



604:Early Case Assessment Online—How Technology Transforms Case Assessment

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Gardner G. Courson is the vice president, deputy general counsel, litigation for Tyco International. Mr. Courson is responsible for corporate legal issues regarding litigation.

Mr. Courson has practiced as a trial lawyer for 28 years, and is admitted to six of the United States Courts of Appeals and the U.S. Supreme Court. He is the former managing partner of the Atlanta office of McGuireWoods and was a member of the Firm's Board of Partners before leaving the firm to join Tyco, Mr. Courson had successfully handled hundreds of lawsuits across the U.S., focusing on complex employment, labor relations, and related business tort issues. He has acted as employers' legal advisor in numerous individual and class actions.

He is a Fellow of The College of Labor and Employment Lawyers, recipient of the General Counsel's Award for Achievement in Diversity from the DuPont Legal Department, and a member of the Advisory Board of the University of Virginia's McIntire School of Commerce.

Mr. Courson graduated from the University of Virginia and earned his law degree from Emory University School of Law in Atlanta.

Blane A. Erwin

Blane A. Erwin is vice president, strategic initiatives with Bridgeway Software and directs the company's long-range innovation efforts. As a twenty-year industry veteran, his experience in technology strategy, market research, and business assessment contribute to Bridgeway's future growth.

Mr. Erwin joined Bridgeway from Forrester Research, Inc. where he was the director of business trade and technology strategies. While at Forrester, Mr. Erwin advised senior executives at firms like Bank of America, General Electric, Lucent, and 3M on the impact of technology on long-range business strategy. He has also been quoted in *Business Week*, *Fortune*, and *The Wall Street Journal*.

Mr. Erwin holds a Bachelor of Electrical Engineering from the Georgia Institute of Technology in Atlanta.

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Early Case Assessment Online

How Technology Transforms Case Assessment

Assessing the discovery needs, relevant facts, and legal principles of a case early in its life cycle can not only increase efficiency, but also help corporate counsel reduce litigation risks and costs. With the advent of online technology, in-house counsel and law firms can work more effectively together to manage early case assessment. This session takes a look at case strategy and its organization in the initial stages and how Internet technology can maximize the ECA benefits available to a team throughout the life cycle of a case.

Attendees at this session will:

- Learn specific ways to structure and facilitate early case assessment with outside counsel using the Internet and case management programs.
- Gain step-by-step instruction on metric and information organizational tools and structure in case management and information management.

INTRODUCTION

Chief Legal Officers today accept several unavoidable demands of their role; cut legal costs and minimize legal risk. Expenses have skyrocketed -- annual operating costs for U.S. corporation legal departments have reached \$150 billion annually¹ - including costs for in-house staff and law firms combined. The largest single budgeted area is litigation² (27% of budget, on average). Now, online technology is emerging to reduce the costs and risks

¹ "Legal Trends for 2003 and Beyond," Daniel J. DiLucchio, Altman Weil, Inc., September 18, 2002.

² "2002 Annual Report of Corporate Law Departments," Corporate Legal Times, May, 2002.

of litigation and make legal teams more productive; designed around the innovation of Early Case Assessment (ECA).

ECA was born out of dire necessity to wrestle down the mountainous litigation dockets piling up during the U.S. corporate growth of the 1990's³. Methodologies for contemporary ECA have been in use for more than a decade. During that time, training manuals, workflow charts, processes, and a patchwork of document technology have grown up around ECA to help in-house staff and outside counsel put it into practice. ECA workflow has been shown to be effective even when implemented with such a semi-technology approach; a good example being DuPont's Legal Model and its widely published savings in cost and risk⁴. But a lack of comprehensive, tailor-made systems to help hectic defense teams quickly and accurately carry out ECA has hampered it from delivering its fullest benefits to the masses.

ECA: THE DEFENSE SEIZES THE INITIATIVE

At its core, Early Case Assessment applies basic business principles to managing and conducting litigation. For the purposes of this paper, we define ECA as follows:

“ECA is proactive litigation defense management processes that are focused on gathering enough of the right kind of information, as quickly as possible, to enable a realistic evaluation of the case and the formulation of an efficient litigation plan.”

Anatomy of Early Case Assessment

The moving parts within ECA have evolved into a tested blueprint that includes:

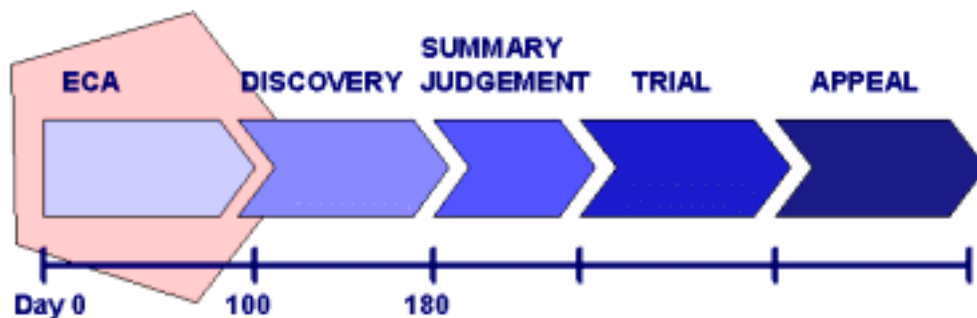
- **A legal and factual framework**, encompassing:
 - Burden of proof & legal principles
 - Key facts and allegations as we know them
 - Venue, judge's and jury's perspective
 - Opposing counsel perspective
 - Client / Business perspective
- **To guide defense teams** in
 - Distilling a lawsuit's relevant facts and legal principles

³ <http://www.dupontlegalmodel.com>

⁴ Courson, Gardner and Sager, Thomas. “Metrics for Success in DuPont's Legal Risk Analysis.” Chief Legal Officer, Vol. 1, No. 3, Summer 2002, p. 29-31.

- Risk assessment
- Determining the best path forward with regard to the lawsuit

Figure 1 The Litigation Lifecycle



ECA is a paradigm shift in the way corporation legal departments and their law firms manage the costs of litigation defense. It “front-loads” the process to assess a case as early as possible in order to construct a proactive defense game-plan.

1. The ECA phase sets the project management tone for the rest of the lifecycle. Manage the first 100 to 120 days in a structured fashion to reduce risk and cost in subsequent steps.
2. Research by the Rand Institute for Civil Justice⁵ shows that 75% of the cost for defense is in discovery. ECA strategically focuses discovery and at times might resolve the case before discovery escalates unbounded.
3. ECA is the best preparation for jury trial should that step occur.

ECA Has Its Benefits

In ECA, the defense seizes the initiative, quickly getting to the heart of the matter from both sides’ perspective. As a result, ECA helps defense teams resolve cases more favorably in strategic business terms, bringing benefits such as:

- **Lower costs**
 - Prescriptive game-plan
 - Strategically focused discovery
 - Lower outside counsel fees
 - Lower indemnity/plaintiff payouts

⁵ <http://www.rand.org/publications/MR/MR941/>

- **Reduced risks**
 - Identify the risks quickly – triage
 - Communicate the risks rapidly – alerts & tracking
 - Mitigate the risks swiftly – seize the initiative
 - Prevent risks – lessons learned
- **Increased efficiency**
 - Faster cycle times
 - Freeing corporate counsel to focus on legal plans & business growth
- **Improved consistency and quality control**
 - Holding law firms accountable (through a mutual gain⁶ environment)
 - Better communication

An ECA Example: Employment Litigation

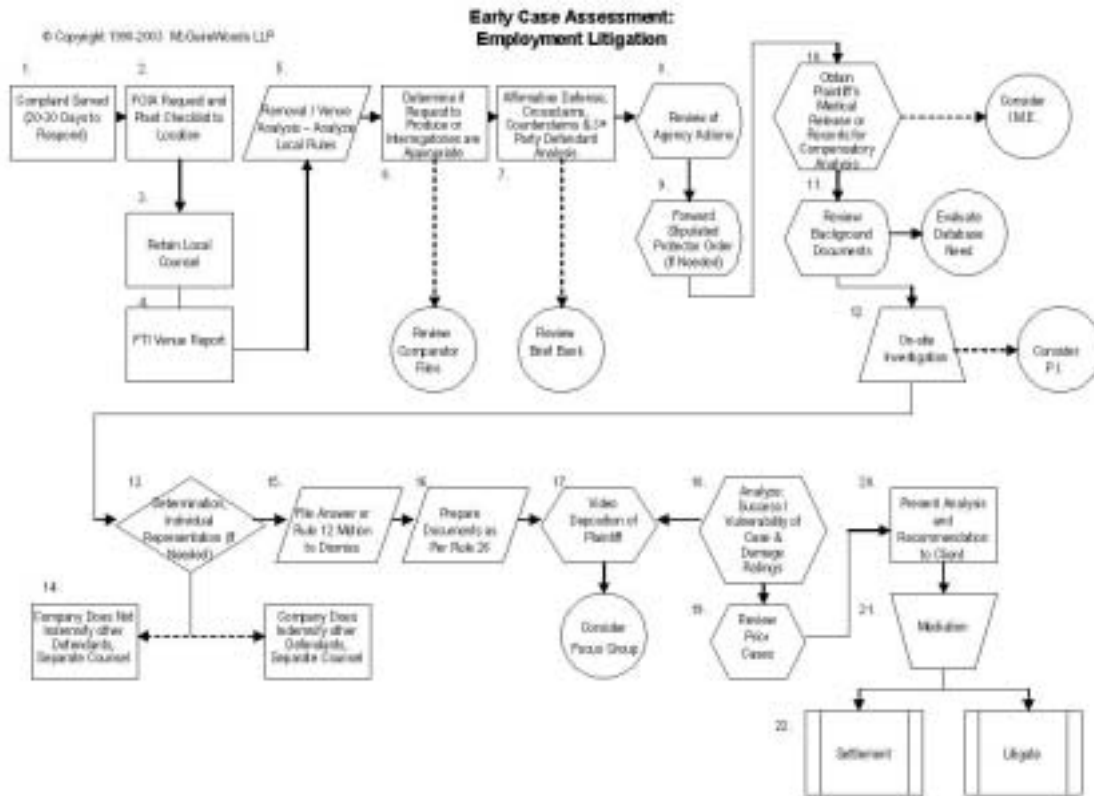
In the formative early days of ECA, inside and outside counsel “pioneers” struggled to define and prove a new methodology for handling litigation – where defense costs, risks, and turn-around time were reduced by seizing the initiative.

During the many “what if ...” brainstorming sessions in this early period, one of the law firm attorneys overseeing a large volume of employment litigation, proposed a work-process flowchart that mapped out the required steps needed to accomplish a case assessment quickly and efficiently. The ECA workflow chart for employment litigation provides a clear, systematic 22-step process to guide the inside and outside lawyers for each individual plaintiff’s lawsuit (see Figure 2)⁷.

⁶ a.k.a. win-win

⁷ <http://www.acca.com/protected/pubs/docket/mj00/images/chart.JPG>

Figure 2 An ECA Workflow Chart



However, to fully reap its benefits ECA must be pervasive, timely, comprehensive, documented, and clearly express the case strategy to business units, in-house and outside counsel. Even where barriers may threaten to arise, two things can ensure that ECA pays off: (1) better tools to enable legal teams to quickly gather and evaluate critical information, and (2) a systematic approach that makes ECA a seamless part of every lawyer's job. In short, the fullest benefits can be achieved from ECA Online.

ECA ONLINE: SPEED & TACTICS

What ECA Online endeavors to do is incorporate ECA into software in a way that maximizes the benefits of ECA. ECA Online draws the legal team together and guides it through the principles and processes of Early Case Assessment -- anywhere, anytime, to anyone the Internet reaches. By way of illustration, consider the principles of Time Management -- such as prioritization, goal setting, task tracking, and so on. For years, Time Management done manually provided everyone toting their planners and

lists with real tangible benefits. Nevertheless, when Time Management – like ECA – goes on-line, everyone's ability to adhere to the discipline and harness the benefits is greatly enhanced. For the purposes of this paper, we define Early Case Assessment Online as follows:

“ECA Online is an Early Case Assessment legal and factual framework, organized in a collaborative, web-based, project management view.”

ECA Online Boosts ECA Benefits

To ultimately bring about a reduction in litigation costs and risks, ECA Online raises the defense team's level of execution throughout the ECA process with (1) speed-tools and (2) a systematic set of tactics.

- **Speed**
 - Real-time view
 - Work from anywhere
 - 24/7 access
 - Alerts
 - Re-usable work product
- **Tactics**
 - Collaboration – in-house & outside
 - Pop-up practice pointers
 - Standards
 - Training tool (learn by doing)
 - Tasks don't fall through the cracks

Scenario #1 : An Example – Employment Case without ECA On-line⁸

The Assistant General Counsel (AGC) assigns a new case. It involves a group of 13 current and former employees alleging race discrimination in a strategic subsidiary formed in 1999 from the merger of several acquired companies. The case is referred to the preferred law firm for the locale, the subsidiary is advised of the complaint and enough information is collected to file an answer.

The case is not high on the docket priority list. Because of the number of Plaintiffs and the numerousness of claims, the Judge provides a one year discovery period. Discovery proceeds typically: interrogatories and document demands are exchanged; motions are filed; and numerous depositions are scheduled.

⁸ Credit: scenario patterned after Sager & Mayer, “A New Era: The DuPont Legal Model”, pp. 30-31.

Defense costs have not yet grown to a high enough level to attract senior management review. Yet, after a year of discovery and motion practice, \$150,000 has been spent on attorneys' fees, experts, and related litigation costs.

Then outside counsel gets a trial call notice. After several months of intense pre-trial preparation, which costs another \$50,000, the case is ready for trial. The case looks defensible, but the latest preparation efforts turned up a few problematic documents, some less than desirable witnesses and the discovery of damaging deposition testimony of an internal employee in a similar case litigated three years ago.

The morning of the trial, the plaintiffs make a \$1,000,000 settlement demand. Defendant offers \$130,000 + \$45,000 for plaintiff's legal expenses. The plaintiffs' lawyer replies that he has too much invested in the case to settle for less than \$500,000. The defense team and the corporate subsidiary refuse to budge, primarily because \$200,000 has already been spent on the defense.

After a few false starts, the case finally goes to trial. The jury returns a defense verdict. The plaintiffs appeal. Nine months later, the appellate court affirms judgment for the defense.

COSTS:

\$ 200,000	Pre-trial
50,000	Trial
25,000	Appeal
\$ 275,000	TOTAL

Scenario #2 : An Example – Employment Case utilizing ECA On-line

The AGC assigns the same case, which is referred to the same preferred law firm. Using Early Case Assessment On-line tools, the case team, including legal assistants, immediately begins collecting relevant information about the current and former employees at issue, the underlying facts of the race discrimination lawsuit, the related previous case and the problematic deposition testimony. The legal assistant spends a few days in the subsidiary's legal files and locates the sticky documents. Outside counsel is also busy. She performs preliminary legal research. Her associate checks out the allegations of the lawsuit and interviews the relevant company witnesses.

After gathering and evaluating all available information, inside and outside counsel prepare an objective and candid Case Assessment, including a

summary of the strengths and weaknesses of the case, concerns about the length and cost of discovery and a discussion about problem witnesses. Discussion with the client reveals that the assessment is accurate.

Defense counsel contacts the plaintiffs' legal team and suggests this case is appropriate for mediation to which plaintiffs' counsel agrees. During mediation, defense lawyers are able to point out problems with the plaintiffs' case both factually and legally, which results in plaintiffs agreeing to settle for \$120,000.

COSTS:

\$ 30,000	Legal fees
120,000	Settlement fees
\$ 150,000	TOTAL

Key Items in ECA On-line

In practical terms, the underpinnings of ECA On-line are arranged in a way that gives defense teams the speed and systematic tactics to seize the initiative. Key components include:

- **Case-list Prioritizer.** Litigation happens in numbers and ECA On-line can help provide a ranked list of cases to point counsel to the most critical suits. Each company may have its own formula for determining the risk "temperature" of a case – accounting for damages exposure, negative business impact, number of plaintiffs, days active, likely outcome, jurisdiction, and so on – but all cases can be measured and listed by these criteria, securely on-line, 24x7.
- **Case Homepage.** The ECA On-line process for each lawsuit starts with the setup of a web-based case homepage. Administrators for the defense team perform the initial definition of everything from case name, jurisdiction, case type, date of complaint, and plaintiff's information to defense team members and on-line access credentials. The case homepage is the daily starting point for team members and gives real-time status of where the case is in the ECA process, critical calendar dates, and critical contact information for the parties.
- **Tasks Organizer.** ECA is all about quick, structured fact finding to inform the decisions that must be made within a 120-day time frame. ECA On-line provides an interactive checklist – Tasks – to guide everything from Freedom of Information Act queries, requests for

information from the plaintiff's medical records and background, to the need for local counsel and analysis of local rules and venue.

- **Complaint Distiller.** ECA On-line provides a standardized, consistent set of questions for the defense team to answer in order to capture the full range of plaintiff's allegations and claims. As a result, ECA On-line can link in the relevant legal principles and burden of proof to help defense counsel gauge the plaintiff's strengths and weaknesses.
- **Business / Venue Analyzer.** To enable defense teams to craft a holistic litigation strategy that includes considerations beyond the claims, ECA On-line supplies tools for analysis of the parties' community standing, the judge's leanings, the method and timing of discovery, and so on.
- **Trial Theme Refinery.** Regardless of whether the ultimate destination for an ECA lawsuit is dismissal, mediation, jury trial, or settlement – ECA On-line ensures that every member of the defense team is on the same page, constantly displaying the defense theme on each interactive case page they access. Pop-up practice pointers further guide the process of establishing and refining the trial theme.
- **Comparator Optimizer.** Though it traditionally has been time consuming, identifying and positioning the comparator “sweet spot” in a case can be crucial. ECA On-line includes templates for aggregating and rolling-up comparator information to greatly streamline the process for defense teams. It helps to address both parties' strengths and weaknesses early in the process.
- **Discovery Generator.** As lawyers and legal assistants work daily to fill in the factual “picture” of a case, they will spontaneously think of little nuggets of discovery requests to remember. ECA On-line replaces the yellow sticky notes of old with a menu to capture these thoughts, anytime from anywhere within its “menus”, whether these will become questions for interviews, depositions, interrogatories, requests for production, etc. As a result, the defense can keep its discovery appropriately focused.

WHAT SHOULD IN-HOUSE COUNSEL DO?

Early Case Assessment Online has not happened overnight. Similarly, corporate legal groups will find it daunting to adopt this new strategy unless a methodical project plan is constructed. Although the temperament of corporate counsel, IT departments and outside counsel that makeup an ECA

team come in temperaments from early-adopters to conservative-followers, the following framework can help guide the ECA Online implementation process:

- **Handpick a leader.** A sustainable ECA rollout requires the watchful eye and attentive hand of an in-house ECA Czar to champion the project. The General Counsel should tap an individual that is a creative, self-starter, who leads teams well and has above average abilities with processes and technology.
- **Get some education.** Intense immersion in the written materials, case studies, and experiences of ECA pioneers (see Bibliography) is critical to jump starting an ECA rollout plan. The ECA Czar will need to get his or her arms around the basic ECA concepts in order to formulate a generic ECA process. But company specific modifications to tailor ECA to a specific in-house legal group can most effectively be planned by face-to-face discussions with ECA trailblazers.
- **Layout a project plan.** Armed with an education in the ECA fundamentals, the in-house Czar can begin to master the details -- defining the goals, phases, timeline, and budget for the ECA deployment.
 - Goals: Each company will have unique goals it strives to achieve through the implementation of ECA, but they will typically include benefits such as % reduction in costs, % decrease in case resolution time (shrinking the docket), % increase in quality, and so on. Expect to spend some time benchmarking the historical levels of these metrics to use in the evaluation phase.
 - Phases: Includes a detailed description of each plan phase, from staffing, education (& training), to first proof case (a test drive), evaluation, and ramp up to production.
 - Timeline: Communicates a realistic picture, in calendar-time, of the ECA rollout to all stakeholders.
 - Budget: Captures the staff, technology, training, and outside counsel investments required to deploy ECA On-line.
- **Deploy a proof case.** Possibly the most critical element of the ECA plan is the prototype phase. For the first time the ECA Czar brings together the ECA flowchart, technology, and initial core users for a test drive. Key considerations should include:
 - Initial area-of-law: Select a practice area based on those that already tend to be most repetitive, considering first those where

costs and risks can run high. Employment, product liability, and mass tort are possible examples.

- Candidate cases: Look for two or three initial “proof-of-concept” cases where the team will be familiar with the likely types of claims to be involved. Select the most ideal case to shepherd through the ECA process for the first time.
- Initial outside firm: Tap a progressive partner with a track record for collaborating well with the in-house group. An added plus is a firm that has previous experience processing a case using ECA.

The project team will start to grow at this point, with preference being given to those who are persistent, adventurous and strong team players. Expect to spend 3 to 4 months in this phase.

- **Evaluate the result.** Central to the evaluation phase of the ECA rollout is measuring whether goals are being met. Armed with the historical cost and case cycle time benchmarks of the project planning phase, the ECA Czar and core team can compare the results of the proof case. Moreover they can evaluate what worked, what surprises occurred, and even circle back to the ECA pioneers & gurus that were interviewed in the education phase for feedback, perspective, and suggestions for future improvements.
- **Put into production.** With 6 to 12 months of experience by this juncture, the ECA team, its collective experience, and its network of partners are ready to expand the scope. In a nutshell, this phase consists of a larger scale repeat of the education, project planning, and proof case phases. A methodical project timeline needs to be constructed which sets milestones for training staff in ECA, standardizing ECA technology infrastructure, recruiting additional ECA-enabled law firms, targeting further lawsuits and practice areas to include within the in-house ECA process, and setting overarching corporate legal “ECA goals.”

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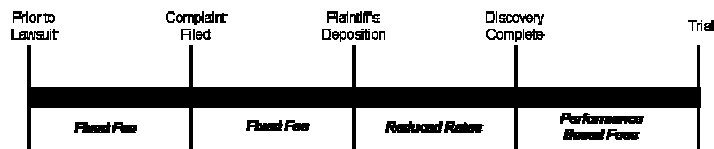
How Technology Transforms Case Assessment

Workflow Maps

ACCA's 2003 Annual Meeting

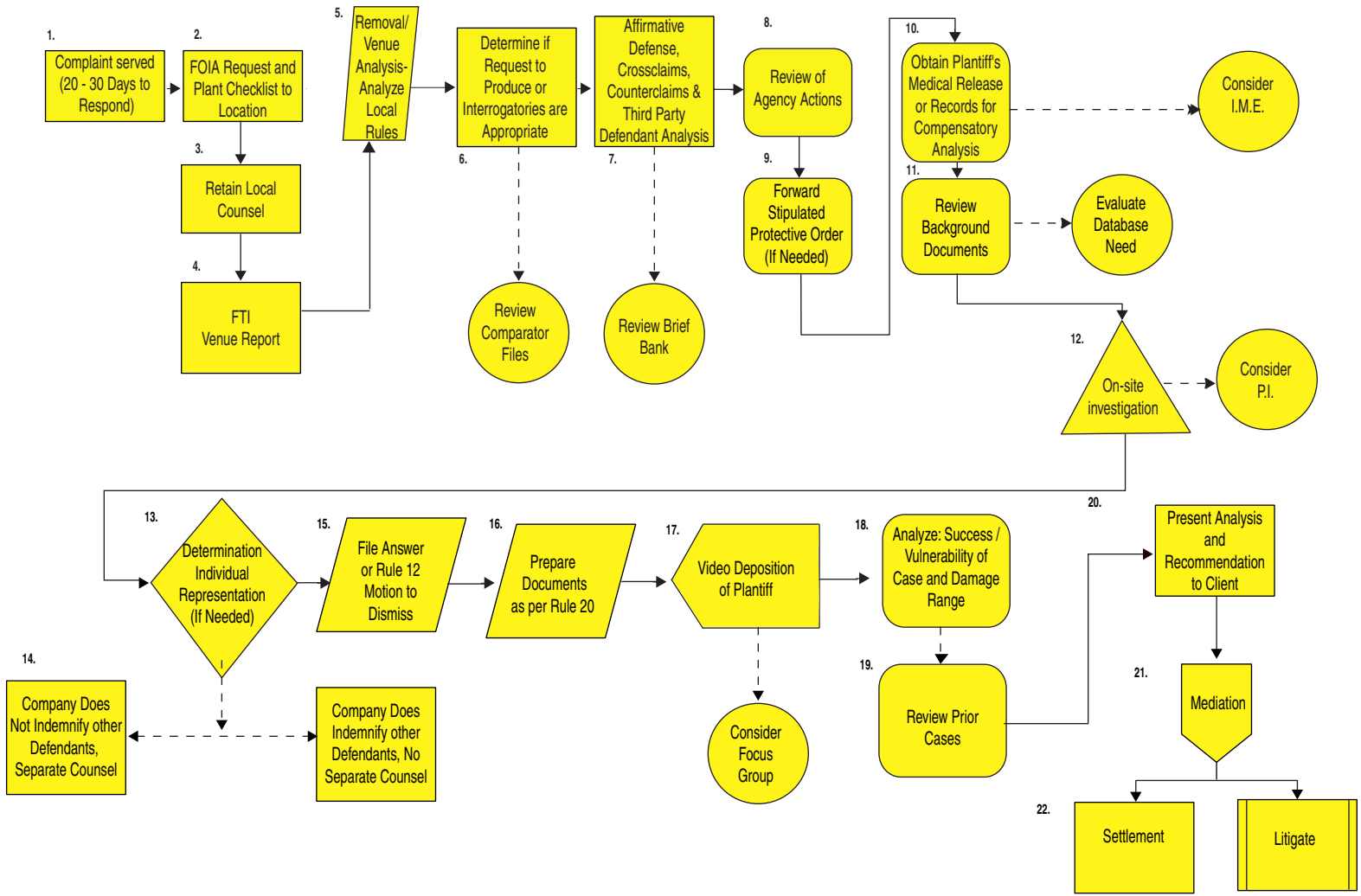
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EARLY CASE ASSESSMENT/ ALTERNATIVE FEE ARRANGEMENTS LITIGATION MODEL



EARLY CASE ASSESSMENT EMPLOYMENT LITIGATION

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METRICS FOR SUCCESS IN DUPONT'S LEGAL RISK ANALYSIS

BY GARDNER G. COURSON AND THOMAS L. SAGER

A corporation faces employment litigation. A complaint has been served alleging discrimination and wrongful discharge. The seriousness of the case is unclear. Among the variables are potential damages, adverse publicity and the considerable time needed to resolve the lawsuit. At the same time, faced with a 120-day deadline and a fixed-fee budget, the busy outside trial lawyer assigned to the case ponders how best to satisfy the client and meet his professional responsibility to apply his best skills, experience and judgment. The lawyer needs to get it done without the usual extensions of time—and without the comfort of the usual billable-hour fee arrangement.

Ten years ago there was little formal guidance for how inside and outside trial lawyers might proceed when faced with impending litigation. In 1992, that changed when the DuPont Legal Model was designed and implemented throughout the United States. The Model imposed an obligation on in-house and outside counsel to develop clear methods and procedures to save time and money on DuPont lawsuits, while main-

DuPont partnered with Deloitte & Touche to test the discipline of Six Sigma on its early case assessment process. The findings—a 28 percent reduction in case cycle time, lower payouts and higher client satisfaction. In addition, the cost savings amounted to more than \$850,000.

taining or improving the quality of legal services. Both inside and outside counsel were closely monitored as they sought to meet these obligations.

Seeking to further improve the cost and quality of its litigation efforts, in 1994, DuPont's in-house litigation function—with significant support from Thomas L. Sager, vice president and general counsel for litigation—began to emphasize a litigation-management process known as early case assessment. ECA methodology has been a cornerstone of DuPont's success in reducing its docket, its legal defense budget and in reaching faster and better resolution of lawsuits.

"The key to successful litigation management is increased business discipline applied to legal matters," Sager explains. "As the Six Sigma study shows, ECA is a lynchpin to that business discipline."

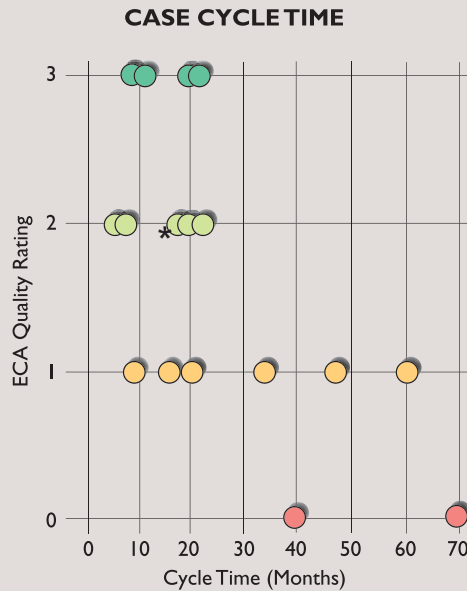
ECA in a Nutshell

Within 120 days of the first defensive pleading, ECA requires outside trial counsel, DuPont in-house counsel and the designated DuPont business representative to produce a detailed analysis of the lawsuit. The details and pro-

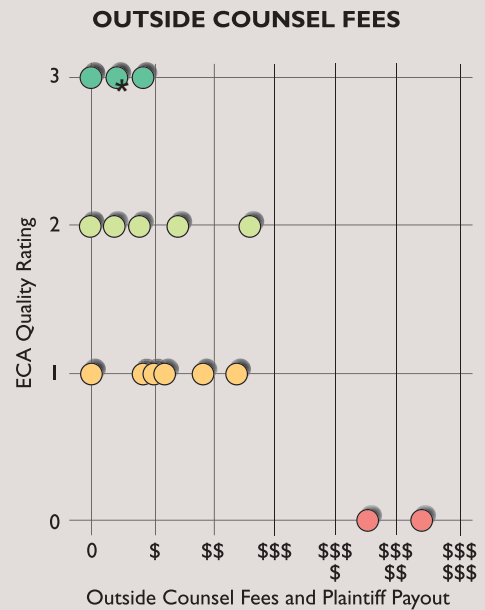
cedures needed to meet the Model's express guidelines have evolved over the past decade and have forced both DuPont corporate lawyers and outside trial counsel to rethink how to handle the first segment of defending a lawsuit. It has taken enormous effort on all sides, but the positive results have been recently confirmed by an independent study using the Six Sigma quality initiative at DuPont, which was verified by the national accounting firm of Deloitte & Touche. The result? The DuPont cases where ECA was rigorously followed resulted in higher satisfaction from the business unit, faster cycle times and an average of 28 percent less cost.

The Deloitte study analyzed 18 litigated labor-and-employment cases to determine two things. First, it studied the correlation, if any, between the quality of the early case assessment and the quality of the results. The second focus was the potential savings to DuPont when defects in the early case assessment process were eliminated. The elements used to measure ECA quality included whether the assessment was timely and comprehensive; whether the strategy and the budget were expressed;

EACH DOT in the charts represents a case, and each is color-coded according to its ECA quality level. The green dots represent the highest ECA quality. The red dots represent the lowest ECA quality. (An asterisk denotes more than one case at that level.)



SOURCE: DELOITTE & TOUCHE



SOURCE: DELOITTE & TOUCHE

Deloitte & Touche studied 18 labor-and-employment cases over a seven-year period. As the ECA quality improved, case cycle times were reduced, outside counsel fees and plaintiff payouts decreased and client satisfaction increased.

and whether the whole process was well documented. The quality of litigation results was determined on the basis of client satisfaction, the size of outside counsel fees, the case cycle time, and the size of the plaintiff payout.

By carefully quantifying the elements and assigning point values to the client ratings, the Deloitte study found that high ECA quality generally resulted in lower indemnity/plaintiff payouts and higher client satisfaction. On top of that, the potential savings in outside counsel fees in the 18 cases were dramatic: \$852,802—more than a third of the total fees of \$2.3 million. Over the seven years covered by the study, the average potential annual savings came to \$121,829.

The Stakeholders

ECA is applied to a variety of cases, including litigation of employment, intellectual property, commercial, personal injury and toxic torts, but

Using the ECA process on a consistent basis results in a more involved and happier business client.

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the stakeholders are the same: the business client, the in-house counsel and the outside trial lawyer. The fourth and fifth stakeholders, whose expectations must be understood and managed, are the plaintiff and his or her lawyer.

For all of these stakeholders, the tension points are basic: money, time and control of litigation. As the Six Sigma analysis confirms, using the ECA process on a consistent basis results in a more involved and happier business client. In addition, it lowers the cost of litigation, both in terms of legal fees expended and resolutions reached. Finally, the business and the in-house legal staff spend less time away from the proper focus of growing DuPont's business.

In the Beginning...

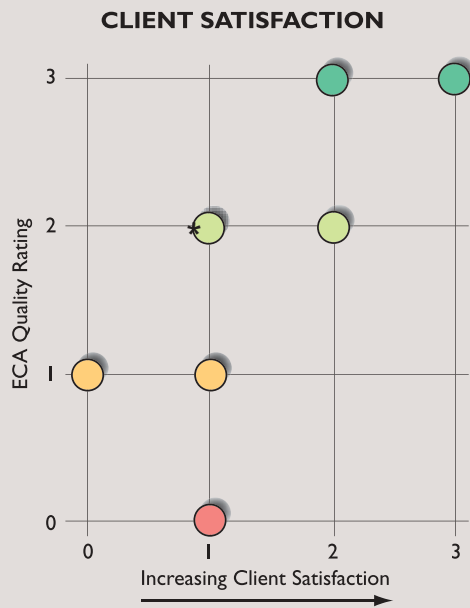
At the outset, the tools and methodology to achieve this change barely existed. There was enormous pressure. Some missteps and floundering

occurred. There was a good deal of pushback, both inside and outside, to this novel but structured approach.

During this early period, many brainstorming and "what if we do things this way..." conversations occurred. One of DuPont's outside lawyers, who handled a large volume of employment litigation, developed a work-process flowchart that essentially mapped the required steps needed to accomplish a case assessment quickly and efficiently. The ECA workflow chart for employment litigation provides a clear, systematic 21-step process to guide the inside and outside lawyers for each individual plaintiff's lawsuit (log on to www.lawexec.com to review this flowchart).

ECA Workflow Process Map

This process has been refined over time at DuPont, during practice group working sessions and at the Atlanta Knowledge



SOURCE: DELOITTE & TOUCHE

SOURCE: DELOITTE & TOUCHE

Management conference in 1997. From the service of the complaint through the decision to litigate or settle the matter, the workflow process chart poses questions that must be answered and suggests decisions that must be made within the 120-day time frame. The issues include essential items such as Freedom of Information Act queries, the need for local counsel, analysis of local rules and venue, information from the plaintiff's medical records and background, strategies for handling the depositions, and the need for possible other services, from databases to private investigators. It concludes by analyzing the client's vulnerability and the potential for success, should the litigation proceed to trial. Time management is implicit in this structured process, but the judgment of experienced lawyers is the backbone of the ECA analysis.

Why is ECA a Good Idea?

"Time and money have always

**The discipline of ECA
reduces business
managers' time away
from their business
goals and decreases
the cost of litigation.**

been the standard measures for any company evaluating the impact of defending litigation, regardless of the type of lawsuit or the jurisdiction where the case is filed," Sager says. "What we have accomplished at DuPont, with the help of our partnering law firms, is a focus on a business approach to evaluating our lawsuits early and often.

"The results, as established through the recent Six Sigma analysis, are very impressive. Eighteen employment cases were analyzed under the scrutiny of Six Sigma. Those that followed the ECA process faithfully resulted in a 28 percent savings to DuPont in total transaction costs and a much more satisfied business client as a result."

Like most corporations with a large litigation dockets, DuPont was concerned about how much time lawsuits took away from managers who were responsible for growing DuPont's business. It was also concerned about how much money it was spending on outside lawyers who tried cases and in-house counsel who managed large dockets of litigation.

As the Six Sigma study conducted by Deloitte & Touche established, using the methodology and discipline of ECA reduces business managers' time away from their business goals, improves the corporate perception of the value of the law department and decreases the total cost of defending litigation per case. Among the various items captured in the ECA process are those actions, tasks, procedures and customs that drive litigation costs.

ECA focuses on such items as cycle time, paper touches, whether the lowest cost, most capable person is handling the

task (paralegals versus young associates, for instance) and whether a case is being given the proper attention by a first-chair trial lawyer.

Another ECA requirement is that the trial lawyer responsible for the case, as opposed to less experienced members of a defense team, must articulate a theme to the jury early on, before discovery commences. This, of course, requires all evidence to be assessed and evaluated around a jury theme, central to the ability of the company to convince a jury that the plaintiff has not been wronged.

An unspoken advantage of the Early Case Assessment, according to Sager, is cases, which have been properly assessed with ECA methodology, usually have lower discovery costs, since only pertinent documents and evidence are collected and analyzed. In other words, when you have a plan to build a house before you drive the nails, the house goes up faster, at less cost, and the end result is likely to be close to the blueprint you developed. When the ECA process comes together, the best talent focuses on the most relevant information. The usual result is better decisions by all involved, made in less time and at a lower cost.

Holding managers accountable at DuPont is a long-cherished business tradition. Following the establishment of the DuPont Primary Law Firm Network, DuPont in-house counsel and their law firm counterparts are being held accountable in a way in which they can truly contribute to the success of the process without sacrificing their professional judgment and sense of accomplishment. ●