

HARNESSING THE POWER OF PERSUASION

DuPont's toxic tort experts bring in Litigation Insights for an extra edge.

With almost two decades of litigation experience as an in-house toxic tort attorney with DuPont, Janet Bivins has tried cases from coast-to-coast that have run the gamut from herbicides to computer chips.

The dollars at stake are large, the facts are complex, and the issues in question are emotional. Bivins has learned that even the slightest edge in messaging can be the difference between fast and cost-effective settlements versus long, expense and drawn out negotiations and trials.

When Bivins needs another set of expert eyes on one of her cases she hires Litigation Insights. Litigation Insights has helped her set the tone and develop effective messages to persuade judges, juries and opposing counsel.

"Delivering the right message, in the right way, is the difference between winning and losing," Bivins said. "I've trusted Litigation Insights with our toughest cases and they always come through for us."

A recent case in point: DuPont was able to secure a change of venue in a toxic tort case after Litigation Insights determined the community, and its pool of jurors, were just too biased. Ultimately, DuPont was able to take a case that represented hundreds of millions of dollars in risk and reduce it to a much more equitable settlement level.



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Toxic Tort, DuPont

■ SUCCESSFUL PREPARATION, PREPARING TO SUCCEED

Bivins typically engages Litigation Insights in the early stages of discovery to identify key issues that can be used to build a strong theme. The sooner the better is the rule of thumb, especially if you hope to gain the early advantage. Superior preparation usually leads to superior results.

Bivins also works with Litigation Insights consultants to help with mock trials, witness preparation and effective concepts for trial graphics. When necessary, Litigation Insights observes and monitors reactions in courtrooms and can make quick recommendations to themes or presentations.

"Their research is hard to hear sometimes, but it's a good dose of reality that is needed in all stages of a big case," said Bivins. "We have to guard against being blinded by preconceived notions and egos that can send us in the wrong direction. Litigation Insights keeps us on track."

Bivins can point to many instances where Litigation Insights contributed significantly to the successful outcome of a case. Another that comes to mind is an \$896 million dollar case that had the potential to develop into pattern litigation that could cost the company even more.

DuPont lost the first case, and Litigation Insights was brought in to develop case themes and conduct jury research for subsequent cases. Their work led to a small and successful settlement for the DuPont legal team once they were armed with information on how to present and argue key issues of the matter.

A LEGAL MODEL FOR QUALITY AND COST CONTROL

When DuPont adopted its Legal Model nearly 20 years ago, the goal was to promote quality, efficiency and cost control among its outside law firms and service providers. DuPont's list of law firms and service providers went from several hundred at the time to about 40 today.

The belief is that a tight-knit network fosters interaction and strategic partnerships as well as applies business discipline to the practice of law.

Litigation Insights is a part of this select DuPont legal services provider network. As one can imagine, it's difficult to break into since the performance standards are high and the attrition is low.

Lyn Brantley is global managing counsel for operations and partnering, and is one of the leaders of the DuPont Legal Model. She's responsible for vetting and managing its members.

"Litigation Insights has always impressed us with their ability to quickly understand a case and tell

where we are and recommend where we need to be," said Brantley. "They bring everything into focus on a consistent basis."

RELATIONSHIPS, INSIGHTS AND WINNING

The stability of the provider group has been an important factor in the success of the DuPont Legal Model. Most of the current firms and service providers in the network have been with the company as long as the program's been in place. It's good for DuPont, and it's also good for the members who can count on steady work and referrals.



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"Members are more focused on how they can help DuPont in the long run due to a steady stream of work," said Brantley.

Brantley and Bivins agree on the criteria for provider selection: What it ultimately comes down to is knowing and trusting a law firm or outside consultant. Whether it's a mock trial or live trial, you have to have a high level of confidence with your service providers.

Bivins likes the direct and astute feedback she receives from Litigation Insights.

"Litigation Insights doesn't just tell me if I'm going to win my case, they tell me how I'm going to win my case and what it will take to ensure success," said Bivins. "That's what we really want to know."

EARLY CASE ASSESSMENT KEY PART OF DUPONT LEGAL STRATEGY

- 1 Early Case Assessment (ECA) helps develop the most effective case themes quickly.
- 2 ECA supports deposition questioning to reduce risk early and bring out the most compelling case points.

- 3 ECA guidance better positions DuPont for mediation, settlements and trial arguments.
- 4 Reduces guesswork and saves time.