EVALUATING CIVIL CLAIMS:
AN EXPERT SYSTEMS APPROACH

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THE
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This paper describes the authors' current work in applying expert systems, a sophisticated form of computer modeling, to describe reasoning involved in settlement of civil liability claims. It is a reprint of an article appearing in volume one of the journal *Expert Systems*. The paper was presented at the first Conference on Computers and the Law held in August 1984 at the University of Houston. An expanded version of this paper is available in the proceedings of that conference, published by West Publishing Company.

The work described in this paper is part of basic research conducted by the Institute for Civil Justice on the process of settling civil disputes. It also represents an attempt by the Institute to explore how new computer technologies might be used to improve the efficiency and rationality of the litigation process.

Evaluating civil claims: an expert systems approach

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1. Introduction

Civil claims for compensation of personal injury are costly and cumbersome. They cost Americans billions of dollars each year in court costs, legal expenses and operating expenses for insurance companies. Although only a small proportion of these claims are ever tried, they still consume an overwhelming bulk of the time and tax dollars of the American civil courts [1, 2].

Almost all personal injury claims turn on the question of how much to pay the claimant. Attorneys and claims adjustors often find this evaluation difficult. It requires placing a dollar value on subjective matters, e.g., the amount of money needed to compensate a claimant’s physical injury and disability and allocating this dollar loss among parties whose different actions contributed to the injury [3]. Difficulty in evaluating claims greatly adds to the costs and delay in resolving those claims. Parties occasionally make unreasonable evaluations of cases and even reasonable evaluations can lead to widely different demands and offers.

During the past few years we have been studying how lawyers and adjusters evaluate civil claims in the product liability area. We believe that the decisions of these legal experts can be represented by a schema that organizes the facts and issues involved in a case. The schema evolved from our extensive interviews with lawyers and adjusters and examination of how they evaluate actual claim files. The schema, and a sizable set of rules we are developing to elaborate the schema form the basis for an expert system that models legal decision-making. This system, called LDS, can help both researchers and litigators understand better how claim evaluation takes place since it provides a basis for generating and organizing hypotheses about litigator’s methods for making settlements. With further development, the system could become a tool to help litigators reach fair and timely settlements of claims.

During our development of LDS we have drawn upon a variety of methods and sources to study how legal experts handle civil claims. We have interviewed lawyers and claims adjusters in many intensive, week-long sessions devoted to exploring how these experts reach decisions about product liability claims. During these interviews the experts read and considered actual closed claims. To understand how they evaluated these claims we questioned them in depth about each element of the case while repeatedly changing the case facts.

Since this was almost a virgin area, we

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1 Ross's interviews and observations of claims adjusters represent the most considered examination of how litigators reach decisions about civil claims [4]. Also, Johnson [5] has been studying the cognitive dimensions of legal reasoning.
began with exploratory, descriptive research. Although economic theories analyze the relationships among case evaluation, projected expenses, offers, demands, and final settlements, they provide little insight into how litigants make the critical decision about case value (see e.g., [6, 7]). Rather than imposing new, obviously naive theories about legal decisions, we let the experts themselves, through the interviews, show us what was important to their decisions and how their decisions were affected by particular types of facts or legal principles.

These interviews generated a great deal of information about legal decisions. We used knowledge engineering techniques to keep track of and organize this complex, detailed knowledge and turn it into a dynamic model of litigant's decision-making processes.

In Section 2 of this paper, we describe the LDS system and briefly discuss the expert system methodology underlying its development. Section 3 describes the schema we have developed for modeling the settlement process and discusses the role that litigants' decisions play within that process. Finally, in Section 4 we summarize our work and present concluding remarks.

2. Expert systems in the legal arena

The computer has already been used as a tool for analysis and modeling of legal processes. Examples include a system for analyzing cases on the basis of legal doctrine [8], a system that automates the assembly of formal legal documents [9], the Legol language for expressing legal concepts [10], the Taxman system for investigating tax consequences of corporate transactions [11], the LRS system that performs knowledge-based legal information retrieval [12] and the DSCAS system that analyses differing site condition claims in the area of contract management [13].

Our use of an expert system to analyze and explain legal reasoning is similar to other expert system applications, although new problems are raised by the adversarial quality of the litigator's decisions and the subjective nature of legal evidence.

An expert system is a computer program that embodies expertise and knowledge supplied by human experts and uses artificial intelligence techniques to solve problems in some narrow domain [14]. The process of designing and constructing expert systems is called knowledge engineering. This typically involves 'picking the brains' of a small number of experts by presenting them with hypothetical problems requiring a decision. The experts then decide what decisions should be made and why. The person conducting the interview, the knowledge engineer, systematically explores the decision process by varying facts presented to the experts and noting how changes in facts change the decision-making process.

For example, in a claim involving a defectively designed product, the defendant may first be described as a retailer, then a small manufacturing company, then a large manufacturer. Next, the interviewer may ask an adjuster or lawyer to evaluate claims for all three types of defendants if the claimant now alleges that the product was defective because its instructions were inadequate, rather than because it was improperly designed. By changing these facts one at a time, interviews develop precise descriptions of the reasoning that the experts use, e.g., that design-defect claims against manufacturers bring larger settlements than similar claims against retailers, or that claims against retailers produce larger settlements when the retailer should have known that the instructions were inadequate and did not instruct the purchaser on how to use the product.

Our expert system, LDS, uses a rule-based scheme for representing legal expertise revealed in these interviews. The system is a collection of rules, each of
which has the form: IF(conditions)THEN-
(conclusions). Each rule describes the
conclusions that litigators draw from a
limited set of facts and legal issues.

**Figure 1. Representative Rosie rules for calculating general damage**

1. Assert each of ‘blindness in one eye,’ ‘severe dizziness,’ ‘sexual loss,’ ‘paralysis of one limb’ and ‘loss of one limb’ is a disability of an important function.
2. Assert each of glaucoma, epilepsy and heart disease is a serious illness.
3. Let the value of glaucoma be $100,000.
4. If the plaintiff did receive an eye injury
   and there was just one eye that was injured
   and the treatment for the eye did require surgery
   and the recovery from the injury was almost complete
   and visual acuity was slightly reduced by the injury
   and the condition is fixed,
   increase the injury trauma factor by $10,000.
5. If the plaintiff’s injury did cause
   (a temporary disability of an important function)
   and the plaintiff’s doctors were not certain about
   the disability being temporary
   and the plaintiff’s recovery was almost complete
   and the condition is fixed,
   increase the fear factor by $1,000 per day.
6. If the plaintiff does have
   (a chance of ‘contracting a serious illness’)
   and the value of that chance is greater than 5%
   and that chance is less than or equal to 15%.
   increase the future trauma factor by 30% of
   (the value of ‘contracting the illness’).
7. If the plaintiff did not wear glasses before the injury
   and the plaintiff’s injury does require
   (the plaintiff to wear glasses),
   increase the faculty loss factor by $1,500
   and increase the inconvenience factor by $1,500.
8. If the plaintiff did not wear glasses before the injury
   and the plaintiff’s injury does require
   (the plaintiff to wear glasses)
   and the age (of the plaintiff) at
   (the time of the injury) >25
   and the plaintiff’s appearance is important for work,
   increase the disfigurement factor by $5,000.

Figure 1 shows examples of these
rules, each of which can be examined and
understood by itself. The rules are imple-
mented in Rosie, an English-like pro-
gramming language developed at the Rand Corporation [15]. The rules in Figure 1 are 'raw' Rosie code, not an English translation of the code. The unique English-like nature of the language has greatly increased our speed and efficiency in developing the system.

When LDS is given the facts of a new claim, it searches the stored rules and finds rules that are called for by the facts of that case. The system uses the selected rules to add new information about the claim. Every time the system finds a rule that matches the case facts, it treats the conclusion of that rule as a new fact in the case. For example, if a product liability claim includes two facts — that the product is a machine and is over ten years old — then a stored rule might reach the conclusion that the implied warranty of fitness no longer applies to the product. This becomes a new fact: 'The implied warranty of fitness does not apply.' The system continues to search and select other rules that are called for by the original facts and conclusions of previously selected rules. It stops when it reaches a conclusion about the likely value of the claim.

Figure 2. Champagne bottle case

On December 18, 1980, Claimant was opening a bottle of champagne bottled by the insured, Oxnard Vintners. Claimant had never opened a champagne bottle before. He rarely drank and the bottle had been brought to him by a guest. Claimant had partially loosened the wire cage when the cork forcefully shot out of the bottle, striking Claimant in the right eye. Claimant was holding the cork toward his face when he was loosening the wire cage.

Claimant was taken to the nearest emergency room and then transferred to the eye clinic at the local university hospital. He had suffered a detached retina. Doctors surgically repaired the eye, but for four days doctors did not know whether he would regain vision in the eye. Claimant's condition is now stable. He has slightly impaired visual acuity in the eye and must now wear glasses at all times. He is 30 years old and prior to this time, Claimant did not wear glasses. Because of the injury, Claimant has a 5–10% chance of suffering glaucoma.

Claimant is a sports broadcaster for a local radio station, broadcasting high school and local college sports events. Prior to the injury he had interviewed for a job as a local television sportscaster. Claimant claims that his need to wear glasses contributed to his failure to get the job.

Claimant's specials total $6,500.

Claimant's experts concluded that the wire cage securing the cork had corroded because it was not properly made. They will also testify that the bottle was excessively charged, basing this conclusion on the reported force of the cork leaving the bottle. The insured's experts will testify that this force could have been caused by shaking or heating the bottle. The insured's experts confirmed the corrosion of the wire cage, but say that this might have occurred because of the conditions of storage after the bottle left the insured.

The Claimant has a competent plaintiff's lawyer. He has filed suit and trial is expected in 6–12 months in the Central District of the Los Angeles Superior Court, a court with a reputation of favoring plaintiffs. The trial judge is unknown. The defense lawyer is experienced and above average.

The insured is a small, family owned wine-maker that does not do mass marketing nor advertising.
LDS organizes these rules into claims that represent chains of reasoning that experts might go through. In these chains the conclusions of earlier rules become premises of subsequent rules. Figure 2 describes a hypothetical case involving an eye injury to a thirty-year-old man caused by a bottle of champagne. Figure

![Decision Tree](image)

**Figure 3.** Decision tree for general damages in champagne bottle case ($C = \text{claimant}$)
3 shows how some facts about a claimant's injuries combine in various ways to determine general damages for the claim. In turn, the calculation of general damages becomes a fact that is a premise for further rules that calculate the overall settlement value of the claim. All the chains of reasoning come together at the final conclusion about case value to form a decision tree, as shown in Figure 4.

The value of representing legal expertise as explicit rules is twofold: it permits us to organize a cumbersome level of detail, and it permits rapid progress in developing and testing our understanding of legal reasoning. We have more fully described the usefulness of this technique in our previous work on modeling formal rules of law as they apply to product liability cases [16]. This method has

![Decision Tree Diagram]

**Figure 4. Decision tree for settlement value in champagne bottle case**
been used successfully to describe and test complex decision processes in other areas of expertise, such as geology [17], medicine [18, 19] and chemistry [20]. Peterson [3] describes the application of the method as a tool for processing civil claims.

3. A schema for case settlement

Rule-based systems are useful for organizing the complexity of facts and issues raised in civil claims. They are particularly useful for developing hypotheses about how decisions differ among different types of litigators and how these decisions are affected by particular issues or by changes in legal rules. But by themselves, the systems do not provide a general conceptual structure that can help us understand legal decision-making. The rules are too specific, while the chains of reasoning are ad hoc products of the facts in particular cases.

Our recent research has suggested a general conceptual structure for decisions about civil liability claims. In interviewing litigators and building our models we found that litigators consider a more or less common set of issues in evaluating claims. We formulated a schema that describes these primary decisions. The schema breaks litigators’ evaluations of civil claims into separate steps, each of which can be understood in isolation and in relation to the other steps of the process. These steps are considerations of: the claimant’s loss, the defendant’s liability, relative responsibility for the loss, characteristics of persons involved with the claim and the context of the claim, i.e., matters of timing and strategy.

Analysis of loss.

One of the most important steps in determining case value is setting a dollar value on the plaintiff’s loss. Our schema follows litigators’ conventional analyses that evaluate the plaintiff’s loss as the sum of two elements — special damages and general damages. Special damages include all of the specifiable economic losses resulting from an injury, e.g., medical expenses, lost income, and property damage. Special damages are fairly easy to estimate, since their values are not heavily dependent on subjective judgements.

General damages include other direct and indirect effects of the injury on the plaintiff, such as the direct trauma of an injury, fear, loss of a faculty (i.e. sight, use of a hand), limitation in activity and others. Since evaluations of each factor depend to some degree upon subjective judgements, they are difficult to estimate and a significant source of disagreement among parties.

Through our rule-based approach we have already advanced understanding of general damage evaluation by distinguishing and describing fifteen different elements of the complex concept that is often referred to simply as ‘pain and suffering.’ For example, a compound fracture of the leg might produce all of the following compensatable losses: the trauma of the injury itself (i.e., pain and suffering), the inconvenience and trauma of treatment, such as surgery to reduce the fracture or the inconvenience of a cast, disfigurement from the scar, permanent disability (if the leg is shortened or otherwise deformed), permanent loss of recreation and others. Each element contributes to the loss suffered by the plaintiff and apparently has a value that is added to the values of the other elements to produce appropriate compensation. Separate rules within the schema describe each of these elements.

Analysis of liability.

Another critical step in determining case value involves litigators’ estimates of the probability of establishing liability against a defendant. This determination depends on formal rules of law in the jurisdiction and their application to the facts of the case. For example, requirements for
establishing *prima facie* strict liability varies among jurisdictions: some require plaintiffs to show that a product was unreasonably dangerous. Others, such as California, do not require proof that the defective product was unreasonably dangerous. In dealing with this issue, rules must consider both the jurisdiction and the dangerousness of the product.

**Analysis of responsibility**

In jurisdictions that follow the legal rule of comparative [contributory] negligence, an important and highly subjective step in determining case value, involves estimating the proportion of responsibility that should be assigned to a plaintiff for his own carelessness. This estimate has a large impact on the value of the case, since a plaintiff’s award will be reduced by the percent of his own responsibility for his injuries. Like the liability component, considerations of responsibility are heavily dependent on the facts for a particular claim and are often based on circumstantial or incomplete information. As an example, from our research, litigators found comparative responsibility on the part of a middle-aged man whose eye was injured by a cork popping from a champagne bottle, since he had pointed the bottle at his face as he opened it. The plaintiff’s age, sex, and experience with champagne all influenced evaluations of the degree of his responsibility. Issues of primary liability also changed this analysis of responsibility, e.g., did the cork pop out while the wire case was still attached.

Our rules about responsibility and liability must capture subtle variations in specific cases. We have also been exploring the degree to which litigators treat separately the consideration of establishing a defendant’s liability from consideration of the relative responsibility of claimants and defendants. Although these are separate legal and conceptual matters, litigators often seem to collapse both issues.

**Analysis of characteristics**

We have made progress in describing another highly subjective consideration, adjustments to case value that are based on seemingly superficial aspects of the case, such as characteristics of the litigants, lawyers, judges, and jurisdictions (see also [21]). For example, results of our interviews with legal experts suggest that the skill of the attorneys in the case must be taken into account when determining case value. Furthermore, the skill of the defence attorneys may have more of an impact on case value than does the skill of the plaintiffs’ attorneys. This can be reflected in rules that change the case value more for differences in the defence attorneys’ skills than for differences among plaintiffs’ attorneys.

**Analysis of context**

The final step involves adjusting case value for matters of strategy, timing, and the type of claim (e.g., product liability of strategy, timing, and the type of claim (e.g., product liability versus automobile accident). For example, a claim is worth less if the claimant has an immediate need for money. Timing is particularly important. We found that legal experts believe that case value increases as the trial date approaches. Thus, the case may be worth as much as 20% more just before the trial than it was two years before the trial. We also know that the type of claim can make great differences in case value [21].

The schema we have developed can be summarized as follows:

Value = LOSS * LIABILITY * RESPONSIBILITY * CHARACTERISTICS * CONTEXT

Thus, if we determined that the loss was $100,000, the probability of a plaintiff’s verdict was .8, the plaintiff’s responsibility for the loss was .5, the adjustment for characteristics was 1.2 (more favorable to plaintiffs than to defendants) and the
adjustment for context was .9 (e.g., timing and strategy reduce the case value), the resulting case value would be:
VALUE = $100,000 \times .8 \times .5 \times 1.2 \times .9
= $43,200

This schema builds upon methods for analyzing claims that are commonly recognized by litigators. Most begin by calculating the full value of a claimant’s loss and then adjusting that value according to the litigator’s personal strategies or rules of thumb, e.g., reducing the value if liability is questionable, facts are disputed, or the claimant contributed to his/her own injury. 2

But the schema goes well beyond litigators’ commonly recognized bases of case evaluations. The schema, and the rules that flesh out the schema, provide a precise and explicit account of the relationship among all elements that influence litigators’ decisions. The schema organizes the rules and also determines the order for searching those rules to match case facts. We break down each element of case evaluation into rules that describe how decisions are reached about that element. This lets experts examine and then accept or reject the rules as descriptions of their decisions. And the rules clarify how the different steps in case evaluation are related, i.e., which steps draw on common rules.

4. Directions for future work and conclusions

Our further work will address a number of different issues concerning civil litigation. These can be placed into four groups:
1. Case features that affect settlement strategy and amount (reflected primarily in the rules)
2. How litigators process this information (i.e., the schema; how do litigators deal with uncertainty)
3. Differences among litigators
4. The process of negotiation and settlement

Our work so far has concentrated on the first two groups. Additional work with issues in these two groups includes considering questions such as the following:
- Do litigators separately consider the five elements we have identified in the schema? What are the relationships between considerations of liability and comparative responsibility? Are these separate considerations?
- If the five elements are separately considered, how are they combined to determine the value of the case? Do these elements have a multiplicative relationship?
- How do litigators deal with uncertainties? Does uncertainty about proving an element of special or general damages reduce the size of the loss? How does uncertainty affect conclusions about liability?
- Does the severity of a claimant’s injuries affect decisions about comparative responsibility?

Our interviews suggest that claimants will be excused for their own carelessness as their injuries are more severe — at least when the defendant is a ‘deep pocket,’ i.e., a corporation, government agency, or obvious insurer. One of our expert insurance claims adjusters suggested that claimants with extremely severe injuries can expect almost complete recoveries, even when they are almost entirely responsible for their own injuries.

The third group involves differences among litigators and includes questions like:
- Are defence lawyers more likely to make elaborate arguments dealing

2 Since we are trying to model litigators’ decisions, the schema should draw upon analyses that are common and recognized.
with liability issues? Do plaintiffs’ lawyers concentrate on issues of injuries and losses?

- Does a litigator’s role affect his way of approaching a case?

We found, for example, that plaintiffs’ lawyers were more imaginative than claims adjusters in finding bases for adding value to a case. This might reflect the requirements of each side: plaintiff’s generate arguments to add value; insurance adjusters understand and will accept these arguments in appropriate cases, but they do not create arguments for adding value. We also found that plaintiff’s lawyers think about cases in terms of complex if-then rules, while claims adjusters tend to simply make percentage adjustments for various factors in a case.

The fourth group involves the process of negotiation and settlement. Our interviews suggest that the value of a case increases as trial approaches. Questions to explore here include:

- Do offers increase as the time to trial decreases?
- Does the settlement amount increase as the trial approaches?
- Does the party who first states a specific amount for an offer or demand fare worse?

Our work to date indicates that rule-based expert systems can be developed and used to understand decisions involved in civil litigation. We can extract a great deal of information by systematically interviewing lawyers; this information can be translated into the if-then rules of a rule-based model, and that model can capture much of the richness and flexibility of legal reasoning.

5. References


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6. Further reading


**About the authors**

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Donald A. Waterman is a senior computer scientist at The Rand Corporation in Santa Monica. He received his B.S. in Electrical Engineering from Iowa State University, his M.S. in Electrical Engineering from the University of California at Berkeley, and his M.S. and Ph.D. in Computer Science from Stanford University. Dr. Waterman is currently principal investigator for the Knowledge-based Systems program, a collection of three projects geared toward developing an improved English-like expert-system-building language and support environment, containing sophisticated explanation, acquisition and tutorial facilities. He is also principal investigator for the LDS project, an effort to model the expertise of legal practitioners through expert systems. He is one of the designers of Rosie, a rule-based language for building expert systems that has been used successfully in many applications, including the areas of tactical targeting and crisis management.
Mark A. Peterson

Mark Peterson was educated at the University of Minnesota, Harvard (J.D.) and has an M.A. and a Ph.D. in Social Psychology from the University of California at Los Angeles. Since 1976 he has been a senior research scientist at The Rand Corporation, Santa Monica, previous to which he was in private law practice in Los Angeles as well as a period in computer programming and systems analysis. Dr Peterson is a member of the California Bar Association, of the American Bar Association and of the Association of Trial Lawyers of America.
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