## Early Case Assessment Resource Checklist

As today's corporations work to manage litigation costs and improve outcomes, early case assessment (ECA) is taking on an increasingly critical role. ECA helps litigation teams answer questions like these:

- What are the strengths and weaknesses of this case (the allegations, potential damages, opposing counsel, discovery problems, etc.)?
- Should we file, settle, go to trial or pursue another course of action?
- If we decide to pursue settlement, what is a reasonable settlement range?
- What is the average verdict range for similar cases in this jurisdiction?

More and more legal teams find that adopting a systematic early case assessment approach helps them deliver more value to their organizations. With that in mind, LexisNexis has worked with numerous law professionals and consulted guidelines to develop this resource checklist organized according to the ECA elements listed to the right.

On the following pages, you will see ECA phases divided into steps and matched with specific tools to help you streamline assessment of your cases and ensure you are not missing anything critical. Major Elements of Early Case Assessment

- 1. Case or matter identification and communication with in-house counsel.
- 2. Informal fact development.
- 3. Legal analysis.
- 4. Risk management analysis.
- 5. Cost/benefit analysis.
- 6. Going-forward strategy.

#### THE TEAM

In-House Counsel:

Outside Counsel:\_\_\_\_\_

Business Unit Responsible: \_\_\_\_\_

Business Unit Contact: \_\_\_\_\_



# 1. Case or Matter Identification and Communication with In-House Counsel.



Describe case or matter (type of case/practice area, key issues, etc.).

Consider whether anything makes this case special or unusual from the perspective of the corporation's management, the business unit involved, public relations, the Law Department or others.

Identify the case or matter's stage of development (e.g., has litigation or arbitration been filed/initiated).

Determine contractual requirements.

Identify counsel team.

List named defendants (parent or subsidiary, officers, directors, customers, vendors, etc.).

Set up automated Web or e-mail alerts, if desired, to keep the team up to date on filings and relevant news developments.

## RECOMMENDED TOOLS AND RESOURCES

**CaseMap® case analysis software:** Create a Cast of Characters list.

#### CourtLink® Alerts:

Set up nature of suit and jurisdiction-specific Alerts on the assigned judge, opposing counsel and other parties to uncover similar cases that may be relevant to the development of your case strategy.

#### LexisNexis® Alerts:

Receive e-mail or online updates on news and business developments related to the issues of your case.

#### Shepard's Alert®:

Stay on top of new decisions and changes in the precedential status and treatment of related cases.

#### Martindale-Hubbell®:

Review outside counsel credentials with information provided through in-depth profiles, objective ratings and other resources to easily compare lawyers or firms.

## 2. Informal Fact Development.



Review hard-copy and electronic internal documents including transcripts.

Consider unknown or unavailable information and consider ways to acquire it.

Discuss your team's views.

## RECOMMENDED TOOLS AND RESOURCES

#### CaseMap<sup>®</sup> Suite:

Use CaseMap to create a central respository, organizing facts, documents, cast of characters and issues along with legal and investigative research. Additionally, create electronic transcript databases and develop timelines.

#### TextMap® transcript management software:

Review transcripts and testimony from your past cases to determine optimal ways to approach issues and which expert witnesses may strengthen your case.

#### CaseMap case analysis software:

- Complete CaseMap Client Intake Interview Jumpstart form and import into CaseMap case file.
- Create Cast of Characters list in CaseMap.
- Review effective fact patterns and analysis used to achieve positive outcomes in similar cases you have managed.
- Create an issue outline.
- Evaluate and sort facts by disputed vs. undisputed and material vs. immaterial, "for us" vs. "against us," etc.

#### Concordance<sup>®</sup> discovery management software:

Search, review, organize, produce and share discovery documents—scanned paper, e-mail and other e-discovery—including foreign-language documents.

#### Concordance<sup>®</sup> FYI<sup>™</sup>:

An extension of Concordance software, collaborate in real time from anywhere. Search, review, organize and analyze discovery documents while securely accessing them via the Web.

#### lexis.com®:

Set up Alerts available through *lexis.com* to monitor similar cases that may be relevant, news and business developments, and new decisions or changes to the precendential status and treatment of related cases.

## 3. Legal Analysis.



Conduct legal investigation, including statutes of limitations, jurisdictional issues, legal issues, case law and legal obstacles.

Perform key player analysis, including expert witness credibility, judge ruling history, opposing counsel characteristics, litigation history, litigant litigation tendencies.

Investigate facts, including background details, chronology, cast of characters, relevant documents and factual inconsistencies.

Consider claims and defenses.

Determine damages.

Assess venue.

## RECOMMENDED TOOLS AND RESOURCES

#### Expert witness content at lexis.com:

Count on published and unpublished depositions, jury verdicts, settled cases, and courtroom transcripts. With LexisNexis®, you get 175,000+ full-text depositions and trial transcripts.

#### LexisNexis® Expert Witness Profiles:

Gain the ability to discredit your opponent's expert and evaluate a potential expert witness—all from one report that draws from the largest collection of expert witness information.

#### LexisNexis® Verdict & Settlement Analyzer:

Gain insight into success factors, access meaningful visual analytics, assess the jurisdiction and quantify judgments and awards.

#### LexisNexis® Dossier:

Get business background including structure, strategic direction and financial information from reports that draw on sources covering 45 million public and private companies, 58 million executives, and more than 1,200 U.S. industries.

#### LexisNexis® 50-State Surveys

Determine jurisdictional issues using state surveys that provide compilations of key information about important legal issues across all 50 states and/or key international jurisdictions.

#### CourtLink Strategic Profiles:

Uncover the litigation history, judgment data and trends of an opposing party, attorney or law firm and judge assigned to a case, drawing from a comprehensive collection of state and federal court records.

#### Other relevant content at lexis.com:

Easily find relevant cases, codes, practice guides, journals, news, public records and more that may impact your case.

#### Lexis® for Microsoft® Office

Perform research and draft analysis by integrating the legal research process into your emails and documents. Lexis® *for* Microsoft® Office provides direct links to information relevant to your work product directly within Microsoft Outlook® and Word.

#### "Send to CaseMap" links:

Keep vital case information at your fingertips. More than 30 products, both LexisNexis and others, have "Send to CaseMap" functionality, including Microsoft Word and Outlook now with new CaseMap 10.

### 4. Risk Management Analysis.

- Gather and collect relevant information prior to production or review to gain key insight into the size and scope of discovery documents.
- Examine past, similar cases to help determine the level of risk or opportunity for your case. (*See page 4*, Lexis<sup>®</sup> for Microsoft<sup>®</sup> Office, to learn more.)
- Place and manage legal hold on potentially responsive documents (paper and electronically stored information).
- Determine if parties of claim are insured, whether applicable policies have been located and whether notice has been set to all carriers potentially at risk.

Analyze a reduced set of discovery documents to determine potential risk.

## RECOMMENDED TOOLS AND RESOURCES

#### LexisNexis® Early Data Analyzer

Gain insight into the size and scope of your e-discovery data sets—at the earliest possible point—to reduce the amount of data that needs to be stored, processed and ultimately reviewed, delivering *huge cost savings*.

#### LAW PreDiscovery<sup>™</sup> software:

Once you've culled your initial data set using Early Data Analyzer, send the smaller data set to LAW PreDiscovery to refine even further. LAW PreDiscovery helps you efficiently prereview and cull non-responsive data from your e-discovery and scanned documents prior to full review, and allows you to quickly assess the amount of discovery in a case.

#### LexisNexis® Verdict & Settlement Analyzer:

Uncover the level of risk or opportunity associated with a particular suit by evaluating similar past cases and jurisdictions from a single, aggregated source using helpful visuals and the largest collection of verdicts and settlements.

#### LexisNexis® news, legal and public records

Retrieve an impressive depth and breadth of reliable information that will help you analyze past cases that are similar to your case and determine the outcome; search an expansive set of news sources to uncover settlements outside of court by potential parties; comments or articles about parties or individuals and past associations; and determine valuation or possible risks associated with entities or individuals from public records information.

## 5. Cost/Benefit Analysis.

Define business success.

Identify the worst possible risk of losing.

Assess disposition strategies and costs.

Determine the value of the case by consulting similar case verdicts, settlements and resolution time frames, plus jurisdictional analysis.

Estimate and minimize document review costs.

**TIP:** Consider drafting a decision tree or similar analysis to strengthen your cost/benefit analysis.

## RECOMMENDED TOOLS AND RESOURCES

#### LexisNexis® Verdict and Settlement Analyzer:

Gain insight into success factors, access meaningful visual analytics, assess the jurisdiction, and quantify judgments and awards. Assess risk, quantify judgments and awards and identify potential settlement values.

**CaseMap:** Review case facts collected in one place for clear analysis.

#### TimeMap<sup>®</sup> timeline graphing tool:

Transform litigation details into visual timelines to uncover factual gaps and inconsistencies that may contribute to risk or potential success.

#### CourtLink:

Search for judgments within CourtLink dockets and help further determine the possible range of values.

#### "Send to CaseMap" links:

Keep vital case information at your fingertips. More than 30 products, both LexisNexis and others, have "Send to CaseMap" functionality, including Microsoft Word and Outlook now with new CaseMap 10.

## 6. Going-Forward Strategy.

Determine settlement or litigation strategy.

Complete executive summary.

Secure resolution authority.

Conduct effective discovery management.

Evaluate trial strategies and define likely stages.

### Additional Resources:

View a recent on-demand recorded Webinar "Early Case Assessment and Settlement Strategies for In-House Counsel" (*http://law.lexisnexis.com/webcasting/ Userprofile.aspx?multimedia\_id=60559&campaign\_id=2020&jcm\_pc=151500*).

Our thanks to the following contributors for lending their expert insight and knowledge to this project:

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## For more information, call **800-543-6862** or contact **LexisNexis**<sup>®</sup>.



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## RECOMMENDED TOOLS AND RESOURCES

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#### Concordance discovery management software:

Search, review, organize, produce and share discovery documents—scanned paper, e-mail and other e-discovery—including foreign language documents.

#### Concordance FYI:

An extension of Concordance software, collaborate in real time from anywhere. Search, review, organize and analyze discovery documents while securely accessing them via the Web.

#### The CaseMap suite:

- **CaseMap** enables you to identify and link facts, legal issues and parties involved in each case, and store them in specialized relational spreadsheets for ready access, analysis and reporting. Flexible filtering helps you see how any person, fact or issue relates to the other elements of your case.
- **TextMap** generates a searchable database of electronic transcripts from case depositions, examinations and other proceedings. Send transcript summary passages directly from TextMap to CaseMap.
- **TimeMap** makes it easy to produce legal timeline visuals for exhibits at mediation and trial and then send those timelines to CaseMap.

#### lexis.com:

Search and validate case law and gain guidance from authoritative treatises. Send to CaseMap.