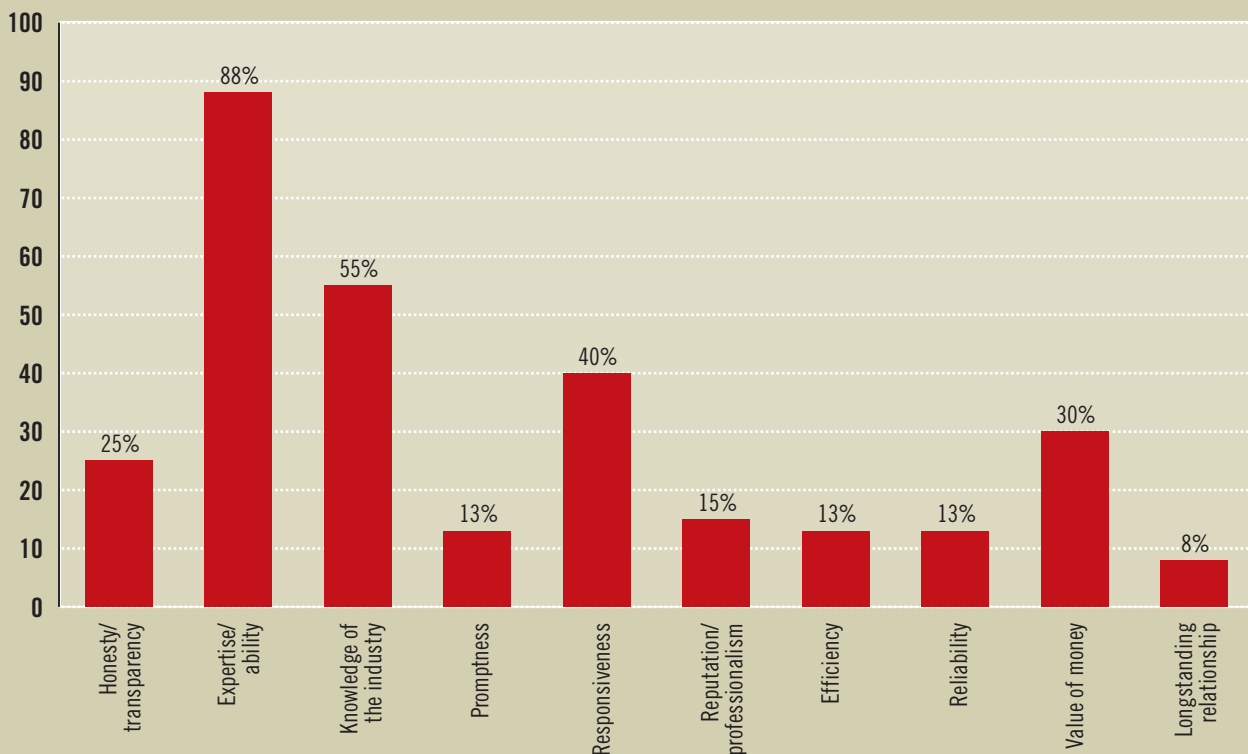


Insurers and reinsurers are spending more money and resources on legal services and advice than before. More companies are being sued or getting embroiled in legal disputes. The in-house counsels of insurance and reinsurance companies tell Bianca Markram how they are dealing with the increase in litigation and what they think of the legal services that are available to them.

# Damage limitation

What qualities do you value most when selecting a law firm?\*

(%)



\*Respondents could each choose three characteristics.

Source for all: Reactions legal survey 2004

In 2002, the US civil liability system cost the country \$233bn, an increase of \$27.4bn over its cost in 2001. According to actuarial consulting firm Tillinghast, tort costs accounted for 2.2% of the nation's gross domestic product of \$10.45 trillion in 2002, compared with 1.4% in 1970 and only 0.6% in 1950.

Litigiousness is not only increasing in the US. It is also on the rise in Europe. In March this year, Lloyd's chairman, Lord Peter Levene, told Italian insurance leaders in Milan that litigation costs UK companies more than €14bn (\$16.8bn) a year. And this cost is increasing by 15% each year.

Indeed, 53% of all in-house counsels polled in the 2004 **Reactions** legal survey say their companies have experienced an increase in litigation in recent years. Of this number, 61.9% are US companies, 19.1% are European companies, 14.3% are Asian companies and 4.7% are African companies.

The majority of US and Asian participants said they experienced an increase in litigation costs, whereas the trend among the European and African participants seems more moderate. (See chart, p34)

The in-house counsels that saw an increase in litigation are alarmed about the trend. And they say the spread of compensation culture around the globe is changing the behaviour of consumers in certain countries.

"In Europe, the UK and Asia we used to try and resolve things through negotiation first, rather than litigation, whereas in the US people settle matters in court," says Michael Davison, in-house counsel for UK broker UIB International. "But the US culture is spreading across the world. Today we find more and more people in the UK screaming and shouting if they think they have a claim. And this leads to more litigation."

He says an added problem is that some lawyers, in a bid to make money, will push people to file claims and lawsuits that they would not have filed without prompting. "There is an increase in contingency-type litigation driven by these ambulance chasers," he says. "You will find more people being prompted to file a claim wherever there is a possible loophole."

He says one of the consequences for companies is increased costs. "Managers of companies have to be more aware of the law nowadays and now spend more time and resources on litigation than actually managing their companies. And all this costs money."

### Time is money

Even those who did not detect a growth in litigation said their legal expenses and the time spent on legal matters had risen. "Our company has not actually experienced an increase in litigation, but we find there is a sharp increase in the cost of litigation," says Tim Lickness, the in-house counsel for Golden Eagle Insurance, a property/casualty insurer for small and mid-size companies.

Higher legal fees are not the only price insurers are having to pay for increasing litigation. In some cases, companies are losing money because courts are forcing them to pay claims that they did not intend to cover in their policies. "We have given greater benefits to consumers than they otherwise deserved under their policies," says the respondent for a health maintenance organisation (HMO) in California that filed for Chapter 11 in 2001.

In the US, the lack of tort reform and caps on punitive damages awarded to plaintiffs is driving insurers and reinsurers away from certain lines of business, such as medical malpractice. In some cases it is even forcing them to leave certain territories.

Lickness from Golden Eagle says if the situation becomes unbearable, companies will leave the US altogether. "Asbestos is already killing companies. These tobacco lawsuits are doing much the same. Then there are class-action lawsuits, which seem to have become more fashionable. If there is not some way to control this, businesses will look for venues that are legally more friendly, even if it means moving outside the US."

## On the soapbox

### In-house counsels have their say

**Reactions** spoke to in-house legal counsels from insurance and reinsurance companies around the world to find out what they think of the service they receive from external law firms. Below is a selection of questions and responses.

#### How could law firms improve their service?

More regular updates to the clients.

*Respondent from a global reinsurer in Singapore.*

Be more innovative with billing arrangements – spend more time learning the business and what we require. More targeted mailings on legal updates.

*Respondent from a UK life insurance company.*

More prompt turnaround and at the larger firms, reduce the number of hands involved in each matter.

*Respondent from a US general insurer.*

They should do more research in the practice of articulate defending. I feel that we lose too many cases due to poor research and cross-examination. More thorough preparation of court cases is necessary.

*Respondent from an international insurer in Kenya.*

Recognise that we are the client and stop paying lip service to the fact.

*Respondent from an international insurer and reinsurer in the US.*

*continued...*

He says class-action lawsuits are a big concern. "Someone has got to rein this in. It is killing us [the industry]," he says. He mentions a case in Texas where an insurance company rounded off customers' premium to the nearest cent. "Because of a cent, the director of the company was sued by policyholders in a class action for millions. You can't defend a class action. You just have to pay up to the aggregate limit. There has got to be a way of making class action less attractive."

The legal systems in the various European countries are different from the US system. For example, the concept of punitive damages does not exist in European law as it does in US law. And in the UK a plaintiff may be required to pay some or all of the legal costs if he or she loses the court case. In the US, there is no such cost burden on the plaintiff.

Davison at UIB International says that so far, there has been another saving grace for UK companies, which has prevented a more severe increase in litigation. "People still focus on long-term relationships. So they are more often willing to negotiate than step into a courtroom."

But he adds that this is changing because of more influence from the US. "You will find more often nowadays that US lawyers are pursuing litigation possibilities outside the US," he says. One such example is US lawyer Edward Fagan. He represents South Africans who are suing firms for allegedly exploiting black workers under apartheid.

As a result of increasing litigation, more than half of the respondents – 53% – say they would support regulatory measures to curb the amount of litigation in their jurisdiction. Almost all the US respondents would like to see tort reform, limits on punitive damages and proof of real injury before a suit can be filed for asbestos-related and other liability cases.

Respondents from other parts of the world say they support regulations that require disputes to be resolved by arbitration rather than lawsuits.

**On the soapbox (continued)**

**How easy or difficult is it to get adequate support and advice from external firms?**

It depends on the type of work. We are engaged in very complex treaties and finding the right lawyer with the right knowledge is very difficult.

*Respondent from a European reinsurer in the US.*

Easy. Money talks.

*Respondent from a commercial lines insurer in the US.*

It depends. For many matters we do not need external support. In some instances I have found that I know as much about an issue as anyone that I would retain. There have been issues where I had to correct outside counsel's work before I could present it to management. But for litigation matters, I don't have the time or expertise. So I will continue to use outside counsel [for this].

*Respondent from global reinsurer in the US.*

Easy. We have good outside law firms who have large resources, provide good advice and can react quickly.

*Respondent from a UK insurance and reinsurance company.*

It depends. Specialists for international industrial insurance and reinsurance law across different lines of business (property, casualty and engineering) are extremely difficult to find. In other areas of law, there is plenty of qualified advice available.

*Respondent from a European reinsurance group.*

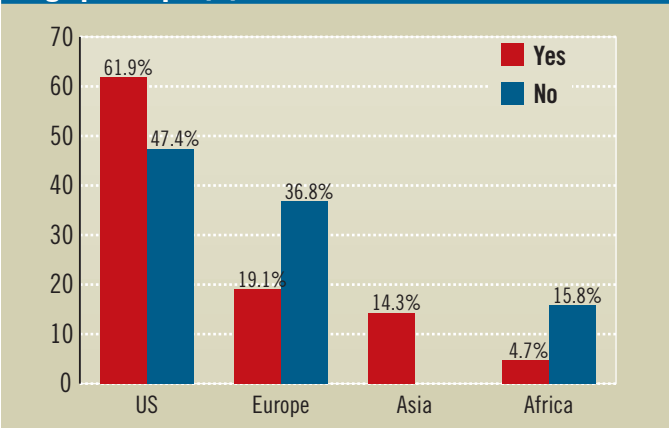
It depends. Some firms are spread too thin. Others know less about the subject matter than we do. All of it is expensive.

*Respondent from a US reinsurance trade association.*

*continued...*

**Has your company experienced an increase in litigation in recent years?**

**Geographical split (%)**



**Help from outside**

More insurance and reinsurance companies are now outsourcing their legal work to law firms to cope with the rise in litigation. Of the in-house counsels polled, 48% are now outsourcing more work to external law firms as a direct consequence of increased litigation. However, 29% of respondents have expanded their in-house legal department. And 24% do a mixture of both.

More companies are outsourcing because it can be more cost-effective. Under more traditional relationships, firms have to pay lawyers retaining fees while they are not using them. But with outsourcing, companies only pay for a lawyer's services when they need them.

"It is easier to control by outsourcing," says a respondent from a US property/casualty insurer. "It is harder to pull down a built

**Top three firms by category (ranked)**

**US**

**Regulatory**

- 1 Lord, Bissell & Brook
- 2 LeBoeuf, Lamb, Greene & MacRae
- 3 Stroock & Stroock & Lavan

**Litigation and dispute management**

- 1 Lord, Bissell & Brook
- 2 LeBoeuf, Lamb, Greene & MacRae
- 3 Sidley Austin Brown & Wood

**Insolvency**

- 1 Lord, Bissell & Brook
- 2 Sidley Austin Brown & Wood
- 3 Cozen & O'Connor

**Corporate contracts**

- 1 Lord, Bissell & Brook
- 2 LeBoeuf, Lamb, Greene & MacRae
- 3 Sidley Austin Brown & Wood

**Policy drafting**

- 1 Lord, Bissell & Brook
- 2 LeBoeuf, Lamb, Greene & MacRae
- 3 Sidley Austin Brown & Wood

**Reinsurance**

- 1 Lord, Bissell & Brook
- 2 LeBoeuf, Lamb, Greene & MacRae
- 3 Piper Rudnick

**Top three firms by category (ranked)**

**Europe**

**Regulatory**

- 1 Lovells
- 2 Kendall Freeman
- 3 Barlow Lyde & Gilbert

**Litigation and dispute management**

- 1 Barlow Lyde & Gilbert
- 2 Clyde & Co
- 3 Eversheds

**Insolvency**

- 1 Kendall Freeman
- 2 LeBoeuf, Lamb, Greene & MacRae
- 3 Allen & Overy

**Corporate contracts**

- 1 Norton Rose
- 2 Lovells
- 3 Eversheds

**Policy drafting**

- 1 Barlow Lyde & Gilbert
- 2 Kendall Freeman
- 3 Norton Rose

**Reinsurance**

- 1 Barlow Lyde & Gilbert
- 2 Kendall Freeman
- 3 Lovells

**Top six firms**

**Most total votes received for US and Europe (ranked)**

**US**

- 1 Lord, Bissell & Brook
- 2 LeBoeuf, Lamb, Greene & MacRae
- 3 Sidley Austin Brown & Wood
- 4 Piper Rudnick
- 5 Nixon Peabody
- 6 Stroock & Stroock & Lavan

**Europe**

- 1 Barlow Lyde & Gilbert
- 2 Kendall Freeman
- 3 Lovells
- 4 Eversheds
- 5 Norton Rose
- 6= LeBoeuf, Lamb, Greene & MacRae
- 6= Clyde & Co

infrastructure." Another respondent from a US life insurance company agrees. He says his company outsources because it "enables the organisation to dial up or dial down the amount of services needed."

A small number of the survey participants do not have an in-house legal department. These companies outsource all their legal work to law firms.

Others have in-house legal personnel, but they only handle matters other than litigation. One respondent from a European reinsurer's US subsidiary explains: "Litigators handle litigation and arbitration better [than the in-house staff can]." She adds that the company is not involved in litigation often enough to justify appointing a litigation specialist to the in-house legal team.

Many of the respondents' companies also operate in more than one jurisdiction. One respondent from an insurance and reinsurance company in Saudi Arabia, which operates in more than 40 countries, says: "We rely on hiring local lawyers from the countries in which we have legal problems." That way, the company can rely on a lawyer's local knowledge.

Not all are satisfied to leave so much of the work to law firms, however. The companies that expanded their in-house legal

## On the soapbox (continued)

### How satisfied are you with billing practices?

Satisfied. Billing shows comprehensive breakdown of hours spent and of the rate.

*Respondent from a US insurance company.*

It depends. I usually require a very detailed billing statement, which is not often provided initially. But once I have made my request to the partner(s) concerned, there is normally no difficulty in obtaining the information I require.

*Respondent from a European reinsurance company in South Africa.*

It depends. Very pleased with some, highly displeased with others.

*Respondent from a US insurance company.*

It depends. Sometimes the bills are not detailed enough to explain the amount charged.

*Respondent from a global reinsurer in Singapore.*

Not satisfied. Flat billing makes a lot of sense and should have been implemented a long time ago.

*Respondent from a US reinsurer.*

It depends. The billings for many of the firms are fairly straightforward. However, I am not pleased to see inter-office conferences or research for a junior associate of a firm that was hired for their expertise. I've also seen cases where we were billed for services performed for other clients. Lastly, I do not like to see a monthly billing for monitoring when I know more about the case than the law firm does.

*Respondent from global reinsurer in the US.*

*continued...*

departments say they have done so to maintain control. "We prefer hands-on control," says the respondent from a UK broker. Another respondent says: "Outside counsels do not have the expertise to handle our business. It is cheaper and better to train in-house talent."

### Avoid reinventing the wheel

According to the survey, 85% of companies that outsource legal work prefer to forge long-standing relationships with outside counsels. The majority of these respondents believe law firms will understand their business and needs better over a longer period of time.

"It is important that those I use understand me, my position and where I want to go so that the advice given to me is appropriate," says one respondent from the Canadian subsidiary of a UK property/casualty insurer.

Another respondent says having long-term relationships with his law firm means he does not have to explain his company's business and needs over and over again. "I prefer to deal with lawyers who understand our company so that I do not have to reinvent the wheel every time something new arises," he says.

When it comes to selecting a law firm, 88% of the respondents say they select an outside counsel for its expertise and ability, and 55% look for knowledge of the industry. With regard to fees, 30% of the respondents use value for money as one of the top three criteria for selecting a law firm.

The respondents are generally happy with their outside counsels' billing practices. Most companies agree beforehand with their law firms about how the billing would work. And most law firms co-operate with their clients and adhere to these agreements, respondents say.

However, the respondent from a UK insurance and reinsurance company says the promptness of law firms' billing has been a problem in the past. "I have been more dissatisfied

## Other firms mentioned

### In alphabetical order

#### US

- Baker & McKenzie
- Clifford Chance
- Chadbourne & Parke
- Chittenden, Murday & Novotny
- Choate, Hall & Stewart
- Dewey Ballantine
- Edwards & Angell
- Fred Marro & Associates
- Jeffer Mangel Butler & Marmaro
- Kecker & Van Nest
- King & Spalding
- KMZ Rosenman
- Lovells
- McDermott, Will & Emery
- Mendes & Mount
- Morgan, Lewis & Bockius
- Mound Cotton Wollan & Greengrass
- Murchison & Cummings
- Ohrenstein & Brown
- Ripes, Nelson, Baggot & Kalobratsos
- Simpson Thacher & Bartlett
- Skadden Arps
- Sonnenschein Nath & Rosenthal
- Sullivan & Cromwell
- Ungaretti & Harris
- Wachtell, Lipton, Rosen & Katz
- White & Case
- Wiley, Rein & Fielding
- Wilson, Elser, Moskowitz, Edelman & Dicker
- Zelle, Hofmann, Voelbel, Mason & Gette

#### Europe

- Bach, Langheid & Dallmayr
- Baker & McKenzie
- Clifford Chance
- Coudert Brothers
- Denton Wilde Sapte
- DLA
- Freshfields Bruckhaus Deringer
- Herbert Smith
- Houthoff Buruma
- Ince & Co
- Kilroys
- Lawfort
- Reynolds Porter Chamberlain
- Simon & Braun
- WK Webster & Co

## On the soapbox (continued)

### Would you support regulatory measures that would curb the amount of litigation in your jurisdiction?

It depends. We sell insurance. If you eliminate the risk, how much would you sell?

*Respondent from an international insurer and reinsurer in the US.*

No. Other than tort reform in the US, which would tend towards making individuals accountable for their actions and a potential limit on punitive damages, I would not want a regulatory limit on the nature of litigations.

*Respondent from a European reinsurer in the US.*

Yes. As motor loss claims increase because of car hijackings, and accidents due to speeding, security should be enhanced. It should be declared a criminal offence for civilians to be armed, except in exceptional cases. Public service vehicles should be thoroughly inspected for safety features like seat belts and roadworthiness. More severe measures should be put in place for errant drivers. In the case of employers' liability, it should be made mandatory for companies to implement safe working conditions as a precondition for insurance.

*Respondent from an international insurer in Kenya.*

Yes. Cheaper and faster dispute resolution.

*Respondent from a UK broker.*

Yes. Some cap on punitive damages.

*Respondent from a Californian health maintenance organisation (HMO).*

Yes. Federal legislature relative to class action lawsuit limitations and a federal asbestos allocation plan are both very appealing.

*Respondent from a US mutual commercial lines insurer*

Yes. But we are most interested in legislative rather than regulatory intervention. More uniform legislation from state to state would help, along with curbs on abusive litigation.

*Respondent from a US mutual insurance company.*

**The top performers**

**In-house counsels' most wanted firms**

Respondents to the legal survey could fill in their preferred law firms for the US and Europe in six separate categories: regulatory, litigation and dispute management, insolvency, corporate contracts, policy drafting and reinsurance.

Respondents from Asia and Africa that do not have operation in the US or Europe could not provide details of their preferred law firms in Asia or Africa, because the survey did not allow for these two options.

The law firm that received the most votes for its US work was Lord, Bissell & Brook. It was followed by LeBoeuf, Lamb, Greene & MacRae, and Sidley Austin Brown & Wood came in third place.

For Europe, the law firm that received the most votes was Barlow Lyde & Gilbert, followed by Kendall Freeman. Lovells took the third position.

A few firms received votes for their work in both the US and in Europe. These are LeBoeuf, Lamb, Greene & MacRae, Baker & McKenzie, Lovells and Clifford Chance. See tables for full details of how the law firms fared in the US and Europe for each category.

with the timeliness of the invoices than with the amounts [we have been charged],” he says. But he adds: “We always get quality advice.”

A respondent from the Belgian subsidiary of a French insurance company says the billing practices vary from case to case. “In several cases I have found the bills too expensive,” he says. The in-house counsel for a Lloyd’s managing agency says her company pays for the value of a service, rather than fixed hourly rates. “We focus on value for money rather than hourly rates. So sometimes we query bills.”

**A closer partnership**

Overall, respondents are satisfied with their outside counsels. They say the law firms understand their business either very well or well.

But one improvement law firms could make, according to several respondents, is to be more honest about their limitations. “[Law firms] must admit when they are out of their depth in an area,” says a respondent from an insurance and reinsurance company in Iowa in the US.

The respondent from the Lloyd’s managing agent agrees and adds: “I would prefer firms to admit their lack of knowledge and show a willingness to learn from their clients, rather than adding expensive learning-curve hours to bills unexpectedly.”

**Company profiles**

**Lord, Bissell & Brook**

Lord, Bissell & Brook opened an office in Chicago 90 years ago. Today, it has offices also in Atlanta, Los Angeles, New York and London. It specialises in corporate counselling, mergers and acquisitions, litigation, securities, regulatory and tax matters for insurance and reinsurance clients.

**LeBoeuf, Lamb, Greene & MacRae**

LeBoeuf, Lamb, Greene & MacRae (LLGM) has offices in 13 cities in the US and nine in other regions, which include Asia, South Africa and Europe. The firm is known for handling some of the largest merger and acquisition transactions in the insurance industry.

**Sidley Austin Brown & Wood**

In May 2001, two firms merged to form Sidley Austin Brown & Wood. It has a network of 1,400 lawyers with expertise in corporate, banking, regulatory, intellectual property and litigation. It has offices in the US, China, Hong Kong, Korea, Japan and Singapore.

**Barlow Lyde & Gilbert**

Barlow Lyde & Gilbert offers expertise from more than 200 lawyers in mergers and acquisitions, banking and corporate finance services. It has offices in London, Hong Kong and Shanghai.

**Kendall Freeman**

Kendall Freeman is based in London and offers dispute-handling services to insurance and reinsurance companies. Its expertise includes run-offs, alternative risk transfer and regulatory advice.

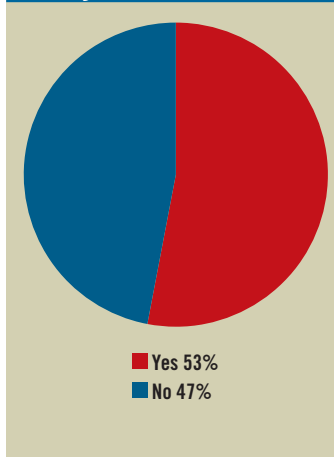
**Lovells**

Lovells has 18 offices in Europe, six in Asia and two in the US. It has 344 partners and more than 1,622 lawyers worldwide. Its practice areas include insurance and reinsurance, capital markets, business restructuring and insolvency, and dispute resolution.

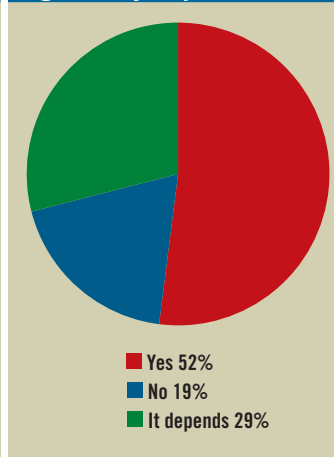
In an increasingly litigious society, insurers and reinsurers seem to be working in closer partnership with their outside counsels than ever before. And it appears that in law firms, insurers have a support system that adequately understands the industry and delivers the service they expect.

Davison from UIB International says litigiousness is here to stay and can only get worse, especially in the countries where it is not yet as severe as in the US. Others agree. To cope with this, insurers and reinsurers are going to need both internal and external expertise. ●

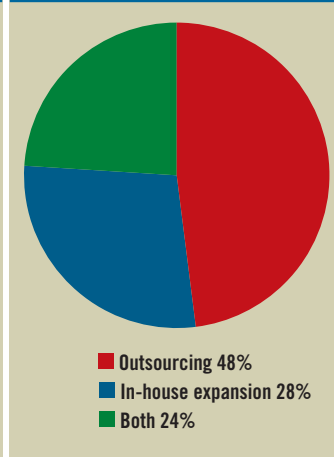
**Has your company experienced an increase in litigation in recent years?**



**Would you support regulatory measures that would curb litigation in your jurisdiction?**



**Are you outsourcing or expanding in-house facilities?**



**How well do law firms you use understand your business?**

