



804 How In-house Litigation Counsel Add Value- Proving Your Case

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Faculty Biographies

Silvio DiCarli

Silvio DeCarli is litigation corporate counsel with the DuPont Company in Wilmington, Delaware. He is currently responsible for a nation-wide docket of product liability and toxic tort cases, including numerous federal and state court class actions. Several years ago, working closely with DuPont business leaders, he played a lead role in designing and implementing a strategic case assessment initiative, designed to bring business discipline to litigation.

Before joining DuPont, he was a partner at a leading New Jersey law firm where he represented major corporations in a variety of business problems, litigation, and trials in areas of toxic tort, product liability, employment discrimination, and commercial disputes.

Mr. DeCarli has undergraduate and graduate degrees from Rensselaer Polytechnic Institute and is a graduate of Rutgers Law School in Newark, New Jersey.

James L. Michalowicz

James L. Michalowicz is a director at ACT Litigation Services in Valencia, California.

Previously he was a senior consultant with Altman Weil, Inc. He specialized in corporate law department practice management, including cost reduction, risk reduction, performance metrics, records management, and discovery management. He also assisted law firms in developing alternative fee arrangements, responding to requests for proposals, and creating strategic marketing efforts directed toward corporate law departments. Prior to joining Altman Weil, Mr. Michalowicz was the litigation program manager for Tyco International, Inc. In that position, he coordinated law firm and supplier convergence programs, early case assessments, alternative fee arrangements, e-discovery management, and performance metrics. Before Tyco he worked at E.I. DuPont de Nemours and Company as the business manager of its legal department, as well as the manager of litigation support. He began his professional career with two of the pioneers in the automated litigation support field, Informatics and J. Feuerstein Systems.

He is a contributing member to the Sedona Conference working group on electronic document retention and production and an editor for the Sedona Guidelines: Best Practices for Managing Information & Records in the Digital World. He is also a member of the board of advisors for the Legal Sales and Services Organization and the Georgetown University CLE advisory board supporting the E-Discovery Institute.

Mr. Michalowicz is a contributing author to the book *The DuPont Legal Model - A New Era*. He has authored articles for *Corporate Legal Times*, *Law Technology News*, *Corporate Counsel*, and other industry publications. He is also a frequent speaker on law department issues.

He received his B.A. from Catholic University of America in Washington, DC.

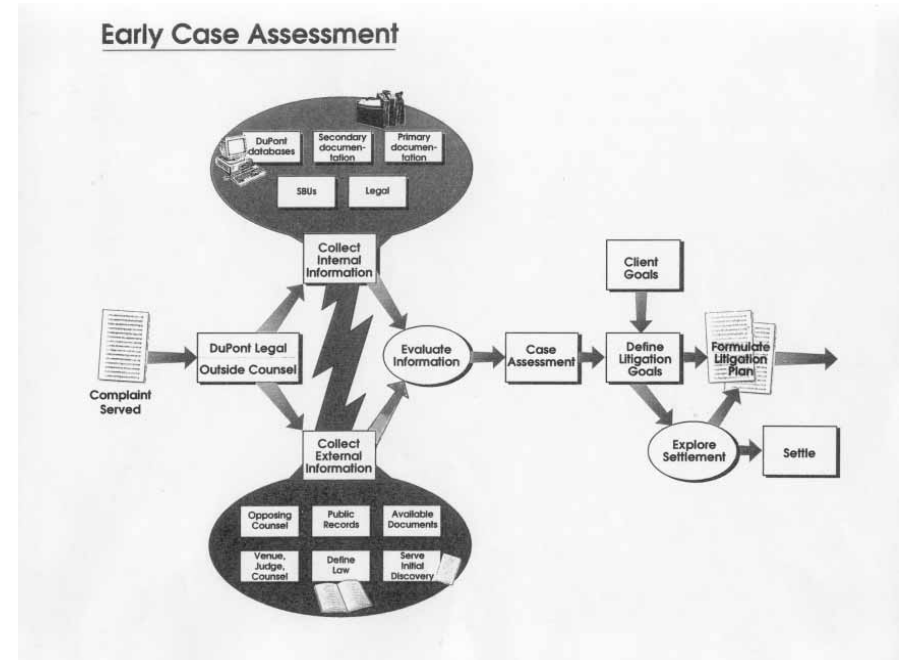
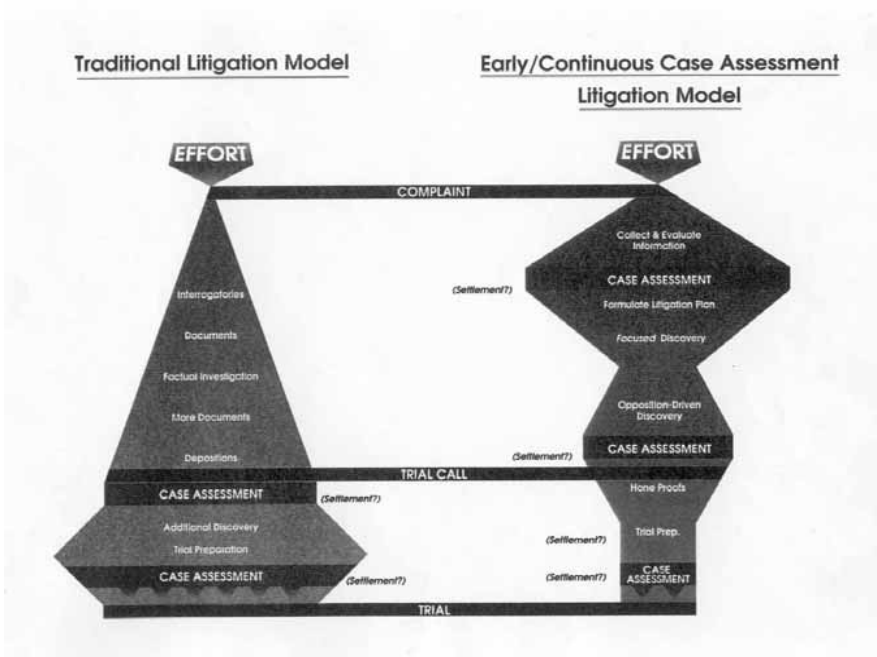


EARLY CASE ASSESSMENT:
THE DUPONT EXPERIENCE

Silvio DeCarli
Corporate Counsel

ACC's 2006 Annual Meeting: The Road to Effective
Leadership

October 23-25, Manchester Grand Hyatt





Early Case Assessment: Central Ideas

- Litigation is a business problem that needs to be resolved
- Cost/benefit analyses can and should apply to litigation decisions
- Early case assessment is not a “settle at any cost” mindset



Some In-House Barriers:

- Lawyers lack the tools to gather critical information quickly and accurately
- Lawyers are already too busy managing and/or conducting litigation
- Reluctance to authorize outside counsel to spend more \$\$ up front



Some In-House Barriers:

- Inherent uncertainty of litigation fosters reactive rather than proactive approach
- Pervasive belief that clients will view a recommendation to settle early as a sign of weakness



Some Outside Counsel Barriers:

- Information needed for early and effective case assessment is internal to the company
- Belief that a decision to forego that last bit of discovery (or not file every conceivable motion, etc.) will be criticized or second-guessed
- View that the company wants to win at any and all cost
- Disincentive of hourly billing



Overcoming the Barriers:

- Unambiguous commitment by management, clients and outside counsel
- Clearly articulated objectives
- Well defined roles and responsibilities
- Enough, but not too much, structure
- Candid evaluation, refinement, etc.
- Patience



Some Anticipated Benefits

Better Results:

- Dispose of litigation as quickly and cheaply as possible
- Identify more serious cases requiring closer attention
- Define successful resolution
- Focus litigation management to achieve defined business goals



Some Anticipated Benefits

Cost Savings:

- Reduce case cycle time and thus individual case cost
- Identify appropriate cases for early resolution, thus reducing cost of overall docket
- Where early resolution is not feasible, focus litigation so effort is commensurate with case goals and needs



Some Anticipated Benefits

Increased Client Satisfaction:

- Include client as active participant in litigation process
- Define and consider client's goals earlier and throughout the case
- Improve communications and enhance relationships with clients



Some Anticipated Benefits

Better Litigation Management:

- Encourage early strategic decisions and budgeting
- Provide vehicle for planning and controlling case direction
- Foster early and continuing communications
- Focus in-house efforts on case goals and strategy rather than “micro-managing” outside counsel



Some Anticipated Benefits

More efficient, focused lawyering:

- Match effort to complexity and potential exposure of case
- Encourage prudent risk-taking
- Eliminate unnecessary case preparation through earlier resolution
- Provide convenient written evaluations for management and clients