

Dispute Navigation Analytics (DNASM): The Next Generation of Early Case Assessment



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As sophisticated consumers of litigation services, clients increasingly demand more predictability and up-front analysis from their outside counsel when evaluating specific matters, as well as full litigation/dispute portfolios. While the concept of early case assessment (ECA) is hardly new, the reality is that what served clients well in the early days of ECA was often little more than a back-of-the-napkin exercise, discussed over lunch and executed with a handshake. While many firms and clients may wax nostalgic for those rose-colored days, we all pretty quickly take off those glasses with the recognition that the mission-critical business of legal services demands better control and precision.

With this in mind, several years ago Duane Morris began to build upon traditional ECA methodologies and services, with the goal of moving well beyond the market and the traditional ECA approach while also meeting client needs for cost containment and improved insights on litigation outcomes. Harnessing our collective litigation experience through technology, Duane Morris developed Dispute Navigation Analytics (DNASM), the next generation of early case

assessment. DNASM evaluates the qualitative and quantitative elements of litigation early in the dispute life cycle to give clients insights, based on hard data in the form of real-life case information, to help guide business decisions. Through a step-by-step analysis of the broadest range of factual and legal issues facing clients in litigation, DNASM allows our clients and our attorneys to have a better understanding of potential costs, risk exposure and outcome probabilities.

How DNASM Works — Art and Science Unified

DNASM uses both a qualitative and quantitative approach to analyzing litigation. The DNASM tool first identifies the issues with greatest influence on probable outcomes. DNASM then applies a cost-impact evaluation in real time for each successive phase of litigation. DNASM systematically accounts for a range of factors, including potential compensatory and punitive damages based on existing precedent; the identities of the adversaries and their attorneys; jury dynamics and demographics; the number of potential key witnesses; cost of discovery and e-discovery; result and cost outcomes of similar litigations; and any available intelligence on the local bench.

In other words, DNASM brings efficiency to the dauntingly cumbersome and complex litigation process, which isn't easy to do. And that's precisely why a lot of lawyers and most law firms have not codified their ECA system: They haven't marshaled the resources, case histories or data sets to inform the entire process.

DNASM also addresses indirect but key factors, such as the cost of reputational problems the company might face as a result of the litigation; the impact on customers, shareholders and employees; and the client's relationship with its banks, financial institutions and other business partners as a result of the litigation.

DNASM's final analysis gives both Duane Morris and its clients real insights and data to guide the decision on whether to pursue litigation or seek alternative methods for settling the dispute.

Results — Cracking the Code

We knew we were addressing a widespread need for improved litigation cost predictability, and the market responded accordingly. As The BTI Consulting Group has noted, while the number of litigation matters is surging,

spending remains flat. "[W]e see more aggressive and widespread use of early case assessment (ECA) as a cost management tool. The combination of ECA, alternative fees, budget enforcement, alternative staffing and a focus on settlements convinces corporate counsel they can manage the new surge in matters with minimal, if any, spending increase. ... Law firms who can develop a protocol to help clients evaluate and triage new matters on a continuing basis are best positioned to turn the surge into business."

For Duane Morris, DNASM helps us help our clients in ways they never imagined. By arming the legal department with data-driven recommendations on litigation, they are able to up the ante and the discussion with the C-suite and the board. The proof of the pudding is in the eating, as they say, and recently DNASM was cited by a new client as a key factor in helping us secure a significant, nine-figure piece of litigation.

With DNASM, we have sophisticated analytical tools at the ready, giving our clients real-time, end-to-end cost management visibility. Our continual goal is to give our clients unparalleled insight and control over the cost of litigation throughout the entire litigation life cycle and before litigation even begins — DNASM helps us crack that code.

