



JEFFREY FORBES, EXECUTIVE DIRECTOR, FORBES INSTITUTE

## How a formal claims recovery programme can secure client loyalty

**B**usiness development implies being proactive. Many lawyers seem to think this means shaking a lot of hands and telling anyone who will listen about their firm and its services. This usually produces meagre results because clients are generally not interested in your firm or your services until they have a problem and believe you can help them.

However, there is a technique that most partners can adopt but apparently few have thought about until now. What I'm talking about is helping your clients to set up a formal recoveries programme and cementing your firm into this process. It's a fact that companies assert claims formally and informally every day. But the programme I am suggesting formalises this process by identifying and pursuing legitimate claims your client's company might have missed, which can add real tangible value.

One of the best known examples of a formal recovery programme is the one that the in-house legal team at DuPont set up in 2004. Since then, it has recovered more than US\$1.6 billion globally for their company. In 2009, DuPont recovered enough money to pay for its global in-house legal team and all of its external legal fees – and still had a few million left over. In effect they turned their in-house legal department from a cost centre into a profit centre.

### The six-step approach

Based upon DuPont's experience, the in-house legal team recommends a six-step approach to setting up a formal recovery programme in a company.<sup>1</sup>

The first step is to conduct an audit. This will show the scale of potential recoveries in a company. A formal audit requires outside experts to evaluate the history of litigation issues. An informal audit takes a similar approach but on a smaller scale, working with the company's finance department.

The second step involves setting up a programme based on the audit to proactively assert legal rights. This requires careful review and assessment. It also takes reassuring other managers that the legal department will handle each case professionally or alone, if they fear upsetting the other party.

The third step calls for a cultural shift from conflict avoidance to assertion of rights. This takes time because human nature is what drives so many business relationships. Driving change is a key objective of a recovery programme but, as DuPont's in-house team notes, it's a journey that is never fully attained.

The fourth step requires putting in place resources to facilitate recoveries. A cross-disciplined team of in-house specialists (litigators, bankruptcy, real estate and anti-trust) works best. Smaller companies need to mix and match to create a team, leveraging on their primary law firms and other advisors.

The fifth step is to standardise a process to track and analyse recoveries. DuPont uses five criteria:

1. there must be a recoupment;
2. it must be quantifiable;
3. there must be a net benefit;
4. the legal department must substantially contribute; and
5. it must be outside the normal course of business.

Like with any programme in any company, the sixth and final step is to communicate your success. For instance, DuPont schedules regular internal and external communications about its recoveries, using periodic reports, team meetings, webinars, awards, videos, presentations and the media.

### Pointers for law firms

As outside counsel, the first step you should take is to bring this idea to the

attention of your in-house clients and suggest they consider setting up similar programmes in their companies. Keep in mind that your role will be limited because this programme needs to be led by the in-house legal team.

However, you can certainly play an active part in uncovering claims for clients when you have access to the relevant documentation.

For example, if you acted on any big acquisitions or disposals of companies, you might also want to look at indemnities, warranties and other risks, like intellectual property rights or environmental issues that you helped to negotiate.

After closing a deal, it's not unusual for documents to be filed away and for no one to bother checking if or how these agreements were fulfilled. Since many companies do not yet have an internal contract-checking mechanism, this presents an opportunity for outside counsel to show they care and can add value.

Obviously, if you find anything, you should ask to be instructed to pursue it. This should be built into your client relationship management strategy because it is a win-win opportunity.

If you still need convincing that it is a good idea, take a look at Eversheds. The international law firm recently launched a special consultancy arm to help companies implement recovery programmes. According to its research, claims in IP areas alone could amount to billions of dollars. <sup>mp</sup>

– JEFFREY@CLIENTDOCTOR.COM

### Endnote

1. The summary of the six-step programme is reproduced with permission from: *The Profitable Legal Department*, Patrick Wilkins and Jeffrey Forbes, LexisNexis Martindale-Hubbell, 2010