

At A Glance

Insurance Allocation and Forecasting for Product Liability Claims

Overview

Product liability and mass tort claims give rise to a number of issues for insurance companies, lawyers specializing in insurance law, and companies with insurance assets. NERA experts bring together the required disciplines—including economics, statistics, epidemiological modeling, computer programming, accounting, and insurance modeling—to address the complex insurance allocation and valuation problems that arise in product liability and mass tort claims matters.

For companies with product liability or mass tort claims, insurance coverage can be one of their most valuable assets; it can also be one of the most difficult to value. Liabilities from product liability and mass tort claims often arise years after exposure begins, and each claim may trigger a number of insurance policies. Experts in NERA's Product Liability and Mass Torts Practice have extensive experience in allocating the liabilities to appropriate insurance policies and have developed computer programs that allow them to value insurance assets and forecast insurance recoveries quickly and efficiently.

NERA experts help companies, or their insurers, to set reserves and plan for the future, and to aid with litigation. Successfully resolving litigation and achieving beneficial outcomes in settlements and mediations requires an understanding of the available coverage, the ability to value that coverage, and the expertise to forecast the expected insurance recoveries. We have written expert reports, offered economic testimony, and provided litigation consulting expertise for disputes involving product liability and mass tort claims and the insurance coverage for those claims.

Key Areas of Expertise

Insurance Allocation

NERA experts have extensive experience working with databases of asbestos, toxic tort, and other liability claims and allocating those claims to available coverage. We have developed programs that can allocate the claims to the available coverage under different assumptions about the nature of the insurance coverage and the appropriate way to allocate the liabilities. We have developed customized allocation models to quantify the impact of changing such assumptions including:

- Whether the costs for each claim should be allocated evenly across all affected policy years as in a "pro rata allocation" or to a single policy year as in an "all sums allocation"
- Whether costs allocated to policy years without coverage can be shifted to policy years with available coverage as in a "collapsing allocation"
- Whether defense costs are covered and, if so, whether they are paid within policy
- Whether per occurrence or aggregate limits apply, and whether each claim constitutes a separate occurrence

- Whether the limits for policies that cover more than a year (i.e. “multiyear policies”) or policies that cover less than one year (i.e. “stub policies”) are adjusted to account for the different duration of coverage
- Whether policies have exclusions to certain asbestos related liabilities
- Whether liabilities allocated to carriers that are now insolvent would be paid by the insured.

Forecasting Insurance Recoveries

NERA experts have been forecasting future claims related to asbestos, environmental pollution, toxic torts, and other product liabilities for almost 20 years. We integrate these forecasts with our insurance analyses, allowing us to use detailed information about claim exposure and explicitly model how the claimants’ exposures will age, resulting in the most accurate insurance allocations possible. The integration of our forecasts and insurance allocations allows for more accurate projections of future insurable costs and leads to increased efficiencies, saving time and money for our clients.

Client Experience

For the insurance carriers of a manufacturing company with asbestos claims, NERA experts provided critical analysis that, used in the context of mediation, allowed the insurers to commute policies worth over a billion dollars. We forecasted the company’s future asbestos claims and allocated those claims to the available insurance. The results were used to both negotiate the total size of the payment and to determine each insurer’s share of the liability.

For a company with product liability exposure related to the sale and distribution of silica containing materials, NERA experts forecasted expected future claims and the amount of insurance that could be recovered for those claims. NERA’s analysis allowed the company to set its reserves and report the appropriate liabilities in its financial statements. NERA’s experts worked with the company to explain the methodologies employed and to have the analysis accepted by its auditors.

In a case involving a dispute over the value of insurance coverage for a company with asbestos related liabilities, NERA’s experts were retained by the insurer to quantify the effect of using an all sums, pro rata, or collapsing block

allocation. We analyzed the claims data to determine the claimants’ dates, sites, and sources of exposure, allowing us to quantify the economic impact of arguing that the liabilities constituted multiple occurrences under the insurance policies. NERA’s experts worked both as legal consultants, critiquing the opposing expert’s analysis and computing the effect of different allocations, and as damages experts, preparing expert testimony.

In a case involving Congoleum Corporation’s pre-packaged bankruptcy, Congoleum’s insurers hired NERA experts to investigate the Claimant Agreement that Congoleum had entered into with plaintiffs’ counsel. We assessed whether the claims approved for payment under the Claimant Agreement 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.

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. NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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