



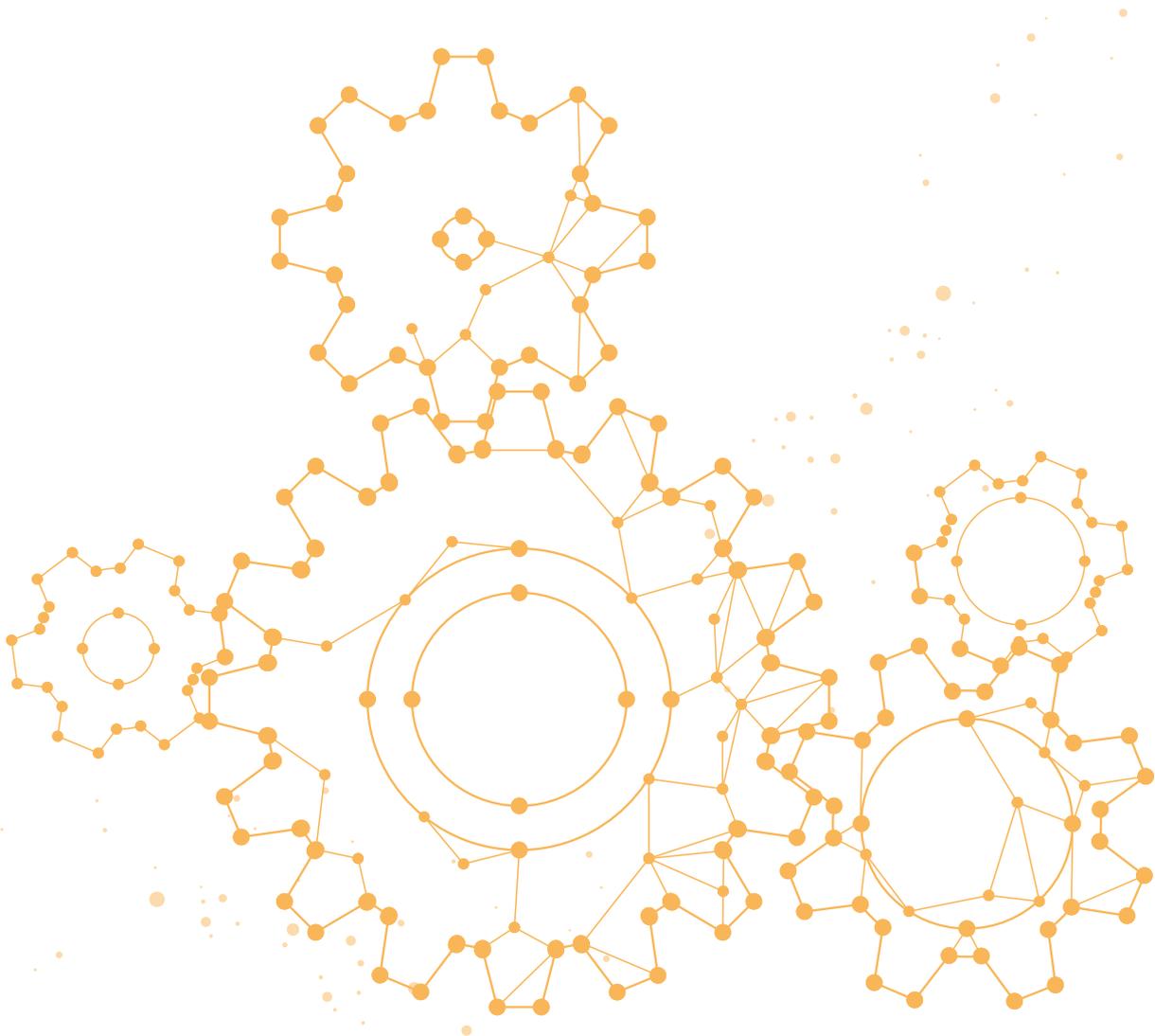
**How Legal Technology,
Advanced Analytics,
and Service Innovations
are Helping the Automotive
Industry Efficiently Manage
Litigation and Drive Down Costs**

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The automotive industry is experiencing a confluence of events that are prompting the sector's most impactful shift of the 21st century. From managing litigation risks and preparing for a driverless future to navigating a dynamically changing labor and employment landscape and traversing a precarious trade environment, car manufacturers are on the precipice of an unprecedented pivot. Add the consequences of the COVID-19 pandemic and car makers are likely to see a global realignment of their businesses and customer preferences in the next year or two.

From a legal perspective, the likely increase in enforcement from both international regulations and the National Highway Traffic Safety Administration (NHTSA), the data privacy and cyber security uncertainty associated with connected cars, and the intellectual property implications of new initiatives designed to move the field forward present a host of issues that could threaten the industry's long-term success. One hallmark that could help it adapt and thrive is a comprehensive, creative approach to innovation.



I. Defining and Implementing Innovation in the Auto Industry

The definition of innovation varies based on the objective of the organization that is trying to transform itself or its practices.

The Organization for Economic Cooperation and Development (OECD), an institution dedicated to global trade and economic progress, divides the concept into four categories:

1. Product innovation
2. Process innovation
3. Marketing innovation
4. Organizational innovation^[1]



Litigation is typically improved through process innovation, which the OECD defines as: “A new or significantly improved production or delivery method, which includes significant changes in techniques, equipment and/or software.” ^[2]

Ultimately, it tends to come down to a merger of technology, talent, and protocols. There is a misimpression that innovation is founded on deploying technology to solve a problem. Rather, it is somewhat more involved than simply offering an easy button, particularly in automotive litigation.

In that context, innovation is designed to be an improvement in delivery, as noted by the OECD, and an attempt to incrementally modernize a particular process. It is both client-focused and straightforward, so any attempt at advancement needs to have at its core an understanding of the problem that needs to be solved and the entity that needs to solve it. If the new approach is being applied internally to support a business unit or the law department, it has to be tailored to their requirements and simplified in a way that helps accomplish a defined goal. That service-centric and process-oriented mission often yields the highest return.

II. Introduction to Automotive Litigation

NHTSA reports that almost 27,000 people died in traffic accidents in the first nine months of 2019 ^[3], while the Centers for Disease Control and Prevention highlight that about three million people are injured in motor vehicle crashes in the U.S. each year ^[4]. In historical data that provides context for these statistics, the U.S. Department of Justice's Bureau of Justice Statistics reported that the most common types of civil cases disposed of by trial were motor vehicle accident cases, which accounted for 35% of the total docket, i.e., 9,431 out of 26,948, featuring a median award of \$15,000. ^[5]

And, those numbers do not reflect the total number of personal injury cases that are filed as they are limited to those that were resolved at trial. Multiply 9,431 cases by 25, since only about 4% go to trial, and that may provide a more realistic estimate of the total number at the time. While this data has certainly changed, the volume of litigation has likely increased exponentially with the rising number of vehicles sold since the Department of Justice released those statistics. After all, in February of 2020 alone, over 17 million cars were sold in the United States. ^[6]

A. What Makes Automotive Litigation Unique?

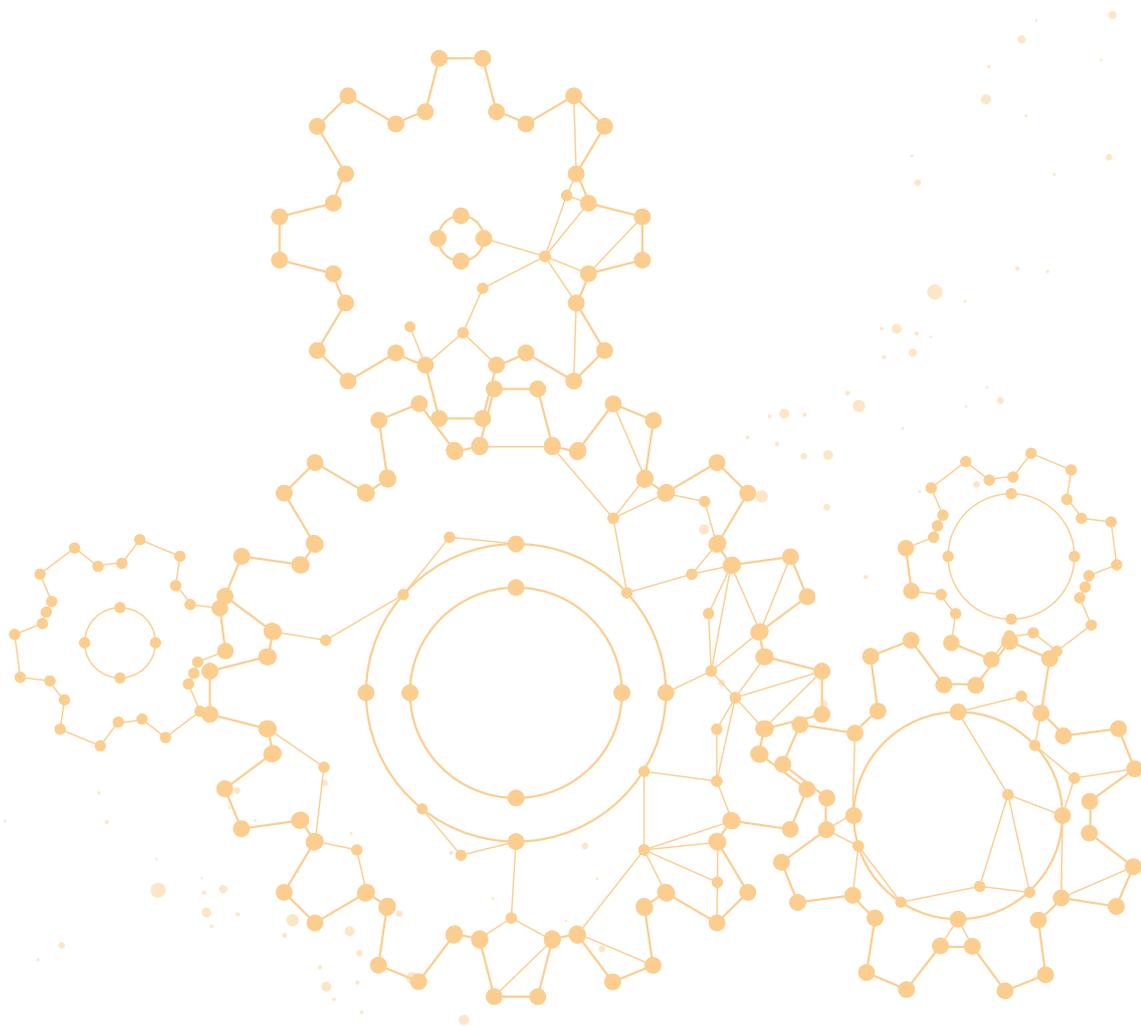
The automotive industry has a global presence and can be involved in disputes in a single lawsuit in an array of courts or in a national class action, as well as a myriad of arbitrations or mediations. In addition to claims associated with injuries related to vehicle usage, automobile manufacturers navigate commercial disputes with partners throughout their supply chain, from basic contract concerns to breach of warranty and indemnification matters, vehicle recalls, dealer disputes, delivery delays, and, of course, force majeure events, such as those created by the COVID-19 pandemic.

1. Rising Costs

In addition to hiring savvy outside counsel to defend it, the automobile industry is faced with the overwhelming challenge of fighting claims of fault and causation, which rely on the specific details of each event in question and a host of variables that serve to increase expenses significantly. Add in the unflattering press potential, regulatory pressures, and shifting political support for the industry in general and the sensitivity of litigation is much more expensive than in most sectors. Mock juries, dynamic trial simulations and graphics, and nationally-recognized experts can materially increase costs, particularly in matters that involve product liability, design or manufacturing defects, warranty claims, product recalls, and other complex concerns.

2. Complex Litigation

In addition to requiring lawyers with a combination of unique industry knowledge and savvy trial skills, automotive manufacturers often rely on broader legal teams with a high level of technical proficiency to manage the unusual electronic discovery, cross-border information exchange, and unusual collection of data types that arise in its cases.



III. Winning with Workflow and Dynamic Services

The blend of commercial, regulatory, and risk factors that permeate each case create the potential for inefficient, uncoordinated, and supervision-intensive dockets that can overwhelm a typical organization. Successful companies, however, align their talent and technology to maximize efficiency and take advantage of economies of scale by deploying a unified set of processes and tools across their entire litigation landscape.

A. LegalEase Solutions LLC

From asbestos litigation to warranty litigation, including Lemon Law claims, automotive companies are retaining experienced external teams to navigate the unique nature of the automotive industry and enhance efficiency. They are routinely leveraging technology to make standard legal work more cost-effective and accurate.



We have found that aligning technology, process improvement, and innovation meaningfully improves the strategic positions of our automotive clients managing warranty and asbestos actions.

Tariq Hafeez

Co-founder & President, LegalEase Solutions

Teams from LegalEase, for example, draft answers to lawsuits in different states and manage the process with local counsel on a lower flat fee basis, typically saving companies millions of dollars. In lieu of national coordinating counsel from a large law firm, savvy in-house lawyers are distributing that work more proactively to providers of alternative legal services at lower rates, with equivalent effectiveness, particularly since process mapping-based case management can optimize legal operations. And, from a workflow standpoint, there is much greater transparency in the process.

Working with leading automotive companies since 2008

That process requires analytics focused on outcomes based in part on settlement details since 99% of warranty and Lemon Law cases settle. Understanding the average settlement value and median settlement value for distinct matters can provide a competitive advantage. And, once the technology platform has data, it can provide an accurate and reliable predictive value giving case managers a basis to settle cases faster and more reliably.

B. Reimagining Automotive Litigation

From asbestos to Lemon Laws and the internet of things to driverless cars, the automotive industry's dual position as a long-standing sector that is central to global commerce and a field that is highly focused on research and development to prepare for a more technological future, it faces litigation in a number of areas. Addressing each proactively and proficiently is, therefore, critical to its success and expansion.

1. Addressing Asbestos Litigation

Litigation prompted by personal injury claims based on exposure to asbestos has been circulating through the courts for almost a century. It has forced a number of companies into bankruptcy and resulted in compensation of many billions of dollars. For automobile manufacturers and their suppliers, disk brakes, drum brakes, brake pads, and brake linings, among other products, once contained asbestos and have drawn them into the cases for decades.

In a longstanding research study of asbestos-related liabilities of more than 150 companies from their public 10-K filings with the US Securities and Exchange Commission, which features data from 2001 to 2018, NERA Economic Consulting found that asbestos-related claim filings in 2018 were 33% below 2008 levels and fell 6% from 2017 to 2018 so the overall litigation seems to be declining. ^[7] In fact, based on data from the National Cancer Institute Surveillance, Epidemiology, and End Results (SEER) Program, Mesothelioma (an asbestos-related cancer) incidence fell 9% in 2016, following an increase over the prior three-year period. ^[8] That said, however, the average amount resolved per claim increased 29% in 2018, reaching a new peak. ^[9] And, the report concluded that "Until mesothelioma filings (which are not reported publicly by companies) begin to decline, the total spending by defendants may continue at historical levels." ^[10]

2. A New Approach to Warranty Litigation, Including Lemon Law Claims

Lemon Law cases are less serious than asbestos in terms of injury, but far more voluminous because if an individual purchases a new car and learns that it has defects or mechanical issues, he or she can request assistance from the car dealer or manufacturer. If that is insufficient, he or she can take advantage of a state's "Lemon Laws" to secure a refund or new car. One estimate claims that 150,000 cars each year (about 1% of new cars) have chronic problems that qualify them as lemons. ^[11]

In addition to these matters, there may be litigation associated with warranties that cover a design defect in vehicles that are already on the market or product recalls for faulty parts or other issues. The volume of resulting litigation is substantial so strategically rethinking the approach to defending these cases, validating the claims, and compensating the customers can dramatically change the outcome or at least the time it takes to achieve one.

C. The Power of Process Mapping to Manage Cases More Efficiently

The key to aligning that goal is through a deeper understanding of each case and the best way to gain that insight is often through visualization. Process mapping allows an organization to envision, rather than simply indicate, its strategy for achieving certain objectives within a range of cases.

In commercial litigation, which requires the coordination of individuals across time zones, skill sets, and levels of responsibility, it is an essential element of modernizing any sophisticated docket.

1. Developing an Advanced Workflow to Ensure Transparency

At its core, the goal of an advanced process map is to develop a holistic workflow that provides guidance to each member of the team at every stage of the matter. This level of transparency often means the difference between efficiency and access in complex litigation. It helps each team member understand his or her role and the importance of the task at issue. Those teams that emphasize proper workflow also give their clients the greatest likelihood for success because they can apply lessons learned and innovative strategies across the entire organization, rather than simply in specific circumstances or isolated incidents.

In a recent engagement with the warranty litigation team of a major automaker, for example, LegalEase facilitated a discussion with the company's in-house legal staff, outside litigation counsel, and settlement/case managers to map out a typical warranty case.

Collaborative Process Review:



The resulting process map gave the client increased transparency and identified target areas for improvement and cost savings. Ultimately this exercise gave the client greater visibility and control over the process, while securing buy-in to make essential changes.

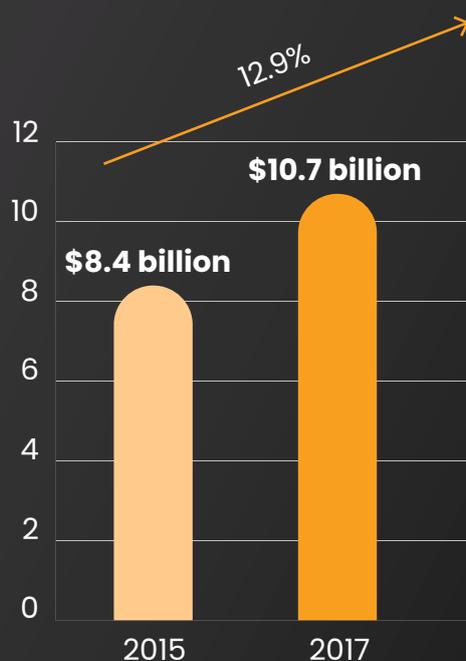
2. Cultivating Talent to Evaluate Analytics and Validate Outcomes

Leveraging a central workflow based on a well-defined process map similarly helps legal teams produce actionable data that offers value beyond transparency in the form of predictability. When organizational leaders understand past practices that have yielded favorable results, they can proactively plan more effectively. In order to cultivate that depth of talent though, they need to be capable of analyzing an array of data to draw conclusions that validate existing and future positions.

3. Proving the Power of Alternative Legal Services

Those positions tend to be directly related to the team proposing them and the composition of that group is changing in modern litigation. Providers of alternative legal services, for instance, perform traditional law firm functions, including litigation support, legal research, document review, and electronic discovery, but with a focus on process and project management, and sophisticated, embedded technology. That technology-enabled service model is transforming the way corporate legal buyers perceive their outside support options since it empowers those teams to offer much greater value and address increasingly complex tasks. And, the market is expanding.

Based on a survey of 517 decision makers at law firms and in corporate legal departments, as well as 35 interviews with executives at providers of alternative legal services, the Thomson Reuters Legal Executive Institute reported that revenues for providers of alternative legal services grew from \$8.4 billion in 2015 to about \$10.7 billion in 2017, reflecting 12.9% growth over the period. It also noted that the respondents expected further growth of 24% per year. ^[12]



Growth of Alternative Legal Service Providers

IV. Applying Legal Technology to Empower the Automotive Industry

Interestingly, a quarter of the individuals interviewed for the Alternative Legal Service Providers 2019 report noted that they were using at least elements of artificial intelligence (AI) and another third claimed to be in the process of evaluating its potential. ^[13]

A. Artificial Intelligence and Automotive Litigation

Given the accelerating proliferation of data, it is not surprising that the providers of alternative legal services are leveraging the power of AI to transform litigation, especially as it has proven effective in evaluating and categorizing data at a rate that is impossible for human lawyers to match. Lemon Law cases, for example, require efficient, uniform management to maximize profitability given that they are the most common source of automotive litigation and that standardization permits automation technology to draft answers and discovery requests. This is particularly valuable for cases that law firms manage on an alternative fee basis.

Rather than deploying associates and paralegals using outdated templates to create drafts, or even testing advanced form fillers and similar static software programs, artificial intelligence-driven tools represent the future of automotive litigation. In order to focus on more impactful tasks, particularly in an environment where caps on hours and fees are commonplace, such as fact-based investigations, deposition preparation, and trial strategy, lawyers need to become more comfortable with AI. It is allowing firms to provide greater value at the same or lower cost, while still providing lawyers with the opportunity to engage in profitable work. And, with minimal training required other than a basic understanding of how to upload a document, the simplicity is fueling adoption.

LegalEase enhances that efficiency by combining tech-enabled talent with analytics-based processes that fuel productivity and empower performance. In fact, the automation algorithms that support the document drafting process also permit extraction and analysis of the underlying data in the document, including the relationships between the key elements.

These analytics can influence the litigation strategy, impact the client's operations, enhance compliance, and support general business considerations by analyzing litigation spend, litigation risk, case assignments, resolution schedules, average billable rates, and resolution time. LegalEase's unique ability to appropriately incorporate this data into its practices can directly affect the approach to litigation, including whether a party pursues early settlement based on historical data.

1. Streamlining Lemon Law Advocacy

From a practical perspective, the use of AI fundamentally serves to streamline high-volume litigation against the auto manufacturers. The focus on standardizing and automating pleadings emphasizes the value of providing uniform responses and avoiding discrepancies across jurisdictions. While these defendants have not historically served standardized discovery requests to properly gauge the merits of the claims against them, they now combine AI-technology and LegalEase's research and writing talent to produce dynamic discovery templates that have streamlined the process.

Beyond the substance, this practice offers the litigants themselves the opportunity to maximize the use of alternative fees and to align advanced technology with industry-specific legal talent to manage the process. It also allows those teams to incorporate algorithms into their workflow in lieu of flawed alternatives or even inconsistent human professionals.

2. Saving Time on Auto Insurance Matters and Motor Vehicle Liability Cases Impacts the Entire Industry

Beyond consistency and uniformity, AI-enabled teams can cut the time necessary to prepare relevant documents in half. They also minimize training because the technology is often easily adopted since it mirrors the human approach to analysis and drafting.

In fact, this simplicity is the critical component of improving the practice of law in general. The most effective tools permit professionals to simply upload documents for the system to evaluate, deconstruct, and reply. The highest-efficiency tools can extract disparate information to reveal relationships within the data and permit the teams to draw clear conclusions from otherwise obscure connections. This is often a valuable tactic in both insurance defense matters and plaintiffs' side personal injury cases.

B. Data Analytics

1. Loom Analytics and the Impact of Data on Litigation, Operations, Compliance, and Business

Loom Analytics is a Canadian company that has developed Structura, an analytics platform that studies data sets that exist in the public sphere, structures that information, and adapts it for commercial use. It is a no-code tool aimed at the business user, which can design what a company wants to track and import records through API integrations, Excel spreadsheets, or data entry.

Loom helps automotive companies reduce the settlements that they pay to claimants with warranty claims. For example, if the settlement of a claim goes above a certain value, the software will notify the general counsel. It transforms reports into automated triggers that apply past practices and predict outcomes for the future.



Analytics is ultimately meant to improve business profits.

We are aligning processes with technology to improve outcomes and implementations to execute change

Mona Datt

The Founder and President of Loom Analytics

To that end, Loom and LegalEase jointly developed an analytics tool to help an automotive client's settlement case managers appropriately value cases based on historical data and advanced algorithms. They can now cumulatively assess their dockets based on the type of defect alleged, vehicle model and year, location, and demographics of the claimants, among other factors. In addition to providing a predictive settlement value, the technology promises to help reduce the time to settle warranty claims and avoid many of the costs associated with unnecessarily prolonged negotiation.

2. Building Data Analytics Platforms to Help Clients Assess Risk and Anticipate Outcomes for Their Own Matters Based on Historical Trends

Those interested in legal process improvements generally want to streamline how they manage counsel, claims, and warranties, as well as leverage analytics to improve outcomes that reduce both payouts and long-term litigation risk. In the automotive sector, analytics could be used to generate early indicators of potential class actions by monitoring failure rates and dealership repair metrics. This could help the manufacturer to adjust its production practices earlier and more quickly to resolve these problems. The data might also reveal patterns among suppliers and prompt a recall sooner to blunt any potential litigation.

The data can ultimately reduce spend and increase profits. Some automotive users leverage their data to more effectively manage their litigation and better control the warranty cycle. Analytics helps to provide a holistic solution to align processes with technology.

C. Advancing Automotive Litigation with Data Analytics

Any litigation requires balancing spend management, risk mitigation, and resource allocation. Applying analytics to this effort helps legal teams achieve equilibrium more quickly and accurately.

Spend metrics, for instance, highlight which aspects of the budget provided the greatest value without raising the risk above acceptable levels. In addition, they can help legal department and law firm leaders assign cases according to data that supports task distribution over personal preference, which may not be able to select the optimal combination of talents. Analytics can also directly impact the outcome by both reducing the time to resolution and streamlining the settlement process when based on historical data over intuition or internal dynamics.

V. Leading into the Next Decade

While unique in its composition and breadth, litigation in the automotive industry faces the universal challenges of needing to create a comprehensive plan to manage a global docket in an uncertain economy during a period of rapid transformation. It is, therefore, critical for manufacturing leaders to continue to adapt their protocols to keep pace with an ever-expanding docket. Whether through predictable flat fees and best-of-breed technology or process-mapping and metrics, the automotive sector has a tremendous opportunity to reimagine its case management protocols.

To realize a future where organizations optimize outcomes by implementing efficient processes, streamlining costs, and deploying advanced technology, they must align providers of alternative legal services with practical artificial intelligence and dynamic analytics. That combination is uniquely suited to helping the automotive industry replace fragmented case management with sophisticated automation-enabled legal talent and a data-driven, transformative approach to litigation.

Automotive Litigation & Data Analytics:

1. Improve outcomes that reduce both payouts and long-term litigation risk
2. Generate early indicators of potential class actions by monitoring failure rates and dealership repair metrics and adjust production practices
3. Effectively manage litigation and better control warranty cycles
4. Using spend metrics to highlight aspects of the budget that provided the greatest value without raising the risk above acceptable levels
5. Legal department and law firm leaders can assign cases according to data that supports task distribution



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