



2015 CLM Annual Conference  
Palm Desert

**Decision-making trees for optimizing and streamlining  
litigation management for professional lines and EPLI claims**

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Litigation management is about obtaining Excellent results without compromising Economy and Efficiency (the “3E’s”). This presentation educates the attendee on how to obtain the 3Es with decision-making processes which will lead to conditioning the attendee to focus and obtain the 3Es in his/her practice or company. The presentation will focus on the creation of Resolution Strategy decision making trees as well as identifying Red Flag issues to assist the attendee in identifying instances where the litigation may be going off the Resolution Strategy track.

**I. Excellence/Economy/Efficiency**

The Holy Grail of litigation management is achieving an excellent result in an economic and efficient fashion. Contrary to popular belief, these terms, the “3 E’s, are NOT mutually exclusive. An excellent result is not easily defined. Many times, it needs to be set on a case by case basis. Even so, each company (corporate defendant or insurer) should have a philosophy of how an excellent result looks to them. Further, each outside counsel representing said corporate defendant or insurer’s interests should have a crystal clear understanding of the client’s litigation philosophy and the expectations both a macro and micro level. What we learn is that a Great result many times should be considered 3 dimensional. It involves an excellent legal result AS WELL AS economy and efficiency. The process to establish the definition of a great result, begins with early evaluation and budgeting and serious “Resolution Strategy.” Once the Resolution Strategy is set out, we then need to stick to the Resolution Strategy unless there is a very serious and justifiable exception.

The 3Es are not achieved overnight. It is important to have processes in place in order to achieve them. The processes that are most important focus on hiring the right counsel and then, training them to evaluate cases and make decisions/recommendations consistent with your litigation philosophy—in effect, implementing decision making trees.

**II. Great Results Require Counsel Retention Process—It takes a Unique  
Legal Skill Set to Deliver the 3Es**

Not all lawyers are created equal. Lawyers have varying levels of ability in the multitude of talents expected of them when they handle a case. Yet, companies focus on specific talents many times related to specific needs. For example, if you had a very important case that you knew was going to trial, you would hire a lawyer with a **PROVEN** record of success at trial. If you had a very important case before an appellate court, you would retain a lawyer with a **PROVEN** record of excellence in the appellate arena.

You need to realize that achieving the **The 3 Es** also takes a very unique skill set. This skill set that requires excellence in persuasion, negotiation, and advocacy. Just like every lawyer is not a great trial lawyer or appellate advocate, it takes a unique lawyer to execute **The 3 Es**.

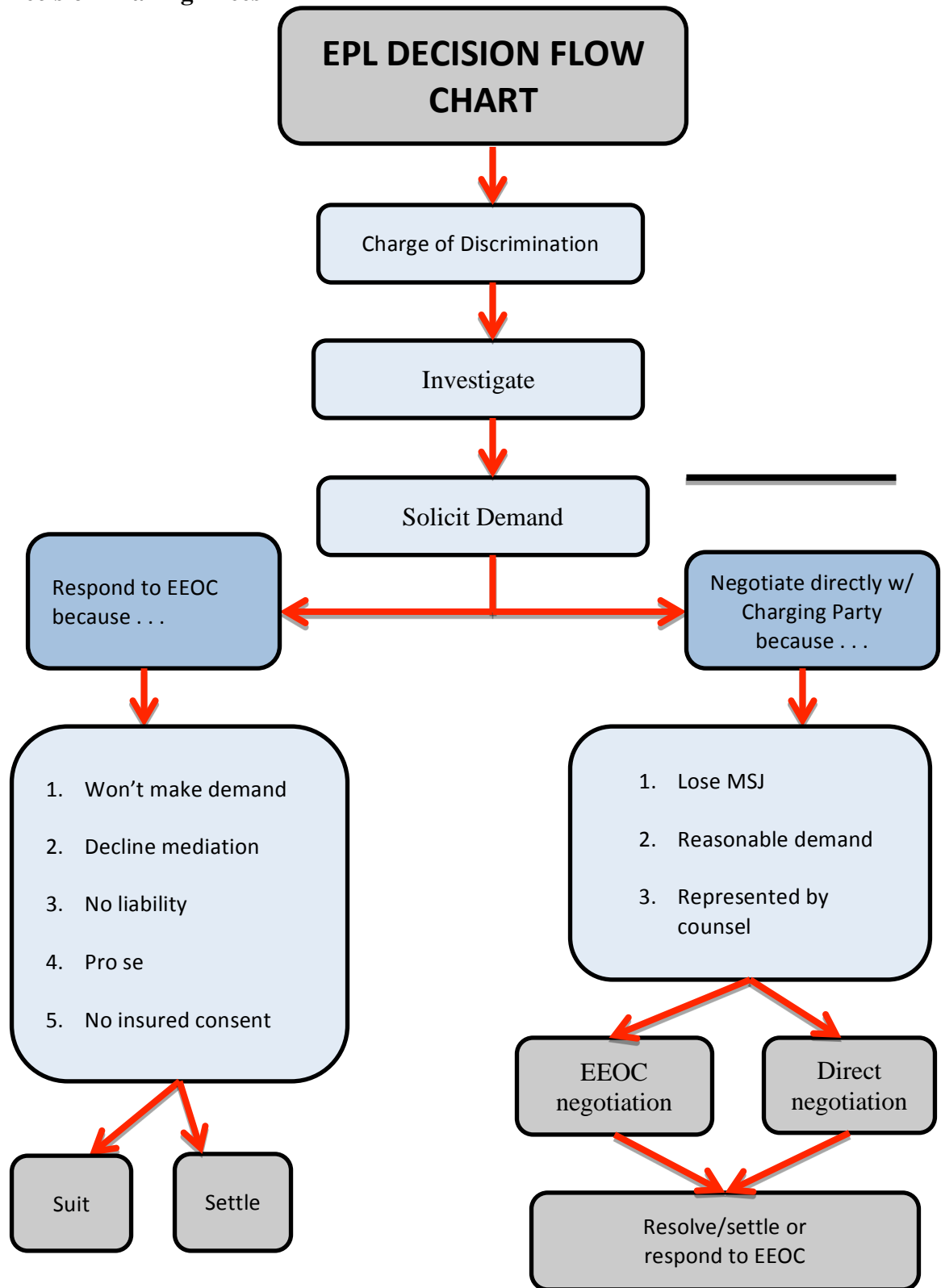
The next question is how do we find this unique lawyer? We all are in the evidence business. In evaluating claims, we look for and evaluate evidence on every level. We then make our litigation management decisions based on such evidence. Meanwhile, the person at the forefront of collecting the evidence, evaluating the evidence, and implementing the plan is your counsel. Hence, it is imperative that you retain counsel that has a **PROVEN** track record in implementing "**The 3 Es**." In effect, request **EVIDENCE** of this fact. Again, you want evidence because it takes a unique skill set for a lawyer to deliver **The 3s**.

In sum, request that counsel provide you a Scorecard of the last 20 claims he/she has handled demonstrating things important to your company such as:

1. % of Claims Withdrawn Without Litigation;
2. % of Claims Resolved Pre-Litigation;
3. If case is litigated, % of MSJs Won;
4. % Number of Days Claim is Open;
5. % Attorney Fees Per Claim;
6. % Indemnity Pay out per Claim.

Also, have counsel provide attachments where applicable. In effect, the Scorecard will provide you with objective data related to counsel's commitment to and unique ability to deliver **The 3 E's**. For example, if the Scorecard shows that only 10% of claims are going into suit, that counsel has gotten several charges outright dismissed without indemnity or suit and the average Legal and Indemnity payout is \$15,000, this certainly means one thing. On the other hand, if the Scorecard shows that a large majority of counsel's cases end up in suit and then, his/her clients prevail on MSJ a minority of the time, but he/she has won 2 trials at an average cost of \$120,000, this should tell you something as well. It will then be up to you to determine how these lawyers fit in to your Great results paradigm.

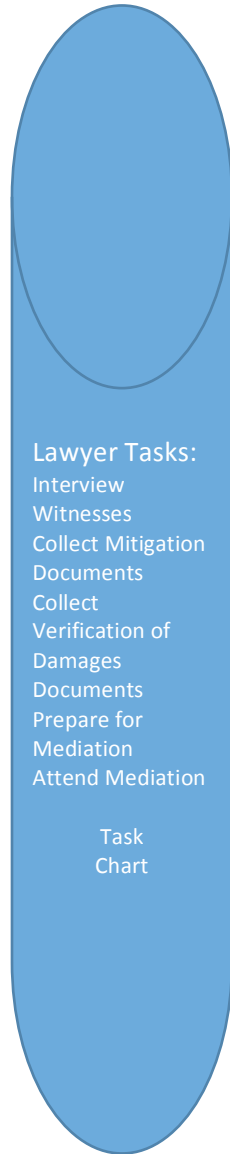
### III. Decision-Making Trees



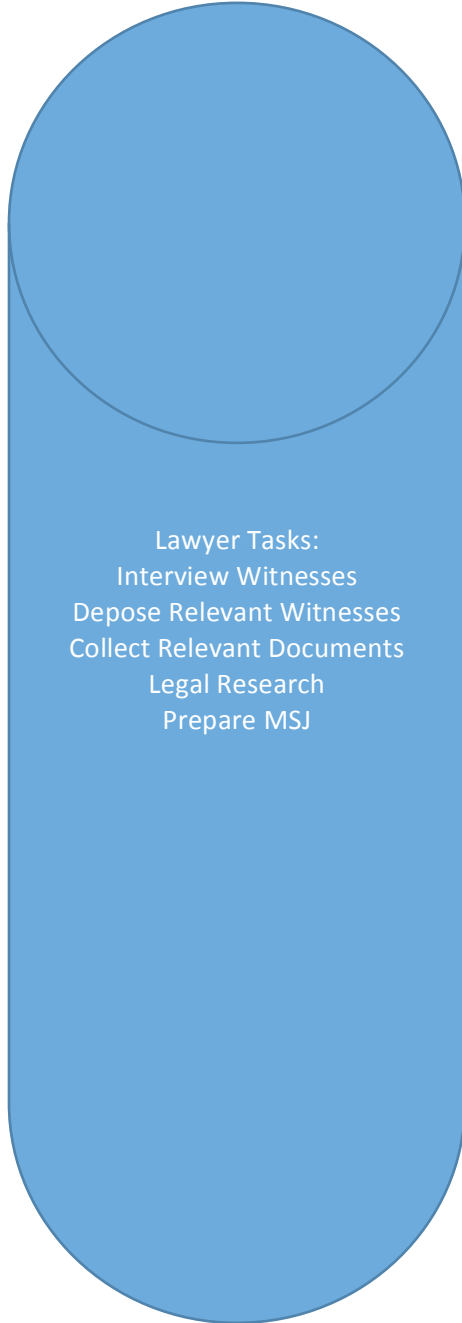
# RESOLUTION STRATEGY TRACK

## LEGAL FEE & TIMELINE

CASE  
ASSIGNMENT



CASE  
ASSIGNMENT



CASE

ASSIGNMENT



EDIATION MSJ TRIAL

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E/O DECISION  
FLOW CHART



Claim/Suit



Investigate



Solicit Demand



Resolution  
Strategy



Ignore  
(Claims)  
Because...

- Frivolous Case
- Claimant not Represented
- Insured won't Consent
- Demand Unreasonable

Settle  
Because...

- Reasonable Demand
- Likely liability
- Cost of defense Value
- Insured Litigation Avoidance

Mediation  
Because...

- Need Neutral
- Free Discovery
- Benefits of Mediation

Motion to  
Dismiss  
Because...

- Frivolous Case
- Technical Defense (S.O.L./Jurisdiction, etc.)

Motion for  
Summary  
Judgment  
Because...

- Case on Point
- Leverage to Settle

Trial  
Because...

- Unlikely Liability
- Demand Unreasonable
- Insured Won't Consent