NERA
ECONOMIC CONSULTING

At A Glance

Personal Injury and Product Liability Actions in the Life Sciences Industry

Overview

A pharmaceutical company is hit with a $100 million adverse verdict for allegedly inflated drug prices; a medical devices company enters into a national settlement to replace artificial hip joints; a cosmetics company faces allegations that its products cause ovarian cancer; an insurer denies coverage for claims of prescription drug side effects. Each of these events may adversely affect a company's earnings and can even threaten its survival.

Experts in NERA's Life Sciences Practice have been analyzing these personal injury and product liability issues for almost 15 years, assisting companies with projects related to:

- Product recalls
- Damage claims
- Insurance disputes
- Mergers and acquisitions
- Consumer class actions

NERA's experts bring together the required disciplines— including economics, statistics, accounting, epidemiological modeling, computer programming, and insurance allocation—to address complex valuation problems that arise in personal injury and product defect litigation actions in the life sciences industry. These analyses include:

- Projecting potential defect rates
- Estimating the likelihood and cost of product recalls
- Assessing the propensity of injured parties to make a claim
- Forecasting liabilities
- Modeling insurance coverage
- Quantifying individual damages
- Evaluating class certification issues

Key Areas of Expertise

Projecting Potential Defect Rates

Alleged failure of a medical device can lead to a product liability class action against a life sciences company. In such instances, statistical analysis of a sample of the products can help assess whether a particular problem is linked with unique conditions or circumstances rather than indicating a class-wide issue. NERA experts have experience in designing samples and analyzing product use and product failure data to identify relevant patterns.

Analysis of defect rates may also be helpful for companies seeking to structure a settlement with claimants. NERA experts can assess the path of historical defect rates, identifying the timing and rate of prior product failures, and can also project the number of claimants likely to come forward and present a claim.

Valuing Potential Recalls

When marketing a new product, a life sciences company may want to understand the risk of product recalls. NERA experts have experience estimating potential recall rates, combining company-specific data with publicly-available

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information. Our expertise also enables us to value a potential recall, estimating the propensity of consumers to participate in the recall, as well as the costs of the recall itself.

Forecasting Liabilities

Combining scientific analysis with behavioral economics, NERA experts have developed rigorous models to forecast personal injury and medical product defect claims. Our experts estimate the size of the population potentially exposed to a company's product (e.g., patients given the product or consumers who purchased the product), estimate and apply the probability of disease or defect, project the number of claims that will be filed from the resulting incidence, and value the future claims. The analysis includes examining historical claiming rates and assessing how those rates may change in the future. NERA's analysis is used by companies to design and value global settlements, as well as to set reserves, and is used by acquirers to assess their potential liability.

Insurance Valuation and Allocation

NERA experts also have experience allocating past and projected future costs for personal injury and product liability claims to available insurance coverage. Depending on the coverage parameters (e.g., aggregate or per occurrence limits, deductibles or self-insurance retention limits, claims-made or occurrence-based coverage), NERA experts build models to allocate both indemnity and defense costs, often generated using our forecasting models, to project the future path of consumption of insurance policy limits. The analysis frequently involves assessing how alternative forecast assumptions may impact insurance allocations.

Coding Information from Claim Files

NERA has worked for life sciences companies and their insurers in assessing the information provided by claimants to support their claims. Our experts have mastered all aspects of managing and triaging documents, capturing data, and organizing the resulting information to generate electronic claims databases. The type of information that is captured and analyzed may include, for example, alleged injuries, years of alleged product use, and historical settlements. NERA has applied these techniques in insurance disputes, as well as to help clients evaluate the reliability of liability forecasts and insurance allocations.

Calculating Individual Damages

In some instances, the number of individuals affected by a product defect may be small, but the injury serious, such as wrongful death cases. In those situations, NERA experts can apply economic and statistical analysis to value lost wages, lost consortium, and premature death.

Evaluating Class Certification Issues

When the number of individuals affected is large, a life sciences company may face a class action. In the pre-certification stage, it is important to assess whether the putative class is properly defined. For example, did class members rely on similar information in their decision to purchase a medical supplement, or do class members have standing to bring claims in a particular jurisdiction? Careful analysis of the putative class may identify how different circumstances or preferences may have affected experience with a product, raising commonality and typicality concerns or delineating potential subclasses. NERA experts work with a wide range of data sources and client records to understand the composition of putative classes.

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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