At A Glance
Auditing Bankruptcy and Other Tort Claims:
Statistical Analysis, Sampling, and Coding Techniques

Overview

To resolve cases involving alleged product liability, companies frequently establish settlement funds or trusts to process individual claims. These claims may be related to personal injury, property damage, or other economic losses.

For example, settlement funds or trusts have been established to pay claims relating to the following torts:

- Asbestos
- Silica
- Environmental claims
- Building products
- Medical devices and pharmaceuticals

Even after such tort claims have been processed and paid, need may arise to review claimant-specific details. The settlement administrator or other interested party may wish to audit the claims to confirm that they are valid according to established criteria. In a recent appeal to the US Court of Appeals for the Fifth Circuit, for example, BP has asked the Court to reevaluate the terms of its settlement agreement related to the Gulf of Mexico oil spill, alleging that "fictitious and inflated losses" are being compensated by the current plan administrator.

In addition, parties may need to obtain information from claim files, such as the date and location of the alleged injury or damage, to map against other sources of data. For example, companies may wish to determine which, if any, insurance policies may have been triggered by the claim, in order to allocate payments against coverage towers. Claim file analysis can also be used to extract and then match

data across sources. For example, a number of insurers and defendants have sought claim-level information from asbestos trusts in order to evaluate total payments, as well as to compare alleged exposure and alleged injuries by the same claimant across multiple sources of data. In May 2013, the US House Judiciary Committee approved legislation that would make such data available to interested parties, as part of the "Furthering Asbestos Claim Transparency Act of 2013" ("FACT" Act) which would require more transparency from the trusts.

For more than 20 years, NERA's experts have brought together the disciplines of economics, statistics, computer programming, claims management, accounting, epidemiological modeling, and insurance modeling to address these and other complex problems related to claim auditing.

Areas of Expertise

Statistical Analysis of Claims Data

When asked to audit individual claim files, NERA experts often begin with a statistical evaluation of available claims databases. This analysis is critical to an identification of any potential "red flags" before a major claim file audit is undertaken. A statistical review can help focus the analysis, and subsequent claim review, on relevant claimants, variables, or time periods.

Our review typically begins with cleaning and standardizing the data to identify any problems with

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the databases. This cleaning may include identification of missing data, incomplete information, or inconsistencies in the data for individual claimants or groups of claimants. One of the goals of the individual claim review may be to fill in this missing information or reconcile any discrepancies.

Then, by running queries and writing programs, we can highlight patterns in claims data that may be indicative of problems that require additional review. For example, we can detect if certain batches of claims appear to be missing key information, or if an unusual number of claims are clustered in certain jurisdictions, appear to have inconsistent claimant characteristics, or have identical filing dates.

By understanding the underlying patterns in the data, as well as assessing any missing information or discrepancies, NERA experts can then structure a detailed analysis of individual claim files to address specific questions or concerns.

Review and Audit of Claims Files

A key component of an audit of individual claims is ensuring that the results will be reliable and replicable. Our experts have mastered all aspects of managing, triaging, capturing, coding, and organizing information from claims files to generate or supplement electronic claims databases. We set up an organized file system to manage claims files; develop a coding protocol to capture the information required for claims resolution and analysis; establish clear rules to avoid error or bias; and engage a system of double-entry and reconciliation to ensure accuracy.

We have coded large numbers of personal injury and property damage claims, extracting information on, for example, symptoms alleged, disease, doctors' diagnoses, X-ray readings, exposure site, amount of claim, and the reason/ trigger for claim. Sources from which we have extracted information include claim forms, medical records, legal filings, and deposition or other testimony.

Using Samples and Surveys

Where relevant records or data are not easily accessible or where electronic data are available but an in-depth review would be time-consuming and expensive, NERA experts have designed statistical samples to extract a small but reliable subset of the relevant population for review. These samples allow us to draw conclusions about the data at a much lower cost.

We use rigorous sampling and statistical techniques to ensure the sample is representative of the population of interest and have testified about sampling methodologies.

In the context of claim file auditing for tort cases, we have designed samples to estimate the underlying rate of injury, illness, or property damage in the claimant population. We have also designed samples to extract claimant characteristics, including occupational exposure and past product use. These samples can either focus on relevant sub-sections of a claimant population—for example, segments where potential fraud or incomplete information may be expected based on exogenous factors—or can be representative of the claimant population as a whole.

In addition to sampling from written claim files, NERA also has experience designing and implementing surveys to supplement and/or compare to coded claim file information.

Extensions

After designing coding protocols and extracting and coding information from claims files, NERA can merge this information with other electronic data sources. The resulting data can be used in a number of applications, including:

Forecasts of Liabilities: Combining scientific analysis with behavioral economics, NERA experts have developed rigorous models to forecast tort liabilities. We can develop or adjust such forecasts to reflect information obtained from claim file auditing, including updated estimates of damages for each claimant as well as adjustments to filing and dismissal rates to reflect the proportion of claimants who may lack evidence of damages/impairment. We also analyze patterns of historical settlement values, use statistical analysis to extrapolate forward settlement values, and price future claims.

Solvency Analyses: NERA can also use information from claim file audits, along with forecasts of future claims, to evaluate the solvency of trusts or settlement

funds for tort claims. These solvency analyses include evaluations of the available assets, as well as of the liabilities.

Insurance Allocations: NERA experts also have experience analyzing and coding the amount of insurance that is available to cover tort liabilities in order to allocate claim costs to available coverage. We determine the nature of the insurance coverage (e.g., whether aggregate or per occurrence limits apply, or whether the policies specify claims made or occurrence-based coverage), and then can write programs to allocate the liability costs to the available coverage by policy and year. Data from claim file auditing (particularly years of exposure) can be used to improve the accuracy of such allocations, both for the allocation of previously resolved claims as well as forecasted claims.

Client Experience

In a case involving Congoleum Corp.'s pre-packaged bankruptcy, Congoleum's insurers hired NERA experts to investigate the Claimant Agreement that Congoleum had entered into with plaintiffs' counsel. Using Proof of Claims forms, NERA designed a database and protocol to capture demographic, exposure, and medical information and assessed whether the claims approved for payment would have had value in the tort system, based on the quality of the claims and whether the case would have standing (accounting for tort reforms, deferred dockets and statutes of limitations in different jurisdictions). Judge Nicholas Stroumstos of the Superior Court of New Jersey Law Division of Middlesex County ruled in favor of the insurers, finding that the Claimant Agreement was neither reasonable nor made in good faith, and that the insurers had no coverage obligations for the Claimant Agreement under New Jersey law.

In a bankruptcy case involving a construction products manufacturer, individuals submitted proof of claim forms alleging property damage. In addition to the standardized form, many claimants also submitted a number of attached documents, including appraisal documentation, receipts, complaints or other legal filings, environmental testing lab results, building inspections, and estimates. NERA developed a coding protocol to record this supplemental information, categorize the data, and analyze patterns in the claim filings.

In an insurance allocation project, NERA was asked to estimate the fraction of historical liability assigned to the insurers versus the fraction to be borne by the company. The company had policies related to several subsidiaries, but not all. NERA obtained claim records for a sample of paid historical claims and coded information on exposure site and years of exposure. The company used NERA's calculation of the fraction of claims with insurance coverage (number of exposure days with insurance divided by total number of exposure days) to negotiate a settlement with its insurers.

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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