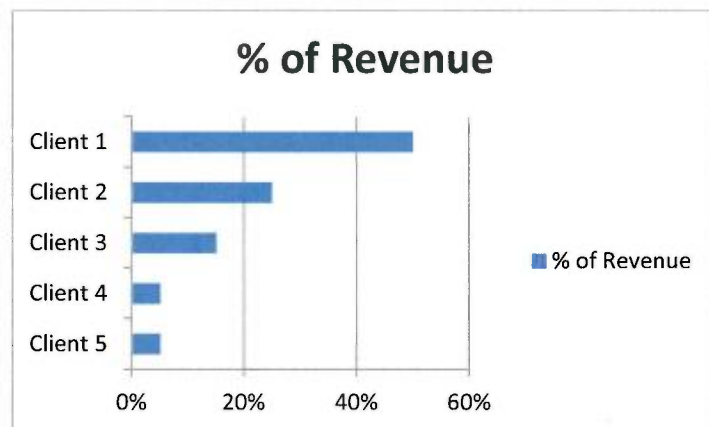
Insurance defense law firms that have been approved as panel counsel for multiple insurance companies can inadvertently find that their revenue base is increasingly dependent on a shrinking number of insurance companies over time. This section addresses why this happens, and what can be done to protect the revenue stream.

Risk #1: Revenue Risk in the Insurance Defense Law Firm

Insurance is about risk management, specifically the process of identifying, assessing, and quantifying risk. Attorneys practicing in the area of insurance defense may find it beneficial to apply some risk assessment principles to the business development efforts within their own law firm.

A leading risk facing insurance defense law firms is that a small number of clients may represent a large portion of the firm's revenue base.

In the adjacent chart, Client 1 represents 50% of revenue while Client 2 brings in 25% of revenue. Loss of either Client 1 or Client 2 would put the firm's continuation in danger.



Reliance on a handful of clients is a common situation early in any law firm's lifecycle. The same can be true later in the lifecycle, as natural attrition chips away at a previously robust client base.

Risk #2: Changing Dynamics within Insurance Panels

The times they are a-changin, as Bob Dylan warned in his well-known ballad. Here are several actual experiences where insurance defense managing partners either lost or risked losing a major insurance account.

The Industry Consolidation Scenario

"We were the lead insurance defense law firm in our state for a respected insurance company," recalls a managing partner for a California law firm. "Suddenly, without any advance notice, our insurance client was acquired by a larger insurance company. Not only did we lose the work, but many of the claims managers at our insurance client lost their jobs in the post-merger consolidation."

The “Out for Bid” Scenario

“Our law firm grew extremely rapidly after its founding in response to the needs of our primary client,” reports a founding member of a Northeastern law firm. “We opened new offices and added attorneys simply to keep up with the client’s case load. The quality and pricing for our legal services was widely acclaimed, but a new Vice President of Claims brought in after a reorganization decided that he wanted to put our work out for bid. We eventually retained our work, fortunately, but it was a hard-fought RFP process.”

The Attrition Scenario

“Our insurance defense practice has a twenty-year history of success,” explains the managing partner of a six-attorney firm who spends his work day as one of the lead litigators. “Over the years, however, I did not have the time to develop new business while also serving the needs of current clients. We found ourselves overly reliant on one client, and without the benefit of an established business development process.”

The “No One Told Me” Scenario

“I suddenly noticed that we were not receiving the same level of incoming cases,” reports a practice group chair with a long history of providing specialized legal services to one of the country’s leading banks. “In researching the problem, not even our internal contacts could tell us who was now responsible for panel appointment decisions. It took many days to identify the bank’s panel manager and realize that they had decided to favor regional law firms over single-location firms like ours. We ultimately got back on the panel, but it was a very nerve-wracking process.”

Insurance defense law firms also face more routine risks, including:

- Departure of a partner who leaves with their book of business
- Retirement of a founding member who served as primary rainmaker
- Insurance clients that decide to hire more in-house attorneys
- Centralization of the insurer’s litigation management team

The best defense is a good offense. Paying close attention to existing clients, while maintaining an active business development process, is an effective way to minimize revenue risk.

Risk #3: Lack of Time to Expand Your Insurance Defense Base

Once approved as outside panel counsel, law firms frequently enjoy a steady stream of cases that arrive at their doorstep with little additional business development effort.

Of course, panel members must perform satisfactorily, maintain good relations, be available around-the-clock for the (hopefully) infrequent emergency, and offer billing rates that are attractive to the insurance company.

The challenge is that existing clients, particularly large accounts, can easily consume all available capacity within a law firm, leaving little time for courting new clients.



It is indeed a juggling act to manage the day-to-day requirements of meeting court deadlines and responding to client requests, while also trying to devote time to business development.

Looking back at the risks mentioned earlier, however, it may be easier to make time for marketing after considering what would happen if you lost one of your largest clients. The loss of a major account could result in lay-offs, as well as possible difficulty making lease and other overhead payments. In an extreme case, a law firm may need to quickly affiliate with another firm, thereby losing its independent status.

Risk Avoidance with a Law Firm Marketing Committee

Insurance defense law firms or practice groups that plan for long-term success may find it helpful to create a Marketing Committee tasked with responsibility for establishing panel counsel relationships among a broader range of insurance companies and other entities.

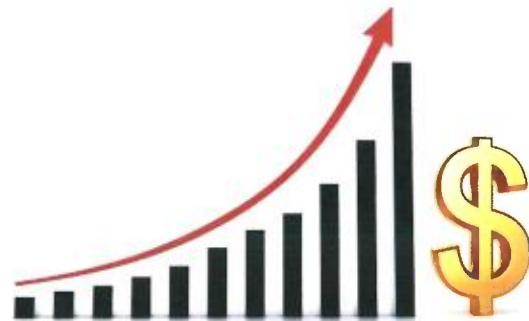
Marketing Committee members can address issues like the following:

- **Where to expand geographically.** This can be a difficult question, since it may involve an acquisition and/or opening up a new office.
- **Development of new insurance defense skill sets.** A firm that handles auto cases may want to expand into related forms of transportation, like trucking, railroads, or aviation.
- **Exploration of new market segments.** Staying with auto for the moment, law firms could try to create business opportunities with fleet managers or delivery services.
- **Growth in the self-insured market.** Many large retail, municipal, or corporate accounts self-insure up to a certain level.

The time to start looking for more clients now! Attracting a new account takes time, so it is advisable to work on business expansion while you have a satisfactory level of business already in place.

In Summary

Start early. Marketing for insurance defense success is a long-term process that benefits from a continuous focus on business development campaign



Set Your Firm Apart

The more successfully you can differentiate your law firm in the crowded insurance defense field, the stronger your ability to attract and retain clients. “Big firm experience at small firm prices” is popular, but not uniquely distinctive. Consider some of the ideas below.

How to Stand Apart in Objectively Verifiable Ways

There are many ways that a law firm can distinguish themselves in the market. Here are a few representative claims that can meet the need for “objectively verifiable” attorney advertising.

- ABC Law Firm has handled cases in every one of the (##) counties in the state of (State).
- All ABC Law Firm partners are AV Preeminent® Peer Review Rated by Martindale-Hubbell.
- Our lawyers tried (##) cases and won (##) in 201x.
- (##) of our (##) partners are Board Certified by (certification entity) in (practice area).
- (##) of our attorneys are licensed mediators, reflecting our commitment to alternative dispute resolution techniques.

More Distinguishing Characteristics

Law firms have many opportunities to differentiate their culture and values. Ideas include:

- **Diversity.** Many carriers and self-insureds (Wal-Mart being one) have strong commitments to diversity programs reflecting gender, nationality, and other measures.
- **Veterans.** Service to our country earns a deep respect from many hiring entities. Military service indicates integrity and discipline. Highlight attorneys with a military background.
- **Minority Owned Firms.** Some insurance carriers may have goals for MBE or WBE (Minority Business Enterprise/Women's Business Enterprise) firms. If your firm qualifies, it may be well worth your while to become certified. Consider also NAMWOLF membership.
- **Languages.** Insurance carriers who represent a diverse clientele in large metropolitan areas will appreciate your firm's ability to communicate with insureds in multiple languages.

Case Management Statistics

Promote investments your firm has made in its case management expertise.

- Technology infrastructure
- Reporting capabilities
- Favorable billing practices
- Specialized teams (fraud, EUO, etc.)



Read the following pages for ideas on attorney credentials and professional associations.

Attorney and Firm Credentials

Listed below are several of the leading law firm rating services well-known within the insurance defense sector.

A.M. Best

Founded in 1899, [A.M. Best Company](#) is a full-service credit rating organization dedicated to serving the financial services industries, including the banking and insurance sectors. They publish *Best's Directory of Recommended Insurance Attorneys*, with 2,600 law firm listings, available in print as well as online. Client references are required for initial approval, and accepted law firms receive an attractive "BestMark" icon for display on their website. There is an annual membership fee that varies with the size of your directory listing.

Martindale-Hubbell Peer Review Ratings

Martindale-Hubbell® is the preeminent source of information on law firms and attorneys in 160 countries worldwide. Started in 1868 and now owned by LexisNexis®, Martindale-Hubbell manages a powerful database of over one million lawyers and law firms.

All U.S. and Canadian attorneys are encouraged to participate in the Martindale-Hubbell Legal Network at no charge. A free basic listing consists of the attorney name, city, state, county, peer review rating, ISLN number, and disclaimer copy.

The prestigious "[Peer Review Rating](#)" system offered by Martindale-Hubbell was updated in September 2009 to include an alphabetical code accompanied by a numeric rating. New designations appear below; the previously used CV® mark is no longer in use.

AV® Preeminent™ (4.5 – 5.0)
BV® Distinguished™ (3.0 – 4.4)

Client Review Ratings are also now in use by Martindale to supplement peer review data. Use of these systems is governed by very specific guidelines.

You must submit a minimum of 18 reference names, some of whom can be judges. All of the attorneys submitted as references must be listed in Martindale themselves.

There is no charge to apply for or receive a Peer Review rating. If you wish to use the distinctive Martindale icon to promote your rating, however, the law firm must maintain an annual subscription with Martindale. Email ratings@martindale.com for more information.

An added benefit, law firms that achieve an AV® rating are included in The Bar Register. This is an annual guide to the attorneys and firms who have earned the highest rating in the Martindale-Hubbell Law Directory and are recognized by their colleagues as outstanding practitioners.

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Small law firms do, however, face potential obstacles in being named as outside counsel to a large insurance company. Carriers may be concerned about the firm's capacity to accommodate a large volume of cases, as well as a perceived limited ability to blend billing rates across a tiered structure of associates and partners.

Business Development Ideas for Small Insurance Defense Firms

Small law firms may find it most productive to identify prospective clients using the following marketing techniques:

- Target smaller insurance carriers
- Check out any local claims associations
- Focus on local self-insurers
- Explore the municipal market
- Network actively
- Pick a niche reflecting local needs
- Research the educational sector



Solo practitioners seeking to attract insurance carriers or self-insureds can emphasize the following advantages:

- Access to local courts
- Affordable billing rates
- Direct access to a partner
- Fast response times
- Specialized knowledge of local market conditions

Captive Law Firms

Some insurance companies employ a series of “captive” law firms to defend the interests of insureds when a claim or litigation arises. In this case, the lawyer is likely to be an employee of the insurance company, yet operating out of his or her own independent law firm.

Solo practitioners who wish to maintain an independent office while also being relieved of business development burdens may find this to be an appealing arrangement.

Check with your State Bar in regard to relevant attorney advertising and ethical considerations.

Risk Retention Groups

The National Risk Retention Association defines a risk retention group (RRG) as follows:

A Risk Retention Group (RRG) is a liability insurance company that is owned by the people it insures. The owner insureds of a Risk Retention Group must share similar business activities. For example, a group of nurses could belong to one RRG while a group of schools could belong to a different RRG. The owner insureds, or members, of the Risk Retention Group own and control the entity for the mutual benefit of the owner insureds.

A December 2011 report of the United States Government Accountability Office (GAO) provides some legislative background on RRGs:

Congress authorized the creation of risk retention groups ... to increase the affordability and availability of commercial liability insurance. Through the Liability Risk Retention Act (LRRRA), Congress partially preempted state insurance laws to allow RRGs licensed in one state (the domiciliary state) to operate in all other states (non-domiciliary states) with minimal additional regulation.

Some of the larger RRGs, as measured by assets, include:

- Attorneys Liability Assurance Society Inc. RRG
- First Medical Insurance Co. RRG
- Housing Authority RRG Inc.
- Ophthalmic Mutual Insurance Co. RRG
- United Educators Insurance RRG Inc.



Nationwide, there are approximately 250 RRGs in operation. Medical malpractice insurance is a leading industry sector covered by RRGs, and other specialized industries and/or geographic areas of coverage vary.

Risk Retention Groups and Panel Counsel Programs

RRGs can be particularly difficult to approach in the search for panel counsel appointments. Many do not maintain a website and are managed by third party intermediaries, making information scarce.

It is not unusual for multiple RRGs to be managed out of the office of one RRG management company. Nevertheless, some do maintain panels and should be considered as part of any business development campaign.

Working with Self-Insureds

Many corporations, from Fortune 500 companies to Mom-and-Pop shops, self-insure for certain levels of property, liability, and workers' compensation coverage.

Insurance defense law firms that wish to expand their client roster may benefit by exploring opportunities with corporate clients. Typically this hiring is done through the General Counsel's office.

Fewer defense law firms take the time to pursue self-insureds, which theoretically creates a less competitive environment. This may be changing, however, as the search for new legal clients intensifies. Corporations are changing also, with many GCs taking a more methodical approach to panel management in terms of issuing RFPs and implementing performance metrics.

There are also disadvantages to working with self-insureds. Some law firms report that the process can be more political, with a greater need for personal connections. Depending on the size of the firm, the volume of cases is likely to be less than a typical insurance client. This may translate into the need for a higher number of small volume clients.

Law firms seeking to break into the self-insured market could start by doing an assessment of prospective clients within their metropolitan area or the state at large. Self-insureds can be targeted in several ways, as outlined below.

By Industry

- Consumer products
- Food safety
- Manufacturing (auto, building products, etc.)
- Retail
- Sports and entertainment

By Practice Area

- Class action defense
- Commercial auto
- Employment practices liability
- Personal injury defense
- Premises liability
- Product liability

By Compliance Requirements

- Construction
- Healthcare
- Restaurants



Once you have a target list of prospects, the next step is to reach out and determine the best way to introduce your firm through networking, a mutual acquaintance, or the submission of introductory materials.

Social Media: Start with LinkedIn

There are many forms of social media marketing, but we will limit our focus to LinkedIn since it is the most widely used network that unites professionals in the legal and insurance industries.

10 Ways to Use LinkedIn

Whether you are a new user or an experienced LinkedIn networker, here are 10 ways you can make LinkedIn work for you:

1. Invite all business acquaintances to link to you. Make it a goal to grow your firm-wide LinkedIn connections from X to Y within a certain time period.
2. Post “status updates” that get distributed to all members of your network.
3. Expand your “company page” to include all service offerings, with supporting images.
4. Join groups and participate in discussions
5. Connect your blog, Twitter, and Facebook accounts (as relevant) to your LinkedIn profile
6. Look for prospects and identify any mutual acquaintances who can introduce you
7. Post presentations, articles, videos, or educational materials
8. Monitor job openings that might be of interest to network members
9. Post news of your firm’s upcoming events and share recent accomplishments
10. Add social links to your website

Tips and Traps

While you can open your personal contact manager (like Microsoft Outlook) to LinkedIn, we suggest adding contacts one-by-one.

Check with your state bar association for their guidance on social media sites. Florida and New York, for example, have taken positions against the display of endorsements and the “Skills & Expertise” section on an attorney’s LinkedIn profile.

Let’s Get Linked!

Connect with the author on LinkedIn at www.linkedin.com/in/legalexpertconnections



Summary: The Value Equation

Litigation panel managers spend a great deal of time and effort to insure that the law firms on their approved panel of outside counsel are highly qualified.

Our advice to insurance defense law firms is to focus on what we call the “value equation” as a means to stand apart from the competition:

- 1. Credentials.** Attorneys who have made the effort to become board certified or AV® rated demonstrate their commitment to quality legal representation. While attorney advertising rules generally prohibit lawyers from making qualitative or comparative statements (i.e., we are the best, or we are the most experienced), attorneys can factually describe most awards, credentials, or special recognition they have received. (Check with your Bar.)
- 2. Billing rates.** Competitive billing rates and experience with alternative fee arrangements, coupled with advanced electronic billing capabilities, helps to get the attention of panel managers who are judged in part on allocated loss adjustment expenses (ALAE), defense and cost containment (DCC) efforts, and related financial measures.
- 3. Representative cases.** Litigation experience is important, and you will never get into some carriers without it. Maintain a separate list of cases (and not just embedded in attorney bios) for use in business development pitches. If you do not have a long list of cases, you might want to emphasize attorney skills in negotiating settlements, handling depositions, or your firm’s ability to carefully track the progress of each case.

Motivated Law Firms Get the Business

The law firms that make a concerted effort to develop and maintain a finely tuned business development process have the best chances of getting new clients. Here are several action items needed for an effective lead generation program:

- Establish a Marketing Committee that meets at least monthly
- Create a “wish list” of firms that you want as clients (by name or characteristic)
- Establish a pipeline report, updated monthly, to monitor new business development
- Designate a lead business development person (consider a non-lawyer)
- Look for outside resources to help with the business development effort

Start Today!

It takes time to get a new client, so the best time to start looking for new accounts is when you are busy, not when you are desperate. Business development is a numbers game; the more prospects you have, the better your chances of opening a new account.

Never stop marketing. The author is available to assist with marketing ideas for your law firm.

About Us

About Legal Expert Connections, Inc.

Legal Expert Connections is a national legal marketing agency focused on business development for attorneys and experts. Our services include insurance defense marketing, outsourced legal marketing management, employment defense marketing, law firm proposals, minority firm marketing, and other business development campaigns.

You can focus on your law practice when we do the marketing and lead generation. Our clients frequently include small to mid-sized law firms that do not have an in-house Marketing Department but are in need of professional legal marketing assistance.

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Ms. Grisdela is the author of "Courting Your Clients: The Essential Guide to Legal Marketing." She helps law firms identify qualified prospects and retain existing clients through marketing communications programs designed to increase firm profitability.

She holds an undergraduate degree from Wayne State University in Detroit, MI, and an MBA in Finance from The George Washington University in Washington, D.C. View her full resume and connect via LinkedIn at www.linkedin.com/in/legalexpertconnections.

The author invites your questions and comments, and can be reached at **1-866-417-7025** or mg@legalexpertconnections.com.

Remember, have fun and never stop marketing!

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