Proactively Positioning for Litigation Risk with Legal Technology and Litigation Analytics

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Why Legal Analytics Matter

Litigation spikes — exponential increases in case volumes — from mass tort litigation and class action lawsuits can happen at a moment's notice and carry on for years.

Legal departments should not be caught flat-footed by a litigation spike hitting their companies when they have:

- Unparalleled access to litigation analytics
- The legal tech tools needed to manage litigation at scale
- And the opportunity to proactive prepare for litigation risk

Case Study: 3M Litigation Analytics

Starting in January 2020, 3M Company faced the ultimate litigation nightmare any legal department can imagine with thousands of new product liability cases filed against 3M per month, and a total of over 227,000 lawsuits in 2020.

3M went from just over 5,000 cases in all of 2019 to an increase in litigation by a factor of nearly 45.

The overwhelming majority of the cases are related to alleged personal injuries, specifically, product liability claims surrounding a line of earplugs sold by 3M.

Case Study: 3M Litigation Analytics

We will be using the example of 3M to illustrate an extreme, but increasingly prevalent, example of what can happen when a litigation spike runs off the rails.

In this CLE, we will explore:

- The power of litigation analytics and technology to alert legal departments and outside counsel to these types of spikes
- How to use technology to manage a massive litigation surge and keep the related data structured and useful, and
- How lawyers can leverage technology and litigation analytics to proactively monitor and prepare for possible future challenges of this kind

Case Study: 3M Litigation Analytics

The proverbial writing appeared on the wall for 3M in early 2018, when 3M entered a multimillion-dollar settlement after acknowledging a line of its earplugs were defective. This settlement then got the attention of inventive personal injury, plaintiff-side firms.

The settlement was later followed by a trickle of cases in January, February, and March of 2019, with a break in the dam that April.

Then a new trend occurred: hundreds of new filings every month for the remainder of 2019 would later morph seamlessly into *thousands* of cases per month in 2020.

Case Study: 3M Litigation Analytics

3M Personal Injury - Product Liability Litigation from 2019-2021
U.S. District Court for the Northern District of Florida

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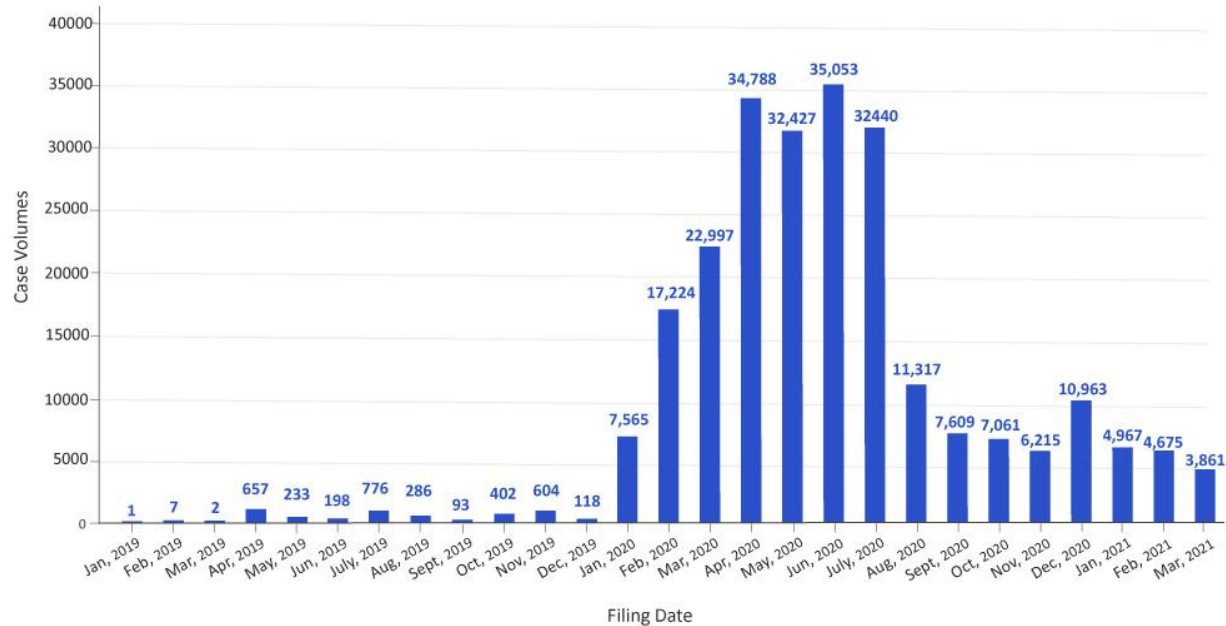
Why Litigation Analytics Matter for Legal Departments

Litigation analytics matter because they allow for real-time responses to pressing problems and pain points. They take surprise out of the equation, and let legal departments focus on moving forward.

But litigation analytics are only diagnostic tools.

For litigation analytics to truly make an impact, they need to be paired with other legal tech tools to manage spikes in case volumes, in addition to strategic plans and playbooks on what to do when it hits the fan.

The Golden Age of Legal Tech

From what we can see, the 2020s are signaling a Golden Age for legal tech. Legal departments have their pick of mature legal tech companies and legal data providers to get the litigation analytics and the underlying data they need.

Developments in 2021:

- Over $1 billion in new investments in legal tech
- Three IPOs of legal tech's first unicorns, each valued at over $1 billion
- A growing recognition from investors that legal tech is only just heating up
- Just in November 2021, Everlaw raised $202 million, bringing the legal tech company to an overall valuation of over $2 billion after 80% YoY growth

The Wait and See Period Is Over

To be truly reactive and responsive to the scope and scale of large litigation spikes, legal departments:

- Need to be vigilant, constantly receiving regular updates on their exposure
- Need to know the volume of litigation they're facing in real-time
- Need to know the nature of the cases filed against them to determine the seriousness of their litigation risk
  - Where were the cases filed?
  - What types of cases are they?
  - What law firms and attorneys filed the lawsuits?
  - On behalf of what clients?
  - In front of what judges?

Someone Needs An Eye on the Ball

Whether legal departments avail themselves of the technology available for accessing litigation analytics reporting and the underlying legal data *OR* they rely on outside counsel to make use of the latest in legal tech to keep an eye out for spikes in litigation volumes, it's critical that someone is honed in on the oncoming litigation and systematically tracking it to be alerted when actual spikes occur.

More agile legal departments should take advantage of litigation analytics tools and data directly, and those departments that swim in red tape and bureaucracy when it comes to procurement should not let that inhibit the need to protect their company's interests.

Building a Data Infrastructure for Data Analysis

To stay ahead of the curve, legal departments need to develop a responsive data infrastructure to perform data analysis.

What does this require?

- Investing in human capital
- Leveraging technology and outside data sources
- Incorporating change management best practices
- Developing a data driven culture

Building Your Own Analytics Discipline

Developing a successful data infrastructure is not enough. Legal departments need to also build out their own robust analytics discipline.

Why build your own analytics discipline?

- Out of the box analytics have inherent limitations
- Get customized insights combining internal and external data sources
- Laying the groundwork for your analytics discipline keeps you focused on the future of law and helps you avoid playing catch up

Getting Past Analysis to Action

Uncovering the trends from litigation analytics is just the first step.

Once the threat or potential threat has been identified and the size and scale properly gauged, the question now becomes how to then leverage legal tech and legal data to best manage that litigation at scale?

Short answer: legal departments need to be prepared and well-positioned to manage their litigation at scale through the use of real-time data feeds and matter management solutions capable of leveraging that data to its fullest potential.

Getting Past Analysis to Action

Now, we'll turn to look at how legal departments can manage litigation spikes with a specific focus on keeping their data structured for downstream reporting and process automation.

We'll also touch on what legal departments should look for in data providers and their matter management solution, and where to learn more about the range of options available in the thriving legal tech marketplace.

Real-Time Insights Require Real-Time Data

As we saw in the case study of the litigation spikes experienced by 3M last year, when your litigation volumes explode exponentially, you need to be ready and able to pivot on a dime when the time comes.

That means having real-time access to the litigation data needed to see when spikes occur and to gauge the seriousness of the lawsuits you're facing.

Use the Easy Button

Fortunately for legal departments, there are a broad array of legal tech companies now offering legal data as a service and real-time data streaming options.

But how do you wade through the growing ecosystem of providers to find the right fit for your data needs?

Luckily, there's an easy button for that.

Leveraging the Best in the Legal Tech Ecosystem

Alongside the burgeoning growth in legal tech, Reynen Court has emerged as a marketplace platform accelerating the adoption of cloud-based technologies for the legal industry by offering a pre-vetted and curated set of providers across the spectrum of legal tech solutions.

Through Reynen Court, you can easily learn more about real-time litigation data providers and even test drive their software solutions in a virtual sandbox.

There are also other marketplace platforms like Theorem, and other legal tech directories like the Legaltech Hub and The Observatory.

APIs are The Way

When you're managing litigation at scale, how you get your data and the quality of your data are critically important.

To build a 21st century data infrastructure and leave the dark ages of manual data collection and entry behind, legal departments should look to APIs (application programming interfaces) for real-time access to the litigation data they need.

Why Else Should You Use APIs

Beyond the ability to stream data directly into applications and matter management solutions, APIs also help legal departments take a leap forward by accessing structured, standardized data from the start.

One of the core pain points and barriers to developing meaningful analytics and managing litigation at scale is bad data that's unstructured, unstandardized, and riddled with normalization issues.

Comparing APIs and Legal Data Providers

As you compare data providers and review their APIs, a key factor to consider is how they structure and standardize their data to make it more easily consumable and reportable.

Legal departments need to ensure the data they're ingesting adheres to common standards, like the SALI standards from the Standards Advancement for the Legal Industry, so they can avoid the revolving bad data in, bad data out problem.

Even if the data provider you're interested in is a member of the SALI Alliance, it's essential that you take a look under the hood and see how they structure and standardize their data. You wouldn't buy a car without test driving it would you?

Don't Get Stuck at the Starting Line

Managing litigation at scale across a range of jurisdictions requires real-time reporting, which means if you don't get your data already structured and standardized from the beginning, you're stuck at the starting line and cannot fully leverage the data you have until it's been cleaned.

Without clean data, you'll have to deal with downstream issues impacting critical reporting and decision points that may be delayed or missed altogether.

Flexibility and Interoperability for the Win

Having the best structured and standardized data is pointless if you don't have the right interoperable tools and the flexibility you need to manage and draw insights from your data.

To leverage real-time data feeds to their greatest potential, legal departments need a matter management solution with proven integration capabilities and the interoperability you'd expect for managing large scale litigation.

Data Integration as the Key to Process Automation

When you have hundreds, thousands, or even tens of thousands of new cases coming down the pike on a monthly basis, being able to incorporate litigation data and other data sources into your matter management solution allows for automating processes to create cost saving efficiencies that scale with the volume of your litigation.

Choosing a Matter Management System

Just as with legal data as a service providers, Reynen Court and Theorem also have a range of matter management solutions listed in their marketplaces that legal departments can choose from, several of which have unique integrations and custom bells and whistles to manage litigation.

In searching for the best solution for your needs, look for options with existing data integrations, and if they don't have the integration you're looking for, make sure the matter management provider at least has the engineering bench needed to build out those integrations if you can't tackle them in-house, or at the very least has a dedicated integration partner who can work with you.

Finding the Reporting Flexibility You Need

In addition to interoperability for ingesting litigation data, legal departments also need flexibility in their matter management solutions, and more specifically, flexibility as it relates to pulling on-demand reporting and canned reports.

Data silos are death knells for innovation in legal departments.

Even with the best integrations and structured data possible, if you can't run basic reporting within your matter management solution or you can't easily export your data into BI or a similar dashboard reporting tool, then you have a problem.

Why Does It Matter?

To be prepared to manage litigation spikes as they're occurring, you have to be able to easily generate your own analytics to see the bigger picture and grasp all the grainy details to strategically handle the challenges your in-house legal team faces.

The Best Legal Tech and Legal Data Isn't Enough

To go for the win, don't stop innovating and modernizing your legal department once you've onboarded legal tech solutions with flexibility and interoperability.

Make sure you take the time to redesign and update your processes for managing litigation and hire the right people to keep your progress moving forward.

The best legal tech and data in the world cannot solve for bad processes being kept in place and the wrong legal professionals being left to manage them.

Be Realistic with Your Roadmap and Keep Moving Forward

Rome wasn't built in a day, and innovation in legal departments doesn't happen overnight.

However, with legal tech marketplaces like Reynen Court and Theorem, in-house teams can fully flesh out their ideal roadmap with all of the data streams and matter management solutions they need to accelerate their tech adoption.

No matter where you are on your roadmap, the key for legal departments is to be realistic about the obstacles and challenges you face, and keep moving the ball forward.

Taking a Proactive Stance on Litigation Risk

Once you get to the point of managing your own litigation at scale using APIs and matter management solutions, you can begin to look at proactive ways to get ahead of the curve and predict potential litigation spikes before they happen to your company.

How Can You Predict Future Litigation Risk?

The best way to predict what's going to happen is to know in real-time when litigation trends are building.

To do that, you need to broaden your focus outside of just the lawsuits that are being filed against your company.

More specifically, you need to know:

- What's happening in your industry, and
- What's happening to your competitors

Hypothetical from the Finance Industry

Consider the perspective of a large financial institution.

To proactively manage the litigation risk its business faces, our hypothetical big bank can track the litigation happening across the finance industry by focusing on certain types of cases it's likely to face in the future.

It can also track the litigation against other large banks and entities in the finance industry that it considers to be peers or competitors.

Hypothetical from the Finance Industry

If a peer bank all of a sudden is on the receiving end of a litigation spike for selling similar financial products that our hypothetical big bank sells, or if there's novel legislation creating new private causes of action and competitors are getting sued by creative plaintiff's counsel, the legal department at our big bank can see the writing on the wall while it's still being written.

They can then use that intelligence to plan and prepare before similar litigation hits their own doorstep.

Hypothetical from the Finance Industry

With real-time litigation analytics, legal departments can also transition from being seen as a constant cost center, to being valued as a proactive partner to the business.

Through providing business teams with litigation intelligence for determining whether certain financial products carry too much risk or whether certain markets are saddled with regulations leading to a likely influx of litigation, legal departments can both protect their client's interests and take a more prominent place at the table as a strategic partner to the business.

Shifting from Reactive to Proactive Stances

While litigation analytics and legal technology can underscore and help manage risks, it's how you prepare when you have time on your side that determines whether or not you remain reactive or take a truly proactive stance.

Prepping for Break the Glass Moments

When you're able to spot potential litigation risk on the horizon, you need to first determine if you have the appropriate outside counsel coverage to protect your company's interests and also think about any steps that can be taken to reduce or altogether avoid that risk.

Do You Have the Bench Strength You Need?

Continuing on with our example of a large financial institution that's identified a surge of litigation against its competitors sparked by new legislation, one of the first questions they should ask is do they have the bench strength of law firms with the experience and expertise needed to adequately defend their company should the surge of litigation flow their way?

In this scenario, where novel legislation has created new causes of action, if our financial institution's outside counsel bench is not deep enough to handle an onslaught of litigation or doesn't have the expertise, there are two options readily available for building the bench needed.

Using Litigation Analytics for Outside Counsel Selection

First, just as our financial institution initially used litigation analytics to uncover the litigation trends indicating their competitor is facing a spike in litigation, they can also leverage litigation analytics to view who the top law firms are in this space.

With litigation analytics, they can move past time consuming RFP processes and outside counsel puffery to find the best talent to represent their firm using a data driven approach.

Litigation analytics let you easily ask and answer the right questions to see a law firm and individual attorney's real-world courtroom experience.

Using Litigation Data for Outside Counsel Selection

Second, they can look closer at their competitors to see which law firms they've hired to handle the influx of new litigation and seek to get those firms on retainer.

This may be a simpler option in many scenarios, but can oftentimes prove impractical when competitors are more territorial over who their outside counsel can and cannot represent.

Proactive Collaboration with Outside Counsel

Once our hypothetical financial institution has found the outside counsel talent needed to lead the charge, they should work collaboratively with outside counsel to develop a plan for how to handle any oncoming litigation spikes.

At the minimum this should include:

- Proactively finding and approving local counsel as needed
- Budgeting and setting aside reserves for anticipated expenses
- Working with business teams to inform them of the risks and look for ways to avoid or mitigate potential exposure

Do You Have Your Fire Extinguisher?

Like buying a dependable fire extinguisher and having efficient evacuation plans in place, though you hopefully never have to use them, when you hit your break the glass moment with a litigation spike, you need to move swiftly into action without hesitation or delay.

If you don't have your fire extinguisher at the ready, or if you didn't even know you needed it in the first place because you aren't leveraging litigation analytics, you'll be caught playing catch up, and will have missed out on the opportunity to better protect and advance your company's interests.

Moving the Needle Toward Modernization

Legal department modernization starts and ends with data.

From building the litigation analytics to spot spikes and trends, to managing litigation with process automation and real-time reporting, and proactively preparing for future surges of litigation, all of these components critical to modernizing legal departments have data as a foundational core element.

The key to it all for legal departments seeking to modernize their legal operations is to continue to pursue progress and seek the level of maturity needed to more adequately protect their companies interests, while moving past the cost center moniker to being seen as a valued partner to the business.

Leave the Sidelines and Proactively Manage Your Risk

Regardless of where legal departments are in their level of sophistication, with the explosion of available, affordable solutions in the legal tech ecosystem and the growth of marketplaces streamlining the process of vetting and onboarding tech tools, there is no excuse for sitting on the sidelines and sticking to the traditional wait and see approach to managing litigation risk.

Learn More and Get In Touch

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