



CPR

International Institute for
Conflict Prevention & Resolution

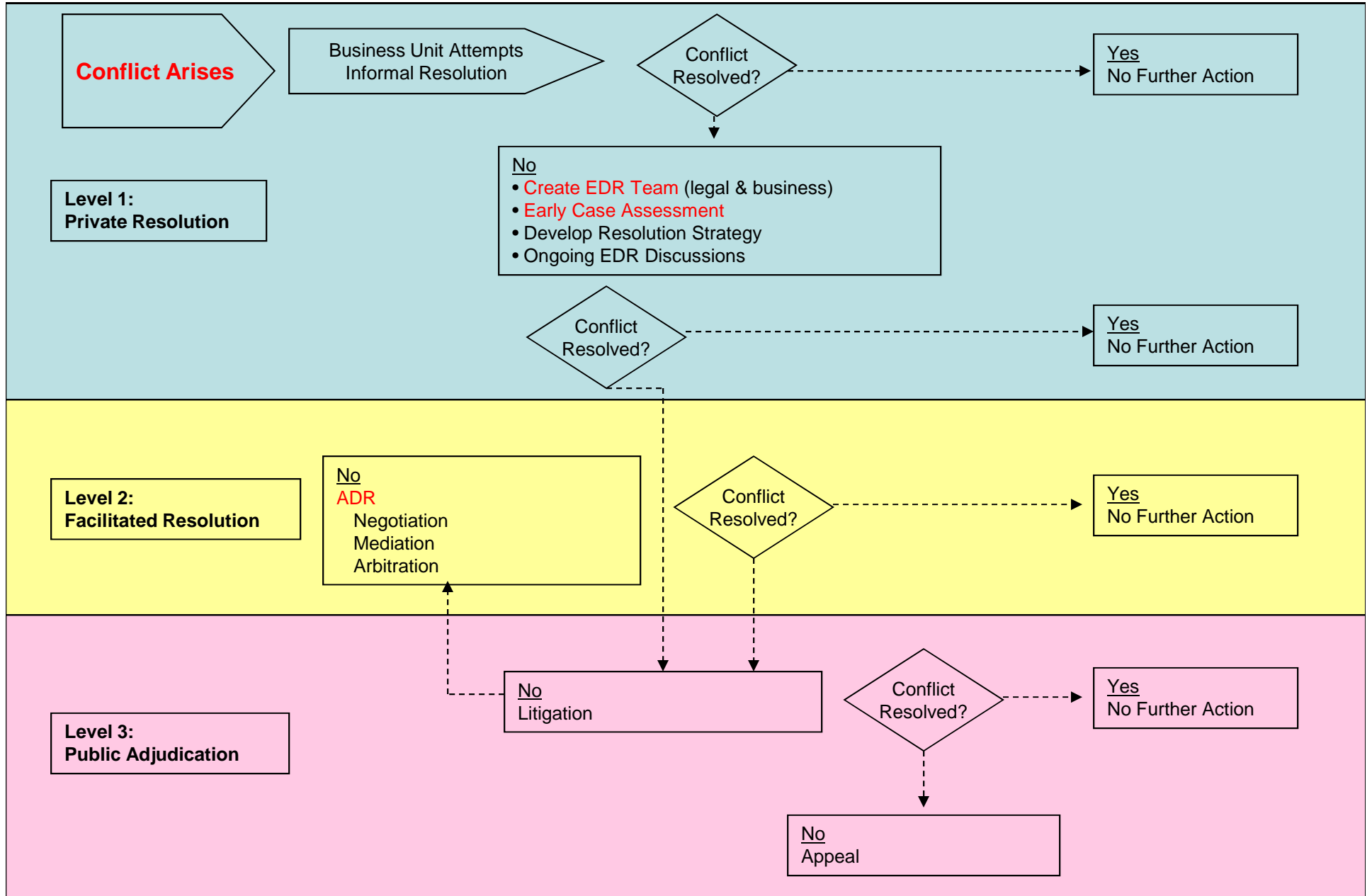
EARLY DISPUTE RESOLUTION

Overview and Model Rollout Presentation

Key Elements of EDR Programs

- Model Process
- EDR Indications
- Creation of the EDR Team
- Early Case Assessment
- ADR Issues to Consider
- Develop ADR Plan
- Approaches to ADR Metrics
- “Plain English” Metrics

Model EDR Process



Conflict Arises

EDR Indications

- The conflict is a threat to existing business relationships
- The conflict poses a regulatory or financial risk to the business
- The conflict is a threat to corporate reputation
- The conflict is part of an emerging pattern
- Unable to resolve conflict informally

Create EDR Team

Business or legal colleague **notification** to litigation group

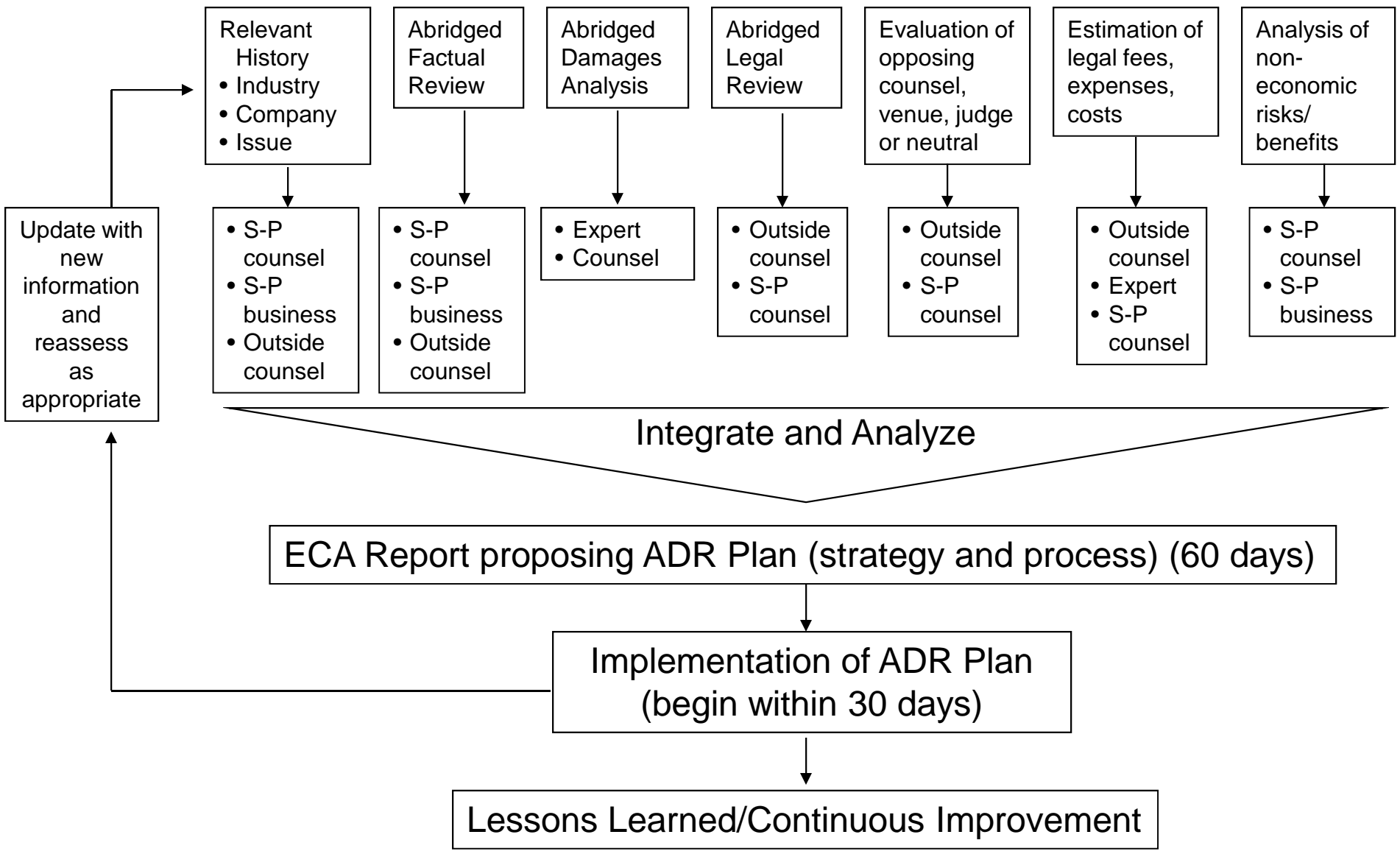
- Litigation counsel performs **preliminary case assessment** (10 days)
 - nature of dispute
 - apparent amount at risk
 - business and/or regulatory issues
 - identification of stakeholders
 - document retention issues
 - risk Management notification, if necessary
 - regulatory/CIA reporting obligations
- **Litigation counsel assembles team** members, as necessary
 - **business contact**
 - **subject matter expertise within business**
 - outside counsel
 - outside expertise

**Create EDR
Team
(cont.)**

- **Perform Early Case Assessment if:**
 1. Financial risk over company threshold
 2. Major Corporate Reputation Issues
 3. Major Precedent Issues
 4. Potential Pattern – e.g., Mass Tort
 5. Corporate Reserve, or
 6. Discretion of Litigator
- **Develop Resolution Strategy**
 - What is the optimal mix of direct negotiation, facilitated resolution and litigation?
 - Are all of the necessary elements in place?

Early Case Assessment

EDR Team identifies **Tasks**, develops **Timeline** and Assigns **Responsibilities** to address **Key ECA Elements**



ADR

Issues to Consider

Is ADR right for the case?

- Is the issue one that can be compromised?
 - Core business issues
 - Products
 - Scale

No

- Continue with litigation
- Identify future opportunities to reconsider ADR

Is ADR process available?

- Contract term
- Court requirement
- Ability to steer to EDR absent requirement

No

- Continue with litigation
- Identify future opportunities to reconsider ADR

Are necessary elements in place?

- Have essential facts been developed?
- Have potential damages/value been analyzed?
- Has business bought into the process?
- Has settlement authority been granted?

No

- Develop plan for getting necessary elements in place
- Develop timeline for moving forward with ADR

Yes

Develop ADR Plan

ADR

Develop ADR Plan

Determine form of ADR best suited to case/issue

Facilitative Mediation:

- +
 - most flexible
 - decision by parties
 - least risk of unacceptable outcome
 - least expensive

△

-
- can't force issue to resolution

Evaluative Arbitration:

- +
 - existing formal frameworks
 - decision assured but must be accepted
 - low risk of unacceptable outcome

△

-
- more time-consuming
 - more expensive

Binding Arbitration:

- +
 - formal framework
 - decision assured

△

-
- decision imposed and final
 - time consuming
 - most expensive
 - can be the worst of all worlds

ADR

Develop ADR Plan

Identify/Choose Mediator/Arbitrator(s)

How many?

- One (mediation)
- Three (arbitration)
- Is choice predetermined?
 - by contract
- If not, key factors:
 - Level of experience (in general/with issue)
 - Judgment
 - Ability to maneuver/push issues to closure
 - Ability to identify blocking issues and develop a process for resolving them
- Can you live with opponent's choice?
 - for mediations, this can make a big difference

Approaches to EDR Metrics

- Six Sigma/Extensive use of Statistical Tools
- Fully Developed Metrics/Less Statistically Oriented
- Beginning at the Beginning
 - “Plain English” Metrics

“PLAIN ENGLISH” EDR METRICS

- Six Sigma requires resources that are not always available
 - Statisticians
 - Blackbelts
 - Greenbelts
 - Training
- Quality metrics are not contingent on the availability of Six Sigma resources

“PLAIN ENGLISH” EDR METRICS

- The key to quality metrics is to begin by focusing on function
 - Caseload management
 - “What gets measured gets managed”
 - Communication
 - Where we are
 - Where we were
 - Where we are going

Function + Objectives = meaningful metrics

“PLAIN ENGLISH” EDR METRICS

- Objectives
 - Enable management of processes to quality outcomes
 - Establish meaningful and reliable benchmarks
 - Understand “success” and “failure”
 - Facilitate consistency
 - Enable “early warning”
 - Enable continuous improvement

Meaningful Metrics Demonstrate Value

“PLAIN ENGLISH” EDR METRICS

- Practical pointers for developing caseload management metrics
 - Should the caseload be managed as a whole or are there good reasons to subdivide?
 - Core Business Issues
 - Plaintiff or defendant
 - Specialty subjects
 - Patent
 - Employment

“PLAIN ENGLISH” EDR METRICS

- Practical pointers for developing caseload management metrics (cont.)
 - Where are you seeking performance improvements
 - Volume
 - Time
 - Costs/savings
 - Counsel costs
 - Settlement costs
 - Results

“PLAIN ENGLISH” EDR METRICS

- Practical pointers for developing caseload management metrics (cont.)
 - What are the factors that appear to drive outcomes
 - Industry issues
 - Early case assessment
 - ADR
 - Fee structures
 - Counsel/expert performance

“PLAIN ENGLISH” EDR METRICS

- Practical pointers for developing caseload management metrics (cont.)
 - What are the available sources of data
 - Budget process
 - Matter management systems
 - “Significant Litigation” reports
 - Satisfaction surveys
 - If the data you need is unavailable, think of tools to generate it, but remember
 - ***Perfection is the enemy of the good***

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“PLAIN ENGLISH” EDR METRICS

- Communication--Using metrics to demonstrate value
 - Identify the audience
 - Management
 - Clients
 - Other stakeholders
 - Identify the message
 - What has meaning to the audience
- ***Meaningful metrics enable you to manage performance AND communicate the message***

