Litigation Interest and Risk Assessment

Help Your Clients Make Good Litigation Decisions

MICHAELA KEET, HEATHER HEAVIN, AND JOHN LANDE

Praise for
Litigation Interest and Risk Assessment:
Help Your Clients Make Good Litigation Decisions

Litigation Interest and Risk Assessment is an invaluable resource for both attorneys and their clients to understand the prevalence and causes of decision errors in litigation. The book presents a clear and practical methodology for improving the accuracy of their risk assessments. Its comprehensive and unique treatment for overcoming decision errors should be mandatory reading for new and seasoned lawyers alike as well as for law students. It will help them improve their lawyering skills and get better results for clients by better understanding and minimizing common mistakes in judgment.

Peter W. Benner, mediator, arbitrator, and dispute resolution consultant

Litigation Interest and Risk Assessment is an essential tool for lawyers who wish to provide assistance on multiple levels to their clients. It provides a straightforward, no-nonsense approach to client service. I would recommend this book both to experienced advocates and those new to the concepts of dispute resolution.

Sarah R. Cole, John W. Bricker professor of law and director of Program on Dispute Resolution, Moritz College of Law, The Ohio State University

Litigation Interest and Risk Assessment will help professionals and their clients make better decisions about litigation and settlement. Lawyers can use it to facilitate many of their conversations with clients and serve them better by presenting them with assessments that surpass guestimates regarding case outcomes. Mediators can use it to help parties to candidly consider their alternatives. Perhaps its most important contribution is internalizing the intangible costs of litigation—the litigation stress, mental preoccupation, and organizational distraction that impact clients' well-being and decision-making—into the initial risk/value assessment of a case, rather than ignoring it or noting it as a vague addendum.

Noam Ebner, professor of negotiation and conflict resolution, Creighton University

This is a rare text focused on how lawyers and mediators can help your clients understand the risks and opportunities at different stages of a dispute. It offers a methodical and realistic framework for conducting these challenging discussions. Senior lawyers, junior lawyers, mediators, and law students would all benefit from this book.

Brian Farkas, adjunct professor, Cardozo School of Law

Litigation Interest and Risk Assessment should be required reading for every lawyer and law student. Clients should demand to see a copy on their lawyer's shelf. We owe it to our clients to help them make good decisions about how best to pursue their legal claims. This book teaches us how.

Lainey Feingold, disability rights lawyer and author of Structured Negotiation, A Winning Alternative to Lawsuits

Litigation Interest and Risk Assessment provides practical tools to help clients develop smart litigation and negotiation strategies. Lawyers, mediators, and settlement conference judges will find valuable ideas in the book, as will law school faculty and students. It is clear, concise, and practical.

Stephen B. Goldberg, professor emeritus, Northwestern University School of Law; president, Mediation Research and Education Project, Inc.

You can read several books on counseling, negotiation, decision analysis, and mediation—or find a concise and readable guide to settling difficult disputes in a single unique book. *Litigation Interest and Risk Assessment* is so valuable because it seamlessly combines ideas and insights from multiple sources and different topics in one guide lawyers can use to work productively with their clients.

Dwight Golann, professor of law, Suffolk University, and scholar in residence, International Academy of Mediators

Lawyers suffer from a gaping hole in our educations—namely, the psychological dimensions of the work that we do. Keet, Heavin, and Lande's excellent manual addresses this gap by distilling a library's worth of research about how emotions impact our clients' decisions—and our own—regarding litigation, negotiation, and settlement. Their book is both wise and practical, with such useful features as checklists of questions that lawyers and mediators should be asking their clients in every case and clear examples of how to use risk analysis. This succinct manual should be required reading for both litigators and their clients.

David A. Hoffman, mediator, arbitrator, collaborative lawyer, Boston Law Collaborative, LLC

In remarkably short order, *Litigation Interest and Risk Assessment* summarizes much of best practice on advising clients about litigation. Significantly, it also addresses elements that are *not* yet part of typical practice, such as guarding against cognitive biases that routinely affect lawyers' as well as clients' judgment, and formulas to encourage more rigorous risk assessment. The result is not only an absolutely essential tool for any lawyer whose client may end up in litigation but a surprisingly easy one to read and apply.

Chris Honeyman, managing partner, Convenor Conflict Management

Mediators would benefit from reading *Litigation Interest and Risk Assessment* regardless of whether they are attorneys. It would help them understand the great stress that parties often experience when they are in litigation and identify techniques to reduce parties' stress and help them make better decisions. Mediators who aren't attorneys would get greater insight into their perspectives and ideas about how to work effectively with them to benefit the parties.

Cheryl L. Jamison, former executive director, Association for Conflict Resolution

This book will be a hugely helpful resource for lawyers and mediators, as it is practical, engaging, and easy to read. The reference materials at the end offer practical tools that readers can easily customize for their practice.

Léa M. Lapointe, family lawyer, Saskatchewan

This is a short, easy-to-read, practical, inspiring book. It helps clients and litigators systematically analyze cases more accurately to develop more confident and realistic litigation and settlement strategies, decisions, and bottom lines. It also helps clients be more engaged by promoting higher quality attorney–client communications. And it helps neutrals because many of the tools and techniques can be used by mediators and settlement conference judges. In short, it is an invaluable guide to good, client-faced dispute resolution.

Michael Leathes, member of the Leadership Group of the International Negotiation Initiative, and author of Negotiation: Things Corporate Counsel Need to Know But Were Not Taught

The themes in this book are critically important and vastly under-recognized. Litigation is costly and can lead to adverse—sometimes devastating—results for clients, be they individuals or organizations. Choosing litigation should be done with eyes wide open! We are schooled to think of the costs of litigation in financial terms, but this book encourages the exploration of the important psychological, reputational, productivity and social costs of litigation—in some cases greater than the financial ones.

Lela Porter Love, director, Kukin Program for Conflict Resolution, Benjamin Cardozo School of Law

Litigation Interest and Risk Assessment is a valuable and practical contribution to decision making at a critical point in conflict. It's useful for lawyers and their clients, but also for those for whom the cost of representation has resulted in self-representation. It's full of useful tools, wonderful examples, and the voices of experience. And it's an easy read.

Bernie Mayer, professor of conflict studies, Negotiation and Conflict Resolution Program, Creighton University Graduate School, and author of The Conflict Paradox: Seven Dilemmas at the Core of Disputes

Bravo to Professors Keet, Heavin and Lande for assembling a useful, practical guide to using Daniel Kahneman's System 2 thinking to reach better decisions in settling litigated cases.

Lawrence R. Mills, mediator and arbitrator, JAMS

This is my kind of practice guide—succinct, practical, and user friendly without unnecessary surplusage. You will immediately "up your game" after reading it. Your clients will appreciate your insightful understanding of their interests and how you handle their cases effectively. My copy will not be gathering dust on a bookshelf like so many other negotiation books. It definitely will be one of my "go to" reference works that I will keep in my tool kit when preparing for and attending any mediation.

Paul F. Monicatti, co-founder of ADRoit Dispute Resolution, Strongbridge Negotiation Strategists, and the International Academy of Mediators

Litigation Interest and Risk Assessment fills a void in legal education with practical knowledge about risk analysis in dispute resolution. Everyone involved in the settlement of lawsuits should make use of this valuable resource. Clients will be grateful.

Michael Palmer, Legal Risk Management

The authors offer new and cutting-edge tools for making good risk assessments and good settlement decisions. This comprehensive, yet practical, guide to decision analysis will enable parties and their counsel to take greater control and make better decisions.

Bennett G. Picker, mediator and arbitrator

A masterfully thorough and well-researched book on an essential topic, with constructive ideas and practical suggestions in clear language.

Spencer M. Punnett II, author, Representing Clients in Mediation: A Guide to Optimal Results

A splendid guide for lawyers, judges, and mediators—clear, thoughtful, thorough, and grounded on extensive research, experience, and insight. I wish this had been available a long time ago.

Leonard L. Riskin, Harris H. Agnew Visiting Professor of Dispute Resolution, Northwestern University Pritzker School of Law, Chesterfield Smith professor emeritus, University of Florida Levin College of Law

In *Litigation Interest and Risk Assessment*, Michaela Keet, Heather Heavin, and John Lande provide an invaluable road map for helping parties and lawyers make smarter, more informed choices in the face of litigation. Helping parties see beyond their zero-sum framings and decision errors to envision better strategies should be the objective of everyone who wants more durable and just outcomes to cases filed in our judicial systems. The approaches this book outlines can open new vistas for how parties can best be assisted in a wide variety of different case types, helping individuals to take more control of their disputes and to get better outcomes.

Colin Rule, vice president of Online Dispute Resolution, Tyler Technologies

This important book pulls together interdisciplinary and practical research for helpful and realistic pointers. These are real things that real lawyers who work with real clients can do tomorrow.

Andrea Kupfer Schneider, professor of law and director, Dispute Resolution Program, Marquette University Law School

Litigation Interest and Risk Assessment shows why so many lawyers and clients do a poor job recognizing clients' interests and risks in litigation and it provides practical suggestions for helping clients make better decisions. It is a must-read for litigators who care deeply about their clients and want to help clients as they struggle to deal with their problems through the legal system.

Donna Shestowsky, director of Lawyering Skills Education and professor of law, University of California, Davis

Litigation Interest and Risk Assessment is a very useful addition to the literature, showing how judicial mediators can be more strategic in helping parties understand the financial and non-financial interests and risks involved in litigation. It provides a simple process framework to promote good communication, decision-making, and outcomes in litigated cases. This can enable parties to move more quickly towards a satisfactory resolution.

Superior Court Judge, Alberta Court of Queen's Bench

As a commercial mediator with 30 years' experience, I tell parties and lawyers that mediation provides the opportunity for everyone involved to make a good decision, all things considered. With this new book, Keet, Heavin, and Lande have provided a comprehensive road map to making those good decisions. It provides clear, concise, and well-organized content plus appendixes rich with practical tools that can be used every day. This book is a must-have for every litigator in Canada and the US.

Rick Weiler, commercial mediator and arbitrator, and
adjunct professor of law, Ottawa, Canada

Because of the increase in judges' roles as case managers, there are a growing number of circumstances where the approach in this book could help. It provides an approach to appraise risk. While, at times, judges are limited in what they can say about litigation outcomes, we can still help people identify risks and costs—and this conversation is just as important to have inside case management conferences, as in settlement conferences. The systematic approach in this book is another tool in the toolbox of anyone engaged in dispute resolution in the "shadow of the law."

The Honourable James Williams, Supreme Court of Nova Scotia

This compact, highly readable introduction to litigation interest and risk assessment is an essential addition to any lawyer's or mediator's library. Not only is it a useful primer for anyone tasked with settling a lawsuit (packed with functional checklists), it's a great reference resource for the many legal analytical tools that are becoming available. Even the most experienced lawyer will discover helpful reminders and guidance for ethical and effective settlement negotiation.

Douglas Yarn, professor, Georgia State Law, and executive director,
Consortium on Negotiation and Conflict Resolution