

ECA Detailed Analysis ("Long Form")

Date Prepared: _____

Last Updated: _____

A. IDENTIFICATION DATA

1. Brief description of matter or dispute

- Parties: Claimant/Plaintiff; Respondent/Defendant; Third Parties
- Type of Matter
- Background
- How Company Learned of Matter
- Status of Insurance and any related indemnity agreements
- Identification of other applicable contracts, pre-dispute agreements, and agreements regarding how disputes may be handled

2. Stage of development (*Do not duplicate matter management system which may contain some of this data*).

No Litigation or Arbitration Filed at Present

Arbitration Commenced

- Identify ADR Provider, applicable arbitration rules, arbitrators, date commenced, causes of action, damages/remedies, schedule

Litigation Filed (*Attach Complaint*)(*This field may be omitted if the Complaint is attached or if the matter is a repeating matter, such as a class action or mass tort.*)

- Court/Location
- Judge
- Docket No.
- Date Filed (*By whom*)
- Cause(s) of Action
- Damages/Other Remedies Sought (*Claim for Injunctive/Prelim.Relief*)
- Court-Ordered Mediation Required/Completed
- Dispositive Motions Filed (*When/Outcome?*)
- Filing Deadlines Approaching
- Jury Trial Matter

3. Contractual requirements (*Consider attaching relevant Dispute Resolution Provisions of Contract*)

- Negotiation
- Two-Tiered Negotiation in Company
- Mediation
- Arbitration
- Other

4. Counsel and team identification

Identification	Our Company	Other Party	Third Parties, if any
Inside Counsel			
Outside Counsel			
Business Unit/Person(s) Involved/Affected			
Insurance Representatives			

B. INFORMAL FACT DEVELOPMENT & RESULTS *(Assemble factual and documentary information without formal discovery)*

1. Summary of Internal Interviews

- Information gathered from discussions with company, law firm, and other lawyers with knowledge of the matter
- Information gathered from client business contacts with knowledge of the matter

2. Summary of Internal Document Review *(Consider attaching key documents, if appropriate)*

- Hard copy documents
- Electronic documents, including number, type, format, media, cost of storage and production, and possible role for e-discovery expert

3. Summary of Witness Identification and Interviews

- Identify the fact witnesses & their location
- Evaluate role of experts, if any
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- Provide a summary of the interviews with witnesses
- Assess witness capability & credibility

4. Results of contacts with opposing counsel

- Information garnered
- Agreements on informal discovery or information exchange *(Consider attaching key documents, if appropriate)*

5. Review relevant company and industry historical information

- History of similar claims in the company (if any)
- Average number of days to resolution of such claims
- Special circumstances differentiating this case from other similar cases
- In-house, law firm, and other lawyers with relevant experience on similar matters
- Business client contacts with knowledge of similar matters
- Relevant company files and/or databases
- Similar matters in the industry/industry concerns/history
- Damages awards and settlements
- Length of litigation process and procedural issues
- Other relevant public data/records or information that might be available

6. Identify key unknown information

- Identify key information not known
- If key information is currently unavailable that is essential in selecting resolution strategy, describe informal routes to acquire it.

C. BUSINESS CONCERNS

1. Identify client's priority business concerns and interests

- Protecting Sensitive Data
- Legal (*E.g., Need new precedent; need TRO or PI; etc.*)
- Economic: Short Term, Long Term
- Timing
- Relationships (including confidentiality)
- Publicity and Reputation
- Psychological (*E.g., understand occurrences; receive apology; be heard by authority figures; vindicate action; clear name; change policies for others in similar situation; etc.*)
- Other special/unique/sensitive concerns affecting disposition strategy
 - Corporate survival/treasury at risk
 - Business relationship at stake
 - Reputation/public relations/stock price
 - Repetitive claim/floodgates issue/class action
 - New product under scrutiny
 - New or existing legal precedent
 - Technical issue, e.g. intellectual property
 - Location of proceedings: forum, venue, jury issues
 - Industry concerns; possible co-defendants
 - Possible criminal liability; corporate governance; compliance; government oversight; RICO
 - International matter, FCPA, or foreign political concerns
 - High level executive testimony required

2. Assess opponent's likely priority business concerns and interests

- Protecting Sensitive Data
- Legal (*E.g., Precedent; PI; etc.*)
- Economic: Short Term, Long Term
- Timing
- Relationships (including confidentiality)
- Reputation
- Psychological (*E.g., understand occurrences; receive apology; be heard by authority figures; vindicate action; clear name; change policies for others in similar situation; etc.*):
- Other:

NOTE: Identification of mutual concerns and interests may lead to dialogue with opponent and possible Early Case Resolution through collaborative negotiation.

D. LEGAL ASSESSMENT (*Consider attaching decision-tree or similar analysis, if appropriate, and reference time frames, and costs of phases of adjudication*)

- 1. Ascertain and narrow scope of claims and defenses**
- 2. Conduct risk assessment of each claim and defense**
- 3. Estimate possible damages spectrum, identifying probable point**
- 4. Identify additional information necessary to pinpoint damages**
- 5. Determine whether and type of damages experts that will be required**
- 6. Determine best estimate of:**
 - Outside counsel fees
 - Other litigation expenses and “hard” costs
 - Anticipated expenditure of internal resources and “soft” costs, including
 - In-house lawyer time
 - Business professional time
 - Witness time

E. FORUM & ADVERSARY FACTORS

1. Forum

- Judge's profile (*including circuit or state court rulings out of sync with majority on relevant issues*)
- Potential jury pool
- Mediator's profile
- Arbitrator's profile

2. Opposing counsel

- Reputation or experience of opposing counsel:
 - Negotiation reputation
 - Trial reputation
- Counsel's incentives to settle early
- Similar claims litigated against the opposing lawyer? What was outcome and what approach was used by opponent?

3. Opposing party

- Any on-going business relationship with adversary (*Anything over \$_____ requires business or other higher level approval of case strategy*)
- Specify financial and legal resources of the adversary
- Immediate needs of adversary that might support use of an early settlement process (*E.g., financial crisis; etc.*)

F. RISK MANAGEMENT ANALYSIS

1. Legal hold notice issuance, date and list of recipients

- Documents
- E-mails
- Length of hold; renewal reminders
- Expansion of document custodians

2. Insurance (*Attach relevant insurance contract provisions, if appropriate*)

- Is the claim insured or self-insured
- If insured, has the carrier been notified? Has the carrier accepted coverage, disputed coverage or issued a reservation of rights?
- If the carrier has not been notified, who is responsible for giving notice and when will notice be given?
- Have all potentially applicable policies been located?
- Who is responsible for locating all potentially applicable policies?

G. CASE COST/BENEFIT ANALYSIS (*Consider attaching decision-tree or similar analysis, if appropriate; consider inserting appropriate data on Executive Summary*)

1. Define successful resolution from business perspective

2. Assessment of disposition strategies

Disposition Strategy as Applicable	Percentage Likelihood of Success/Loss	External Legal Costs	Internal Costs High (H); Medium(M); or Low(L)	Time to Complete	Strategy Advances Priority Business Concerns or Not?
Dispositive Motion					
Negotiate (without any mediator)					
Mediate (with a mediator)					
Arbitrate					
Discovery or E-Discovery & E-Discovery Vendor Use, if any	N/A				
Trial <i>(See Section D, above)</i>					
Other: Dual Track; Appeal; etc.					
TOTALS					

3. Recommended strategy

4. Recommended settlement value (for use whenever settlement opportunities arise)

H. SETTLEMENT PATH ANALYSIS

1. Review negotiation history and current demand/offer

2. Assess settlement barriers to determine if mediation rather than unassisted negotiation is warranted (utilize CPR's ADR Suitability Screen if needed)

The following common settlement barriers can be effectively addressed via mediation:

- Unassisted negotiations have already failed
- Communication difficulties and past history foreclose dialogue
- Emotional barriers to settlement exist between parties or counsel
- Psychological barriers exist such as partisan perceptions, attribution biases, face-saving needs, reactive devaluation, etc.
- Process barriers exist such as no settlement event, lack of settlement authority, positional bargaining limitations, etc.
- Cultural barriers to effective dialogue exist
- Merits barriers exist such as unrealistic expectations, insufficient key information to settle, etc.

The following more difficult settlement barriers often foreclose settlement but even these barriers have been overcome in mediation:

- Fundamental corporate or other principle at stake that cannot be settled
- Need for new precedent is critical
- Managerial responsibility at center of matter including corporate finance or reorganization cannot be settled
- Public message needed including defending claims that may open the floodgates to similar claims
- Public vindication sought
- Extreme power disparities between parties foreclose ability to bargain
- Absence of resources that can be used for trade-offs in negotiation

3. Plan negotiation or mediation strategy to advance interests and business concerns

4. Plan adjudication route if settlement path is not successful in the short term

I. CONSIDER RESERVES

APPROVAL

SUBMITTED BY: _____

Date: _____

APPROVED: _____

[CLIENT]