



About John Kelly

John G. Kelly is a Toronto law professor and professional services strategist to consultants and vendors in the corporate legal department and law firm communities on the development of value-added client-centered legal services in the new professional services paradigm. He has developed billings management models that utilize the Uniform Task Based Management System (UTBMS) as a platform for project management applications, metrics measurement and performance management through Balanced Scorecarding. John is the author of the *The Legal E-Business Guide*, published by The Association of Legal Administrators (ALA).

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Executive Editor's Report

By John G. Kelly, B.Com., DPIR, F.CIS, L.L.B, M.S.Sc., M.A. (Jud. Admin)

My *Big Ideas* "Tech" article this month is really all about a **big idea** that caught my attention at Legal Tech New York 2008. Perhaps because it's now so big I am, like many attendees, seriously focused on zeroing in on an evolving technology or concept that isn't even yet a proven technology tool and imagining just where it might lead. Think about the message I'm putting out to the universe, calling on the tech community to find a mechanism to help lawyers reconcile real-time billing with real-time input. Is a versatile handheld blackberry-like device that can capture and convert time spent into task codes that can be formatted into e-bills that feed into all of a law firm client's vendor e-billing systems the wave of the future, or just a solution inventing a problem to solve? You tell me. I think that the *Business Intelligence Report* in this issue, *Celent Model Carrier 2008: Case Studies of Effective Technology Usage in Insurance*, is putting out the same message but in a different language that gives it more credibility - how can you argue with a survey? However, our mission with LMR is to encourage you to do just that. John F. Kelly, CEO of Allegient Systems, provides a good balance to my **big idea**. I may be up in the clouds, but John is very much down to earth. His strategic management article, *Regional Carrier Competitive Disadvantage – How To Avoid It*, provides regional carriers with some excellent practical advice on how to get with tech. Big solutions are often neither needed nor necessary for regional carriers to achieve the cost efficiencies that their national competitors realize through implementation of major e-billings management programs. E-billing technology has now evolved to the point where all manner and size of carriers can gain cost efficiencies by spending smart. Joshua Leader, a partner in Leader & Berkon LLP, certainly believes so and his firm has demonstrated how effective and cost competitive a smaller firm can be by using technology to leverage insurance defense to the best practices level to the point of being lead firm on national cases. This law firm profile is particularly instructive for regional carriers who, on occasion, believe they need to rely on the big national firms to give them clout in major litigation. Not so, as Joshua Leader points out. There are highly focused insurance defense firms whose expertise, not size, warrants a close look when you are searching for reliable outside counsel.

Welcome to Canada! That's the sub-theme of this issue. The article by Judith Kay provides insurance litigation managers with an introduction to that neighbour to the north. I've even used the Canadian spelling of neighbor in the previous sentence as an illustration of some of the nuances that make Canada distinct but really not all that different in areas like insurance. We do have a common legal system. But when it comes to who Canadians really are and how they have decided to run their lives, my review of Michael Adams' book, **Unlikely Utopia**, in **Must Reads** may contain a few surprises. Just so you don't get carried away or alarmed by the thought of having a utopia as a next door neighbor, I have provided you with a perspective on the rise and decline of empires by reviewing Amy Chua's **Day of Empire**. She is a noted Yale law school professor whose thinking and writing is influencing the way Americans are beginning to think about themselves and the role they want to play in a new world of economics and politics. Take a read and see for yourself. ■

Law Firm Profile

By Joshua K. Leader, Partner, Leader & Berkon LLP



Leader & Berkon has been one of DuPont's Primary Law Firms as a preferred source for legal work in its network of partnering law firms since the inception of the leading edge "DuPont Legal Model" developed during its convergence program in 1992. A major component of that model has been the focus on the use of technology to develop collaborative arrangements between the company and its primary legal service providers. The firm's web site provides the following description of the firm and its service mission.

"Leader & Berkon is a new breed of law firm; neither a trendy boutique nor a traditional "bigger-is-better" legal behemoth. We run a smart, agile, cost-contained operation ready to take on today's most complex cases. We cut to the chase, and quickly develop an early case analysis to formulate strategies to move forward to resolution - whether it be trial, arbitration, mediation and/or settlement. We use state-of-the-art technology to provide the highest quality legal services while supporting the practical business imperatives of our clients: to bring every matter to a swift, affordable and positive conclusion."

Your executive editor had the opportunity to interview Joshua K. Leader, a partner in the firm.

How has your role as a primary law firm in the DuPont convergence program helped you achieve best practices capability in the application of technology in your services?

DuPont expends considerable resources to identify and implement best-in-breed information technology to support its legal function. We benefit from that in terms of being given access to those tools in our representation of DuPont and in becoming familiar with the cutting edge technology available to firms today. This is of considerable advantage to us when we work with other clients. We're in the position of either being capable of working with the sophisticated technology or, if we're selected to manage firms in a complex case, to provide technology recommendations to the client.

Does DuPont help its preferred partners in acquiring outside technology by putting together block RFPs?

They typically leave that to us. However we do often get the benefit of being able to take advantage of the negotiated rates that they've received from vendors or service providers, and those relationships are of great help in enabling us to cut through the red tape of getting to the right source. DuPont is also very helpful in providing us with general advice on technology tools, which might be of assistance to our work both for DuPont and other clients. We reciprocate by providing them with feedback on their technology and information on technology and service providers that we feel could be useful to the Company.

When you do purchase technology that you'll be using with DuPont as the primary client, what kind of support do they provide you in getting up to speed on the learning curve?

It really depends on the situation, but DuPont Legal's IT group provides significant assistance in integrating the technology into the systems they already have in place. For example, if DuPont has a tool in place for a particular purpose, and we have a different tool that we've invested in,

they'll work with us to find a way to make those tools talk to one another. In one large litigation we worked on for DuPont, they used a proprietary litigation management system and wanted us to use it as well since substantial work had already been done on their system by their in-house people, and the data needed to be shared with another Primary Law Firm that we would be working with. We used a different application at the time. DuPont worked with us to make the two systems compatible and to facilitate the exchange of data. DuPont and its vendor benefited from this relationship as well. I believe that what they learned in working with us was how to make that software compatible with other systems as well as ways in which to improve the application based on our feedback on the software's functionality over the course of the litigation.

What is the key to acquiring good technology?

There are all kinds of technology tools available. However, not all technology is suited to every environment. Often some of these tools seem great in theory but are only of marginal use in practice because of the manner in which they can actually be used or the cost associated with the use. You've got to learn to look beyond the bells and whistles and concentrate on finding technology that has the capability to meet your needs yet fit within your budget. What you need to focus on is finding the technology that will enable you to become more efficient and effective in the representation of your clients.

How have you integrated technology into your practice management?

We require all of our attorneys from the most senior to the most junior to be proficient in using our technology in case management. Admittedly, there's certainly differentiation among attorneys, and the actual use of any particular technology depends on the work being done. However, all of our attorneys are aware of the range of technology we have available and

know how to access it when needed.

Have you been able to leverage this type of knowledge to other areas of work such as insurance defense?

Yes, we certainly have. One of our partners is national coordinating counsel for a precision equipment manufacturer involved in asbestos litigation in which we coordinate numerous insurance claims for major insurers. Our early exposure to technology and the experience in learning to use technology to interact with a major client allows us to develop tools that provide for increased collaboration, which, in turn, leads to a decrease in cycle time for case resolution and efficiencies in case management. We found that being a very early adopter of technology tools could maximize our capability and allow us to be competitive with the larger firms in the areas in which we practice.

Does your technological capability allow you to compete head to head with the large national firms?

Obviously the large firms have more resources than we do. However, I think the technology really helps us level the playing field. We're able to be on the cutting edge with what the big firms do. The big firms have all the technology but the key is to learn to use it well. We've developed that expertise.

What would your advice be to a large insurer confronted with a mass tort or national litigation?

The bottom line is to create a level of predictability that will allow insurers to contain costs and accurately calculate and manage reserve allocations. Insurers are looking to shorten the cycle time of case resolution. Driving down legal fees as a sole objective isn't going to achieve the type of long term cost savings and efficiencies that insurers are looking for. What insurers need to do is to develop symbiotic relationships with firms that create opportunities for the development of mutually beneficial solutions. Insurers need to keep in mind that good

firms are interested in working in the best interests of the clients as well as enhancing their own profitability. The kinds of collaborative tools that I've been talking about facilitate the development of innovative case management strategies that operate in real time and can both cut insurers' expenses and increase the efficiency of the law firm. Both parties profit from the relationship.

What does the future look like for a specialty firm like yours that has developed expertise in the application of technology for litigation management?

As clients are becoming more sophisticated about the selection of counsel and are looking at the bottom line of litigation costs, they will look to firms like ours that have proven track records in generating efficiencies in litigation management. You don't have to be a 500 attorney law firm or have offices in every state or even in every big city. Firms like ours that focus on litigation management through leveraging technology have the capability to play a leadership role in cases of any scale or nature. Our size gives us the flexibility to look at alternative fee arrangements or innovative case management and collaborative strategies. Moreover, in our particular case, being a Primary Law Firm in the DuPont network has opened the door to collaboration with many very talented firms. We can bring to bear what we've learned from those experiences to assist and benefit insurance litigation managers.

What is the obstacle that a firm like yours must overcome to achieve that goal?

The obstacle is getting larger clients to buy into the process and understand that there are smaller firms capable of achieving the same or better results and being more responsive, while having more flexibility and lower operating costs than some of the larger firms. We're finding more and more today that clients are starting to realize this, and that the preference for hiring the biggest and most expensive firms is changing. Certain

situations obviously call for big firm involvement. However, just because a case is complex or multi-jurisdictional doesn't mean that clients must hire big or national firms.

In our experience, we have found that between the sophistication we've developed in working with large clients like DuPont and the expertise we've acquired with our technology, we can handle just about any type of litigation. Though there are certainly bet-the-company cases that may call for use of a high profile firm with special expertise, there are no longer any obstacles to firms like ours handling complex cases and managing national litigation. We have the track record and trust of clients to demonstrate that.

Joshua K. Leader has been associated with Leader & Berkon since 1996 and became a Partner on January 1, 2006. He handles a wide range of litigation matters in areas such as complex commercial, securities, product liability, toxic torts, and intellectual property actions in state and federal courts. Mr. Leader also has significant experience in mass tort and complex product liability litigation, including the defense of clients in nationwide semiconductor manufacturing litigation, the firm's defense of a major appliance manufacturer against mass subrogation claims brought to circumvent class action rules, as well as a variety of product liability actions involving issues relating to manufacturing and design defect allegations, fire cause and origin, spoliation of evidence, product recalls, and indemnification. Mr. Leader also heads the firm's litigation technology team. He can be reached at jleader@leaderberkon.com. ■

Must Reads
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cold climate is tolerated because Canada has a reputation as being tolerant. Tolerance is what draws record numbers of immigrants to choose Canada as their preferred destination. According to Adams, Canada has one of the highest ratios of mixed married couples in the world. Moreover, "Canada has the highest proportion of foreign-born legislators in the world." Not only is Canada tolerant, it seems to be accepting of different cultures and different people assuming prominent roles in Canadian society. The country promotes itself as multi-cultural rather than a melting pot.

The country is unique in that it has a "Charter of Rights and Freedoms" entrenched in its constitution. This commitment to respect minority rights and cultures is, according to opinion polls conducted by Environics, what draws some of the best and brightest in the world to choose Canada as their adopted home even though they're aware that life in a new land won't be easy and they may well have to start all over again at the bottom of a career ladder and work their way to the top.

The Canadian commitment to equality and rejection of discrimination is anything but spineless. There is nothing about this country that I'm more sure of. And indeed, when we survey newcomers to this country it's precisely these qualities – democracy, freedom, equality and rights – that they most appreciate about Canada.

A word of caution needs to be spoken to Americans prior to their picking up stakes and moving north. Canada's has a much more extensive public social framework than the U.S. Americans of a conservative bent would be appalled with a government that seemed to have its hand in everything. Public agencies and public/private sector partnerships are more often a rule rather than an exception in Canada. All of this has to be paid for by taxpayers. Americans are often shocked when visiting Canada and finding out that a 14% consumption tax is added on to every retail purchase they make. For those that take up residency, they're often taken aback when they compare taxes in general to those paid back home which all of a sudden seems like the good old U.S.A. Multi-culturalism requires one to bite their tongue on occasion and defer to public

policy decisions that can be downright annoying and enraging to long time residents; Sikhs who are members of Canada's fabled RCMP, are permitted to substitute turbans for traditional "mountie" head gear. All responses to government queries are given in both English and French whether you want to hear the other official language or not. And so on. However, when all is said and done, Canadians are a content lot who want to be good friends with their neighbors to the south while left to live the lives and lifestyle distinctly their own.

Quotable Quote

"Moreover, the Statistics Canada report on recent immigrants indicates that when newcomers are asked what they liked least about Canada, the most common answer (26.7 percent) is the weather. The second most common answer is nothing (19 percent). In third place – and first thing on the list that Canadians can actually do something about, other than trying to speed up global warming to keep our newcomers from more temperate climates cozy – is the lack of employment opportunities (17.4 percent)." ■

Events and Happenings

12th Annual ACE America's Claims Event

June 9-11, 2008

Renaissance Orlando Resort at SeaWorld - Orlando, Florida

- Mike Jackowski – Vice President of Claims Technology Services Allstate
- Roger L. Looyenga – Chairman and Chief Executive Officer Auto Insurers Group
- J. John Wortman – Chief Executive Officer Louisiana Citizens Property Insurance Corporation

For complete details and to register contact Laura Knox at 859.692.2157 ■

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