NERA
Economic Consulting

At A Glance
Transportation Torts and Recalls

Overview

Transportation-related tort and product recall liabilities can create financial uncertainty that can affect a firm's future prospects. Experts in NERA's Product Liability and Mass Torts Practice have been analyzing issues related to transportation torts and product recalls for almost 20 years. We understand that product recalls may differ from more mature torts. Product recalls may have limited claims data, uncertain filing patterns, tighter lifecycles, and can involve estimating failure rates, as well as determining incidence of injury, forecasting future liability claims, and estimating diminution of value for those who own the product.

NERA experts bring together the required disciplines—including economics, statistics, accounting, epidemiological modeling, computer programming, and insurance modeling—to address complex valuation problems that arise in mass torts and product liability matters. Our work encompasses many sectors and product lines, including:

- Railroad cars
- Off-road utility vehicles
- Large trucks
- All-terrain vehicles
- Automobiles
- Tires

NERA's transportation clients have included manufacturers, transportation brokers, intrastate and interstate motor carriers, shippers, railroads, and insurers of transportation-related companies with mass tort or product liabilities. NERA has extensive experience in forecasting and valuing claims involving personal injury or wrongful death, cargo loss, environmental losses, diminution of value, and insurance coverage disputes. We work closely with clients to successfully resolve litigation and achieve beneficial outcomes in settlements, mediations, and other disputes. our forecasts have been used for reserve analyses, insurance negotiations, due diligence for acquisitions and mergers, and for bankruptcy trusts. Among other

applications, we use such forecasts to help companies establish reserves, assess insurance coverage, or establish the size of bankruptcy trusts and discuss the results with the companies' auditors.

Key Areas of Expertise

Recall and Claims Forecasting. NERA experts have developed rigorous models to forecast future product liabilities. To forecast future claims filings, we estimate the size of the population potentially exposed to a company's product; predict the most likely pattern of defects, levels of valid diseases, incidents and severity of injury or diminution of value, and project the number of claims filed by those affected by the exposure. Because not every product defect, injury, or impacted owner will result in a claim, we examine historical claiming rates and assess how those rates may change in the future, e.g., with publicity, increased entrepreneurial tactics by plaintiffs attorneys, or tort reforms. To value future claims, we analyze patterns of historical settlements, use statistical analysis to extrapolate forward settlement values, and price future claims. We also use data available from other similar torts and publicly available information.

Insight in Economics™

Insurance Valuation and Allocation. We also have experience valuing the amount of insurance that is available to cover tort liabilities and allocating claim costs to available coverage. We can allocate the liability costs to the available coverage under alternative assumptions regarding the nature of the insurance coverage, e.g., whether aggregate or per occurrence limits apply, or whether policies specify claims-made or occurrence based coverage. Integrating our claim forecasts with our insurance analyses allows for greater efficiency and accuracy.

Litigation Modeling. We have analyzed the litigation decision process, constructing models that compare the costs and benefits to defendants of alternative litigation strategies, e.g., pursuing a policy of aggressively defending lawsuits versus a policy of settling early. We model the direct costs of each approach, and analyze the potential impact of different strategies on plaintiffs' decisions to sue––both at an individual claimant level and, for class action lawsuits, at the level of the plaintiffs' firm.

Coding Information from Claim Files. NERA experts have mastered all aspects of capturing, coding, and organizing information from claims files to generate electronic databases. We develop a coding protocol to establish clear rules to avoid error or bias, and a system of double-entry and reconciliation to ensure accuracy. We have coded large samples of personal injury and property damage claims, including exposure information related to various automobile makes and models. We use rigorous sampling and statistical techniques to determine whether a sample is representative of the population and have testified about sampling methodologies.

Client Experience

- For an off-road utility vehicle manufacturer with personal injury claims resulting from recalls, NERA experts provided an initial estimate of future liabilities, estimating the number of vehicles in use, the population of riders, and the incidents and severity of injuries, projecting future claim filings, expected dismissal rates, and settlement values to resolve the claims. The company used our estimate to establish reserves, and we provided materials to and engaged in discussions with the company's audit team to support the results.

- For a railroad with personal injury claims (including those related to asbestos, hearing loss, repetitive stress injuries, and chemical exposure), NERA experts provided an initial estimate of future liabilities, projecting future claim filings, expected dismissal rates, and settlement values to resolve the claims. The company used our estimate to establish reserves, and we provided materials to and engaged in discussions with the company's audit team to support the results.

- For a private equity firm, NERA experts forecasted potential future liabilities associated with a proposed acquisition of a transportation brokerage firm. We estimated the number of large truck accidents per year, forecasted the number of fatalities and injuries expected given the broker's carrier fleet, estimated the likelihood that a claim would be brought against the broker, and estimated the cost of settling or litigating the claims.

- For a tire manufacturer that had a recall issued, NERA experts estimated the level of insurance required to cover potential future liabilities. NERA estimated the number of affected vehicles, the failure rate of the tires, the effectiveness of the recall, and the survival rate and life span of the tires. NERA experts then estimated the maximum number of potential product liability claims that the manufacturer might receive.

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 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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