

The Role Of Data Analytics In Mass Torts

By **Deb Zonies and Mark Zabel** (February 8, 2019, 1:33 PM EST)

Over the past decade, the opportunities to collect data and then use it to create business value have greatly multiplied. Along with the increased availability of relevant data, analytical tools and techniques have been developed to provide broader and deeper analyses than were previously possible.

The modern data analyst is able to take advantage of the convergence of these phenomena to align data, tools and techniques to solve a greater number of business challenges in more areas of business. This includes business operations that have traditionally relied on analytics, such as supply chain management, financial analysis and customer behavior modeling, and has recently extended to additional areas such as the legal field.

While many of us may think of analytics as a purely academic exercise, there are data analysts who practice a more practical form of their art, bringing the insights that can be gained from data, and combining them with business knowledge to provide useful and actionable intelligence. In those situations, the aim of the analyst is to provide information to solve real problems and uncover opportunities that might not otherwise be apparent.

For some time, savvy businesspeople have understood the benefits this can bring to their decision-making. Increasingly, lawyers are recognizing the advantages to be gained by using analytics to improve their practices.

Many of the decisions lawyers involved in mass torts have to make are especially difficult because of a lack of information. These lawyers are faced with an almost daily barrage of decisions: whether or not to participate in the latest mass tort, estimating the potential size of the claimant pool, deciding how much to invest and when, comparing the effectiveness of various marketing programs, assessing the relative benefits of serving in leadership, determining how to improve the efficiency of law firm operations, estimating the expected percentage of qualifying cases, selecting bellwether cases, evaluating the likelihood of settlement and calculating a reasonable settlement figure, among others.

All too often decisions are made by relying on gut feelings, what others are doing or a personal recollection of past outcomes. While this may have worked well for some people some of the time, how much better could decision-making be if there were some way to help inform those decisions? In the



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hands of a skilled data analytics team, data can become information, information can be transformed into knowledge and that knowledge can create the insights that lead to better outcomes.

The use of data analytics can even the playing field in negotiations, and it's our observation that the defense bar and their clients are more likely to use analytics to inform their decisions. This may be because corporate clients are more familiar with the knowledge and insights that can be gained by using analytics in other areas of their businesses, and are thus more likely to use analytics in evaluating litigation issues.

One issue that may be preventing firms from using analytics to improve their results is the misconception that for a project to be successful, a firm must already have a massive data set for the analysts to review. In fact, the most effective analytics engagements usually begin in a more consultative fashion, not with the client simply turning over a trove of existing data for analysis.

In order to get the best results from an analytics project, a recommended first step would be providing the analysts with a thorough briefing on the background of the issues to be reviewed. This briefing should include the client sharing their current knowledge and any past experience that may be applicable. Successful engagements continue in a collaborative way, with the analysis being refined along the way as additional information is identified, developed and incorporated.

There's an old saying that knowledge is power — and that is probably most apparent when two parties involved in litigation sit down for discussions about a possible settlement. A negotiation where one side is relying on a thorough and detailed analysis of their opponent, the likelihood of settlement and potential outcomes, and the other side is relying on some rough numbers that may or may not take into account all the relevant parameters is inherently asymmetrical.

Yet, all too often, that is the reality mass tort lawyers have to deal with when they sit down for a settlement discussion. Past experience is undeniably helpful in this situation, but combining that hard-won experience with the insights available through solid data analytics enables you to have a much more powerful and defensible negotiating position.

Settlement discussions may be one of the most obvious examples of when information developed through data analytics can make a critical difference in the success of your negotiations, but there are many other circumstances when analytics support can be beneficial in managing a law firm. Analytics enhances the knowledge gained through your experience of managing your firm and can help uncover previously unrecognized advantages and opportunities for improvement within your firm.

As one example, employees are both the greatest strength and a significant ongoing expense for many law firms. An analysis of this expense would include not only the obvious costs of salaries and benefits, but should also take into consideration other factors such as the costs of office space, IT infrastructure and support, training and managing those employees and the flow of work through the firm. Data analytics can uncover process efficiencies and other opportunities to increase the effectiveness of those employees, potentially leading to greater employee engagement and increased satisfaction.

While the increased availability of data and the introduction of new tools and techniques for the analysis of that data are important to the development of the field of data analytics, the relevant knowledge to determine and interpret that data appropriately is essential to achieving the meaningful insights that can enhance decision-making for mass tort firms.

For much of the business world, analytics seems to be the buzzword of the day, and there's a danger in attempting to apply generic data models to decision-making in litigation, especially mass tort litigation. Mass tort litigation is highly complex and has unique considerations that need to be taken into account when determining relevant data, creating applicable models and interpreting the results of the analyses. Past experience is as important in the analytics support team as it is at the negotiating table, since data without context is perhaps less helpful than no data at all.

Data analytics is a powerful tool, one that can help you make better decisions. It's not a substitute for careful consideration of the issues, or for all the other hard work that goes into maintaining a successful mass tort practice. But it can be a useful component in helping you to take full advantage of every opportunity to make your firm more successful.

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