

Let technology lead the way

Information technology is playing an increasingly prominent role in the running of captive entities. Here, its application in law, claims management and e-billing are explored.

Gary Markham, chief executive of the Legal Solutions Group, provides insights into three areas of information technology and litigation that pertain to the captive sector: litigation management, retention and deductible tracking and the attractions of e-billing.

Where does your organisation fit on the 'scale of sophistication' in litigation management?

Litigation management, including its related cousins of legal spend and cost control, is not a new phenomenon. They have all been around in various guises, especially in the insurance market, for well over a decade, but litigation management is evolving rapidly in the economic downturn. With the advent of universally applied invoice or billing formats, the science of litigation management has evolved.

Demonstrable performance measurement data show that the use of technology in the field of litigation and legal spend management generate an economically sound business case for adoption and implementation.

Figure 1: The evolution in litigation management

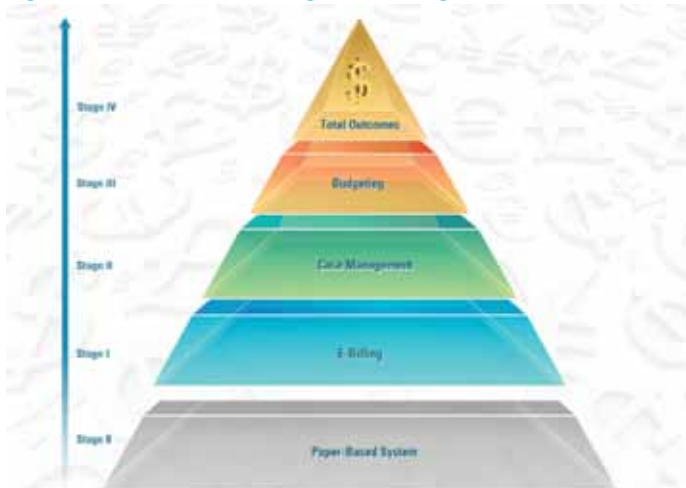


Figure 2 presents a more definitive explanation of the various stages, as well as the benefits that each stage offers to organisations that choose to upgrade their litigation management strategy.

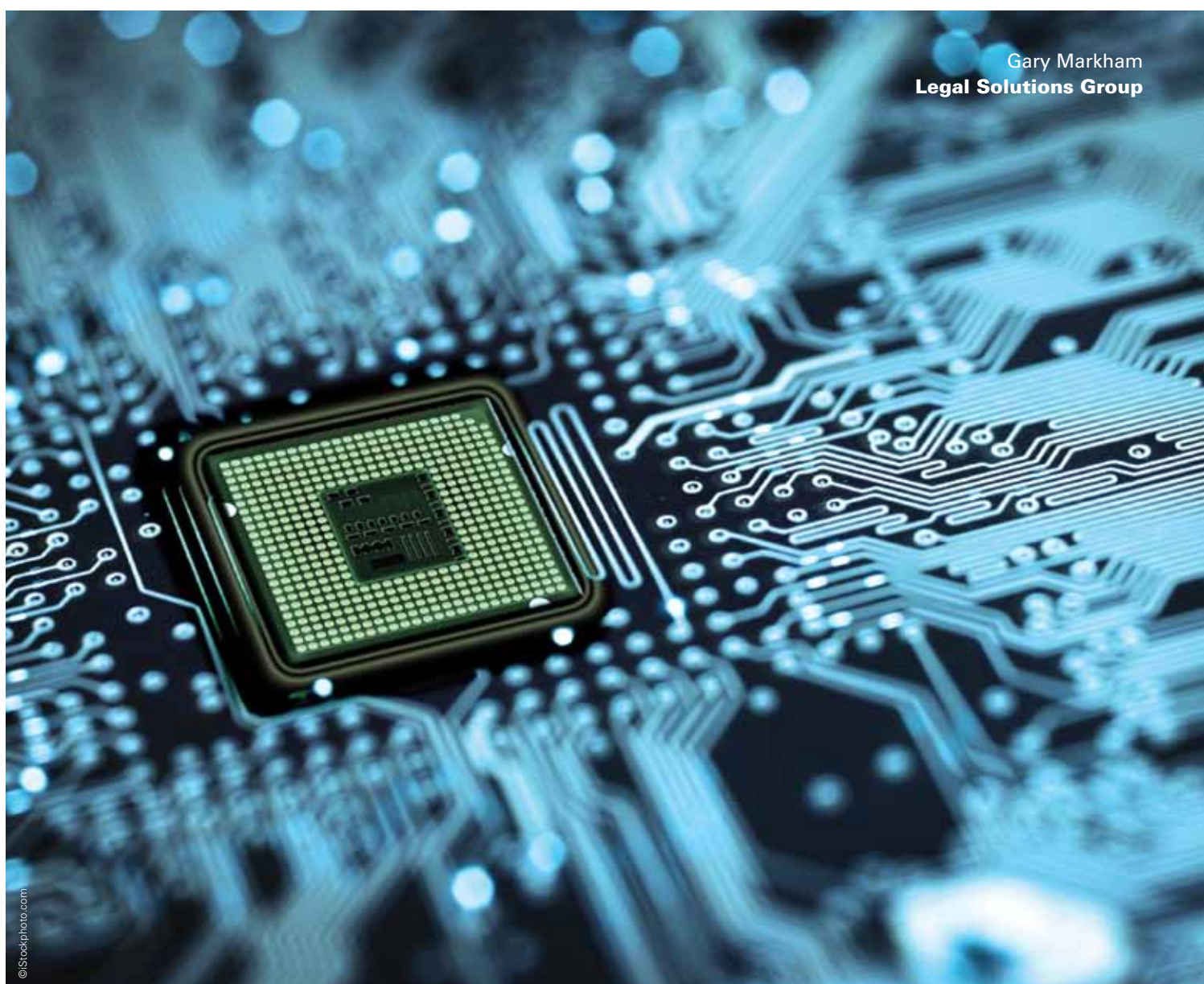
Figure 2: Added benefits of stages of litigation management

	DEFINITION	ADDED BENEFIT
Stage 0:	<ul style="list-style-type: none"> Manual, paper-based system 	<ul style="list-style-type: none"> None
Stage I:	<ul style="list-style-type: none"> Paper-free billing Opportunities for Bill Review 	<ul style="list-style-type: none"> Cost and time savings Guidelines compliance
Stage II	<ul style="list-style-type: none"> Paperless claims feed & matter creation Electronic invoice review & approval Vendor selection, on-panel/off-panel 	<ul style="list-style-type: none"> Centralised data repository Guaranteed management oversight SarbOx & internal audit compliant
Stage III	<ul style="list-style-type: none"> Budgeting Case planning tools Report cards & MI reports 	<ul style="list-style-type: none"> Budget tracking tool to measure cases Reports to review LSP performance Paper completely removed from process
Stage IV	<ul style="list-style-type: none"> Ability to monitor internal case handling Advanced budget billing controls Detailed senior management reports 	<ul style="list-style-type: none"> Higher levels of compliance Proactive litigation management principles embedded in company culture

SIR AND DEDUCTIBLE TRACKING: RELIEVING THE RISK OF E&O CLAIMS, COVERAGE DISPUTES AND EXPOSURE

As world economies have tightened, so has the trend in the insurance industry towards larger self-insured retentions (SIRs) and policy deductibles. By increasing an SIR or retention limit, premiums can be negotiated downward by the insured or client. The flipside of reduced premiums is increased responsibility on the part of the insured for settling (in the case of SIR) or contributing towards claims costs (in the case of retention), in the event of an occurrence which triggers the insured's policy with the insurance carrier/s.

As SIRs are the sole responsibility of the insured, there has been



greater focus and attention to detail on the part of the carrier, to ensure that full and proper fiduciary duty has been met and that erosion of the SIR may be demonstrated.

With larger deductibles, insurance carriers are being challenged legally as to their rights of settlement, where the deductible forms a significant part of the claim payout, for both allocable claims adjusting expenses and indemnity or damages. Several cases related to deductibles have been tried in favour of the carrier.

Coverage disputes

Coverage disputes are not uncommon in the insurance industry. However, a growing and worrying trend is beginning to emerge related to claims for coverage, where the SIR has to be fully and properly demonstrated as completely eroded. Effectively, coverages are being disputed where it cannot be shown that full erosion or exhaustion of the SIR is proved. Several cases can be cited, with a proportion spawning fresh errors and omissions (E&O) claims for claims mishandling or alleged negligence in fiduciary duty, among the most common.

E&O claims

E&O claims are also being brought against third party (claims) administrators (TPAs), wherein claim-file mishandling is being alleged by the insurance carrier or in some cases the insured, where a large deductible is involved in settling the case/claim.

Offsetting risk and exposure

Technologies and other tools have been designed and are available to assist in the tracking of SIRs, in order that proper and full exhaustion or erosion may be proven and demonstrated to have been managed in accordance with the terms of the insurance policy.

These tools will provide for the application of current litigation and legal spend management protocols to be applied from dollar one, thus protecting the needs of the insured, as well as satisfying the requirements of the insurance carrier, under the policy.

They also lend themselves to tracking the deductible or early claims costs, in order that the insurance carrier can make better informed decisions over settlement and resolution of the claim.

FIGURE 3: THE DETAILED PROCESS FOR SIR AND DEDUCTIBLE TRACKING

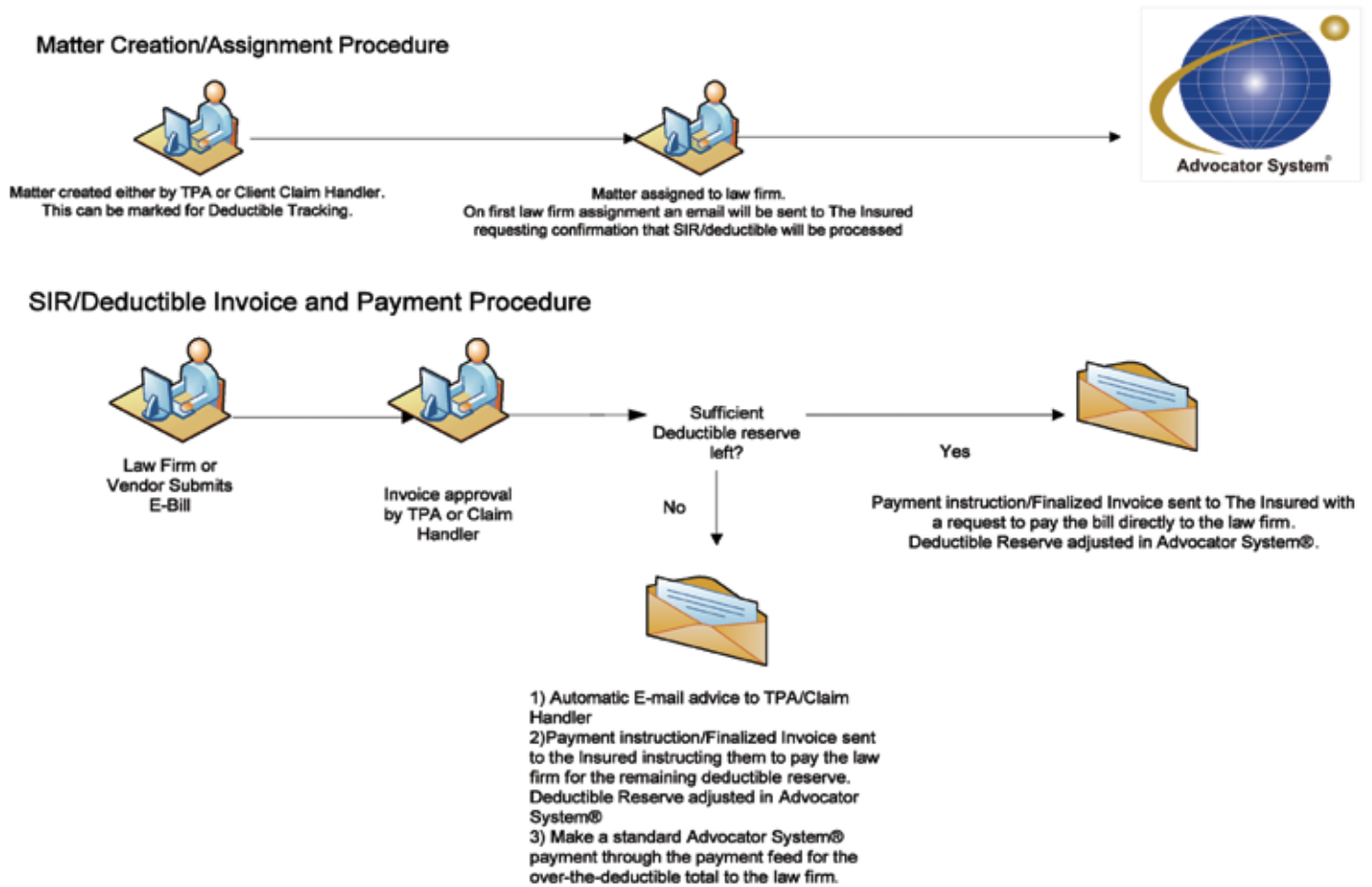
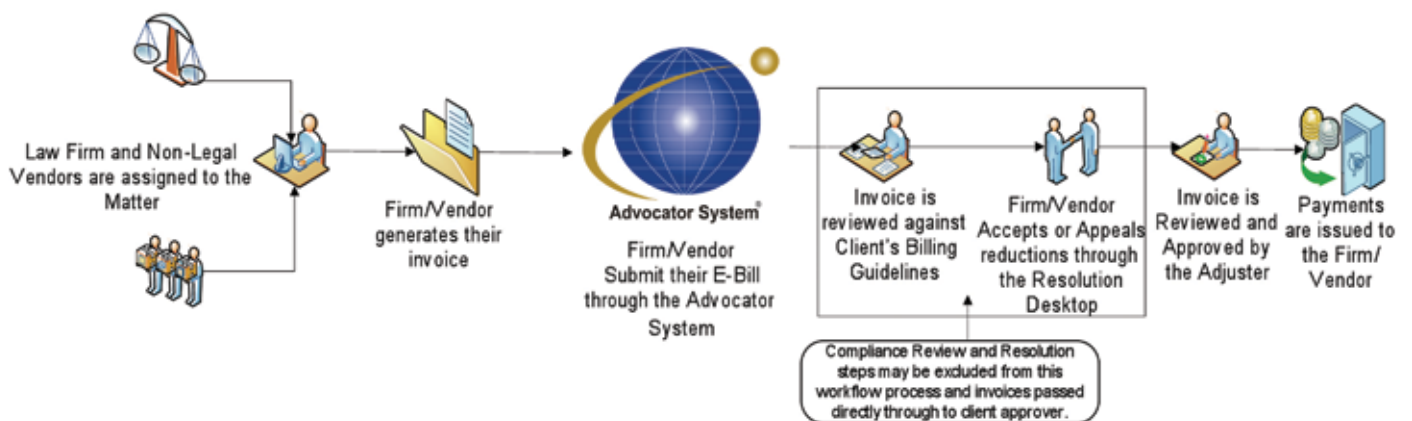


FIGURE 4: EXAMPLE OF HOW AN E-BILLING SYSTEM WORKS

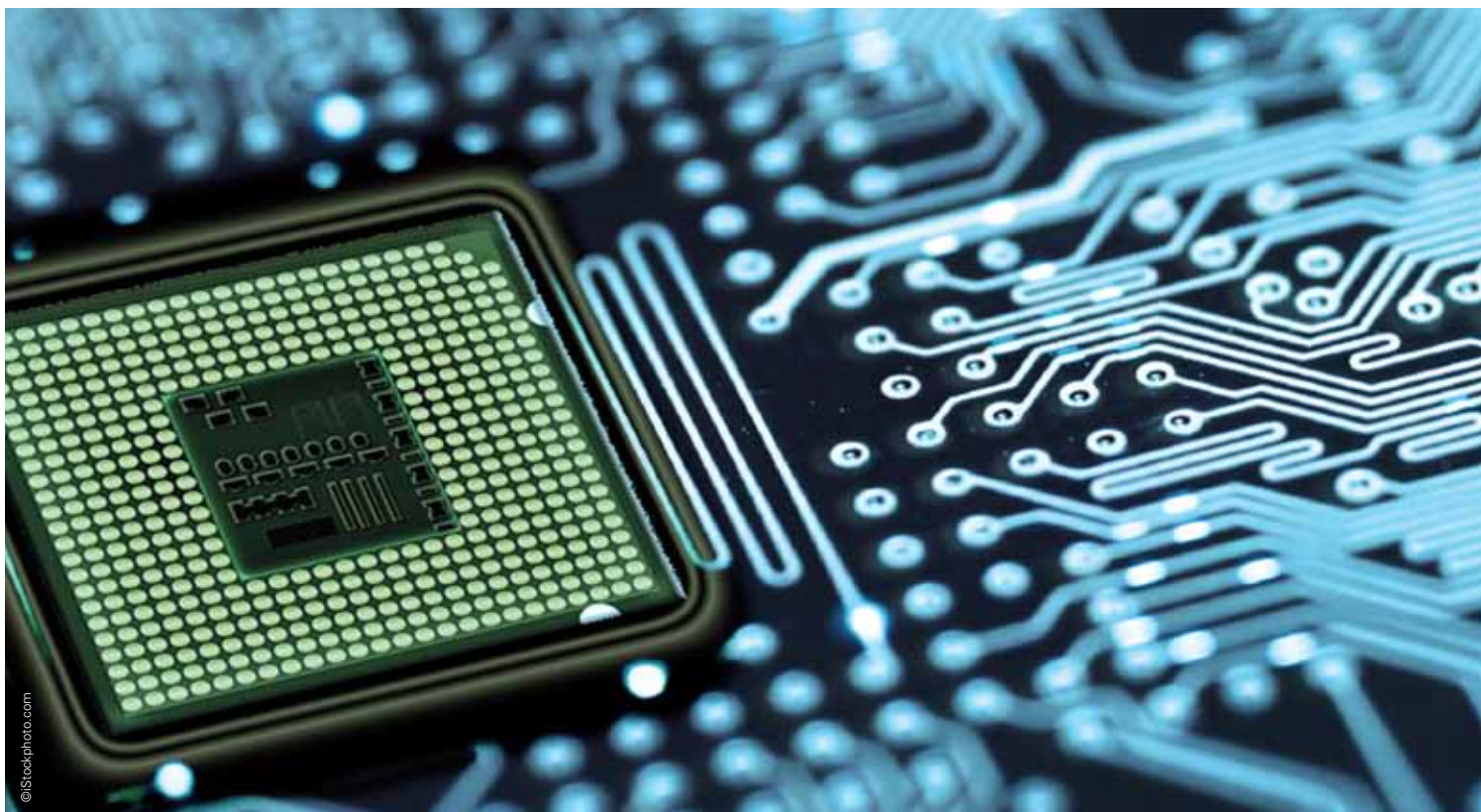


Transparency is the key

By utilising workflow technology and electronic matter management, SIR and deductibles can be tracked from the first dollar. The data from this process provide transparency on the effectiveness of the claims adjusting/handling and reduce ambiguity over coverage.

What is meant by 'e-billing'?

The vast majority of fee-paying clients operate using paper-based invoice submission, review, approval and payment processing systems. However, the final step in accounts payable is typically electronic.



That leaves a large disconnect between service providers who are submitting bills and aiming to generate a faster turn-around and improved cash-flow, and their clients' ability to process invoices quickly via internal business processes and management authorisation.

In the context of the corporate legal market, e-billing has been in use for around 20 years. The legal electronic data exchange standards (LEDES) have become the *de facto* format for the e-billing process. Time and billing software vendors supporting their service provider clients have created LEDES tools, plus the growing litigation vendor marketplace (where Legal Service Group operates), has similarly led the way forward.

Legal services providers (LSPs) across the globe utilise various time, billing and accounting practice management software systems, based on non-compatible platforms, collecting varying and inconsistent sets of billing data. For the client, the submission of multiple invoice formats presents serious data collection and interpretation issues. Generating reports on a basis of expenses per case, per service provider, for example, is made that much more difficult.

An e-billing methodology which uses a common, industry-wide standard such as LEDES helps to overcome most of these hurdles. The ability to submit invoices electronically also offers the client and the LSP the means to transact globally, with very low operational costs.

The benefits of adopting an e-billing software system are well documented, and include the ability to collect data consistently and correctly. Removal of duplicate invoices, duplicate billed entries, mathematical errors, hourly/other rate checks, and validations being done automatically are other benefits of a system which, implemented correctly, will generate an overall cost saving.

Managing a paper-based system is expensive, slow, hard to measure or audit, and harmful to the environment. Plus it's open to significant human error due to interpretation, re-keying manually

on to a PC, and an inability to ensure compliance versus client billing guidelines.

What are the barriers to moving from paper to e-billing?

The general answer is 'there aren't any'. It's now possible to set up a local, national and/or global e-billing solution for a client and all its divisions anywhere Internet access is available. This is due to the ubiquity of web-based or application service provider model software solutions, plus the fact that the cost of setting up and maintaining such systems has dramatically decreased over the years.

What does it cost and what will my staff say about it?

The cost is typically based on the users, or the billing volumes involved, plus the local or global nature of the implementation. Staff who are currently processing paper invoices should be happy about removing paper from their in-trays.

In the e-billing world, professional service providers are responsible for loading their invoices into the client's system. The client simply needs to approve and process these for payment, all of which can be dealt with electronically from within the same e-billing application.

Removal of paper from the billing process is also helping the organisation to meet its CSR policy commitments, as such a system is viewed as green technology.

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