

Predicting the “Unpredictable”: The Power of Litigation Analytics

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Our Panel

Roy Strom | Legal Correspondent, Bloomberg Law, Chicago, IL

Jennifer Green | Partner, DeHay & Elliston, Dallas, TX

Jonathan Judge | Partner, ArentFox, Chicago, IL

Charlie Price | Litigation Counsel, Eaton Corp., Cleveland, OH

Today's Goals

1. Litigation Data Analytics—what is it and how can it best be used
2. The value proposition of using litigation data to make business decisions and inform strategy
3. Enhanced understanding of the cost-benefit calculus that drives most major litigation decisions
4. Using third-party analytical tools to improve litigation judgment, strategy, and results

Mindset

- Data + Uncertainty = Opportunity
- Everything is measurable
- Litigation is more predictable than we think, and ...
- Remember Novak!



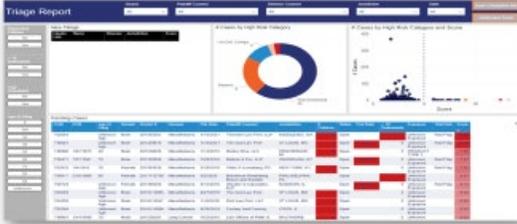
IADC 2024 MIDYEAR MEETING | February 18 – 23

Identifying Trends (KCIC Ligado)



IADC 2024 MIDYEAR MEETING | February 18 – 23

Allocating Resources (KCIC Ligado)



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Challenge: Background Facts

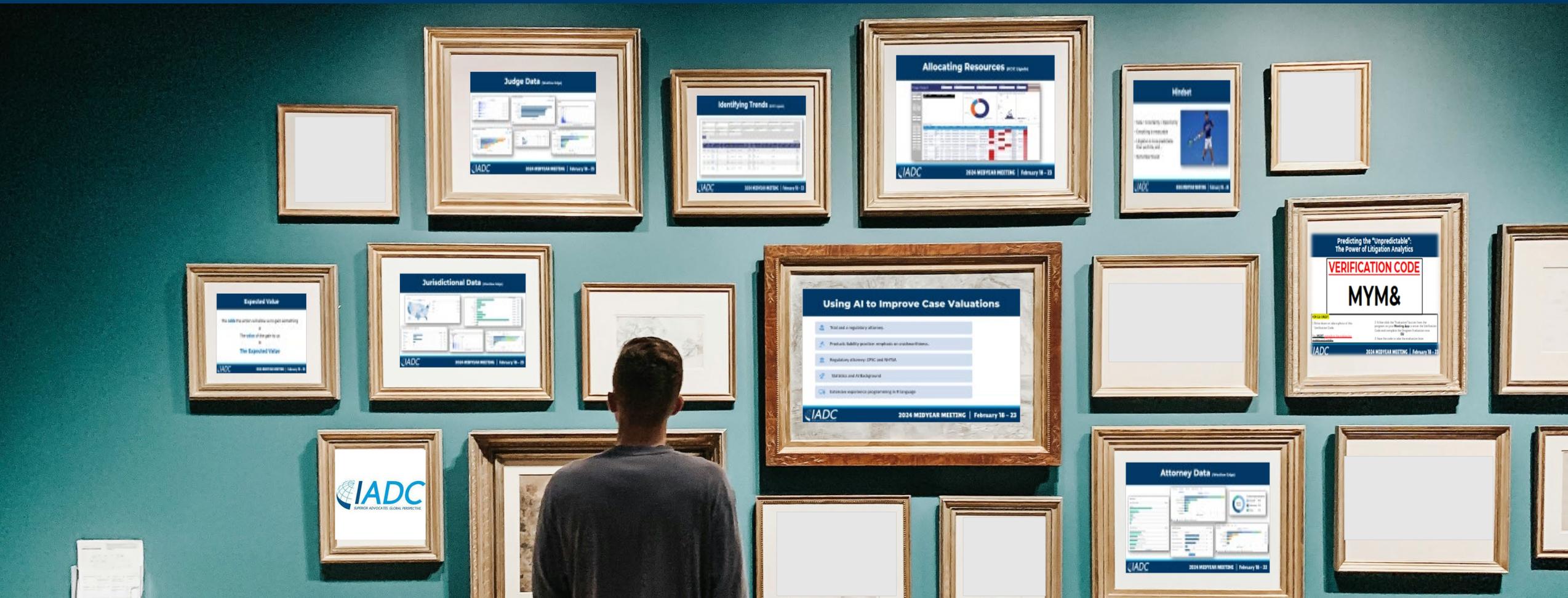
You are managing the risk for a company facing a **high-exposure claim**

Teenager who was rendered a quadriplegic in a **bad accident** sues your company

You need to estimate **how much the claim is worth**

Ready?

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Mindset

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Expected Value

The **odds** the action will allow us to gain something

×

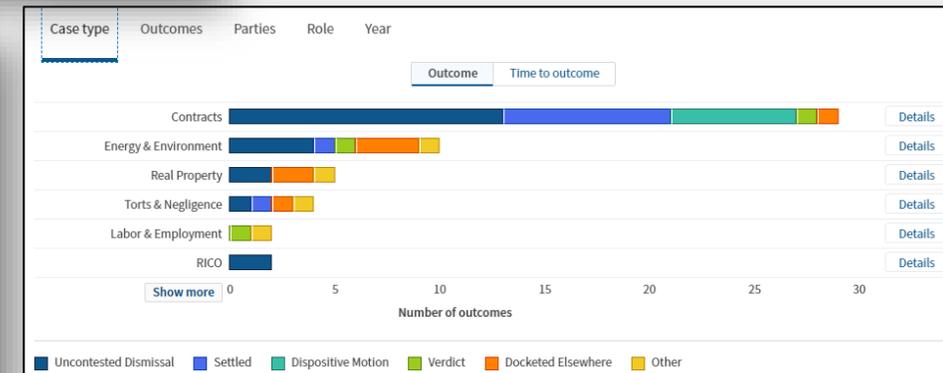
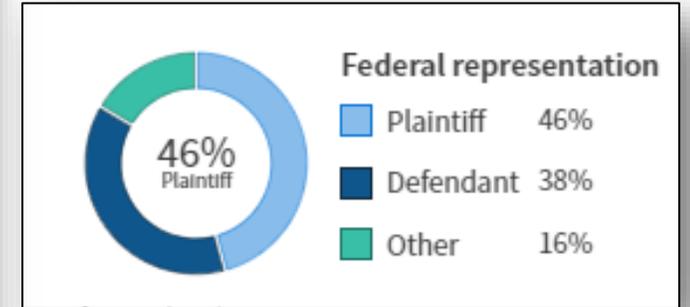
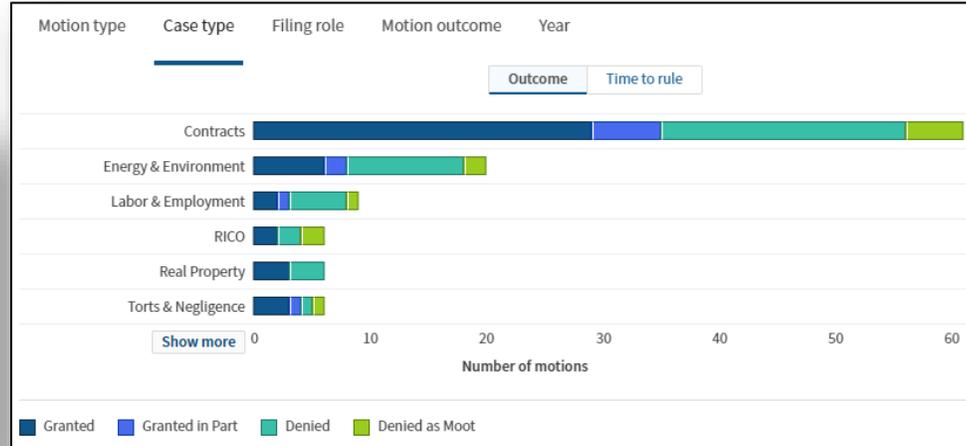
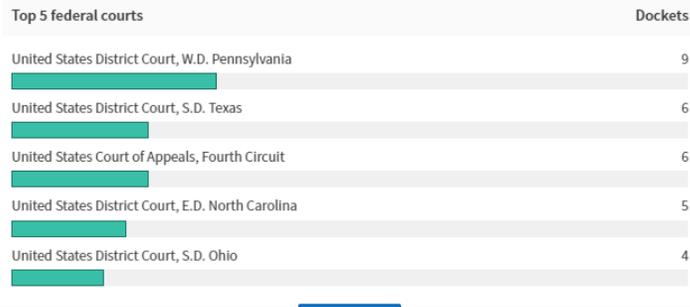
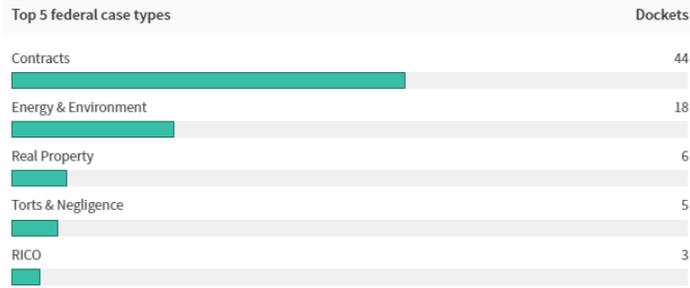
The **value** of the gain to us

=

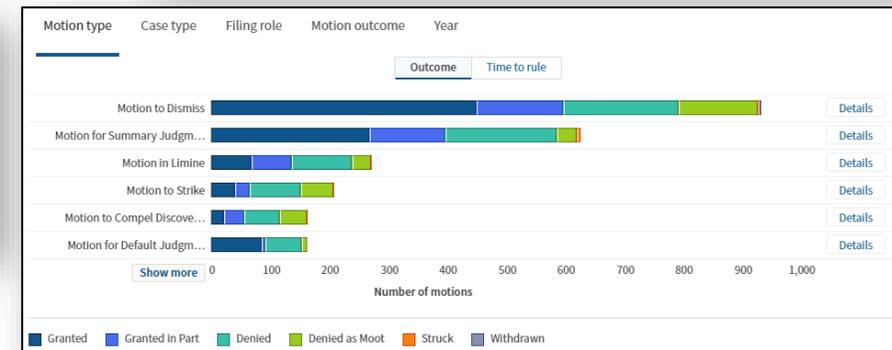
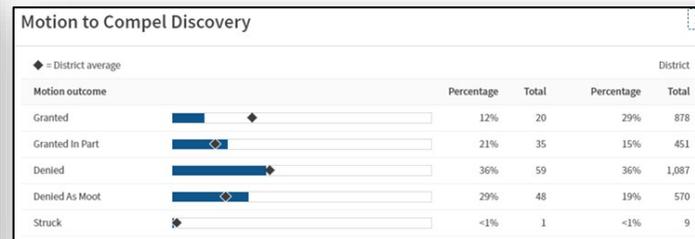
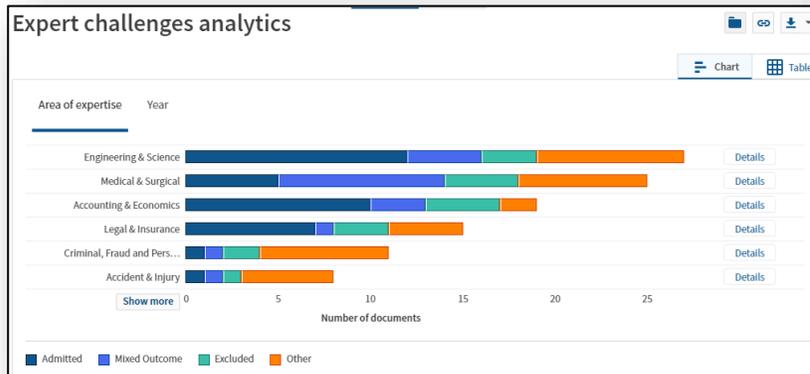
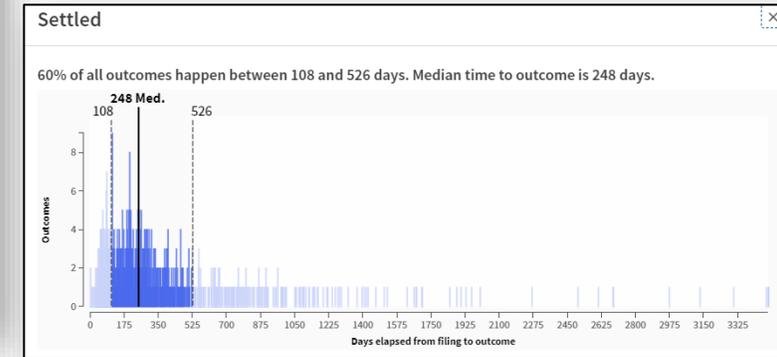
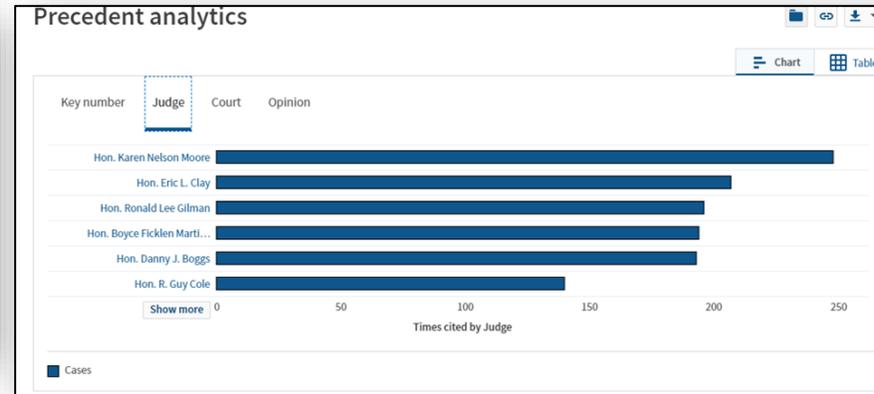
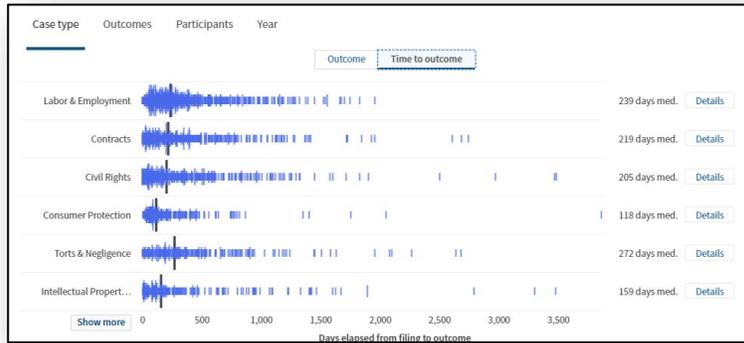
The Expected Value

Attorney Data (Westlaw Edge)

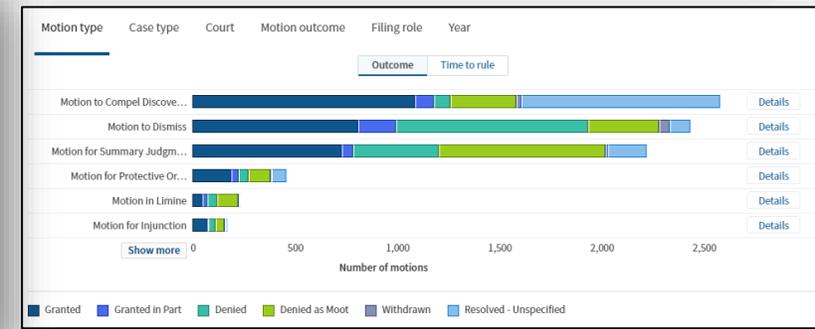
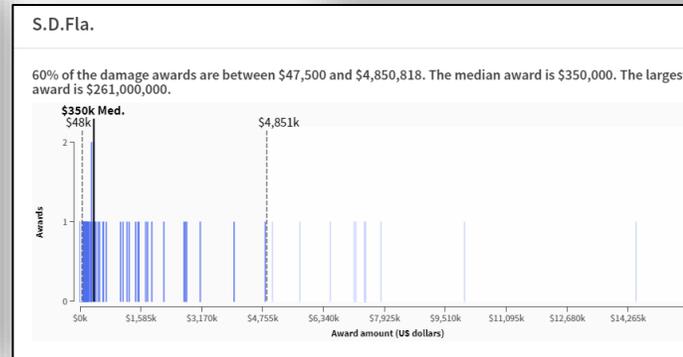
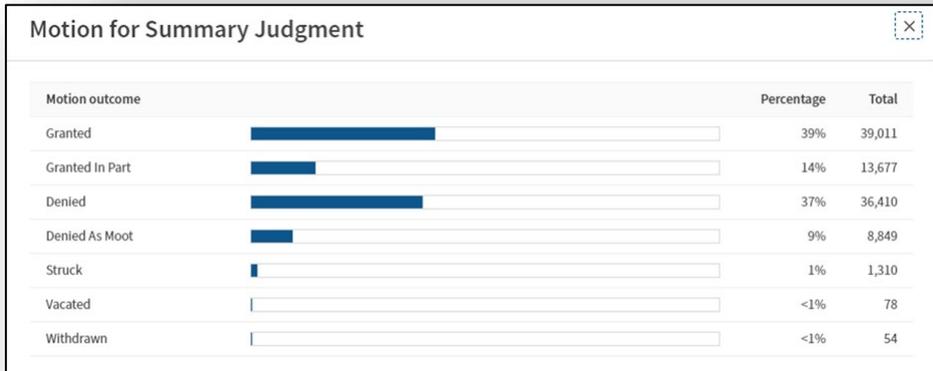
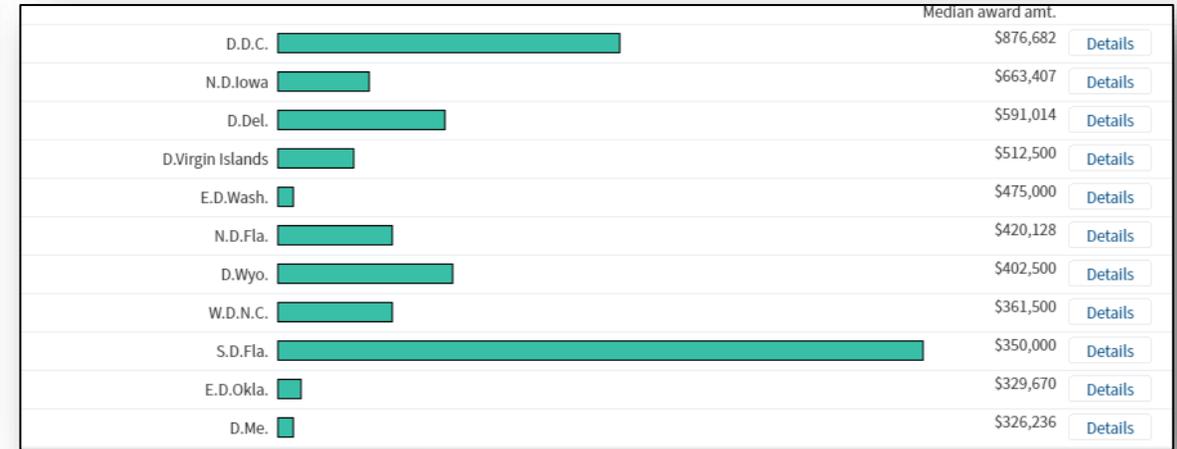
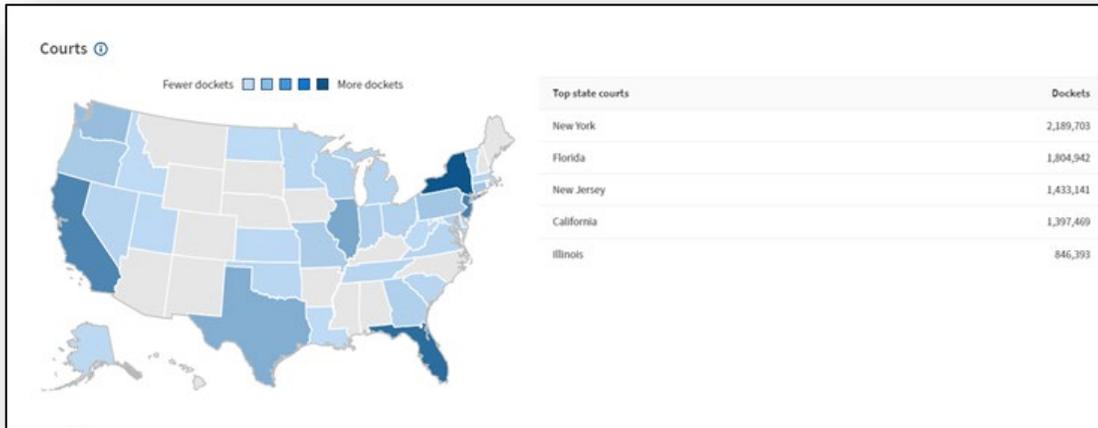
Experience



Judge Data (Westlaw Edge)



Jurisdictional Data (Westlaw Edge)



Identifying Trends (KCIC Ligado)

SEARCH FILTERS:

STATUS: STATE: JURISDICTION: DISEASE: ALLEGATION: NATIONAL PLAINTIFF COUNSEL: LOCAL PLAINTIFF COUNSEL:

MATTER: ACTIVE TRIAL START DATE: ACTIVE TRIAL END DATE: PROCESSED START DATE: PROCESSED END DATE: STATUS START DATE: STATUS END DATE:

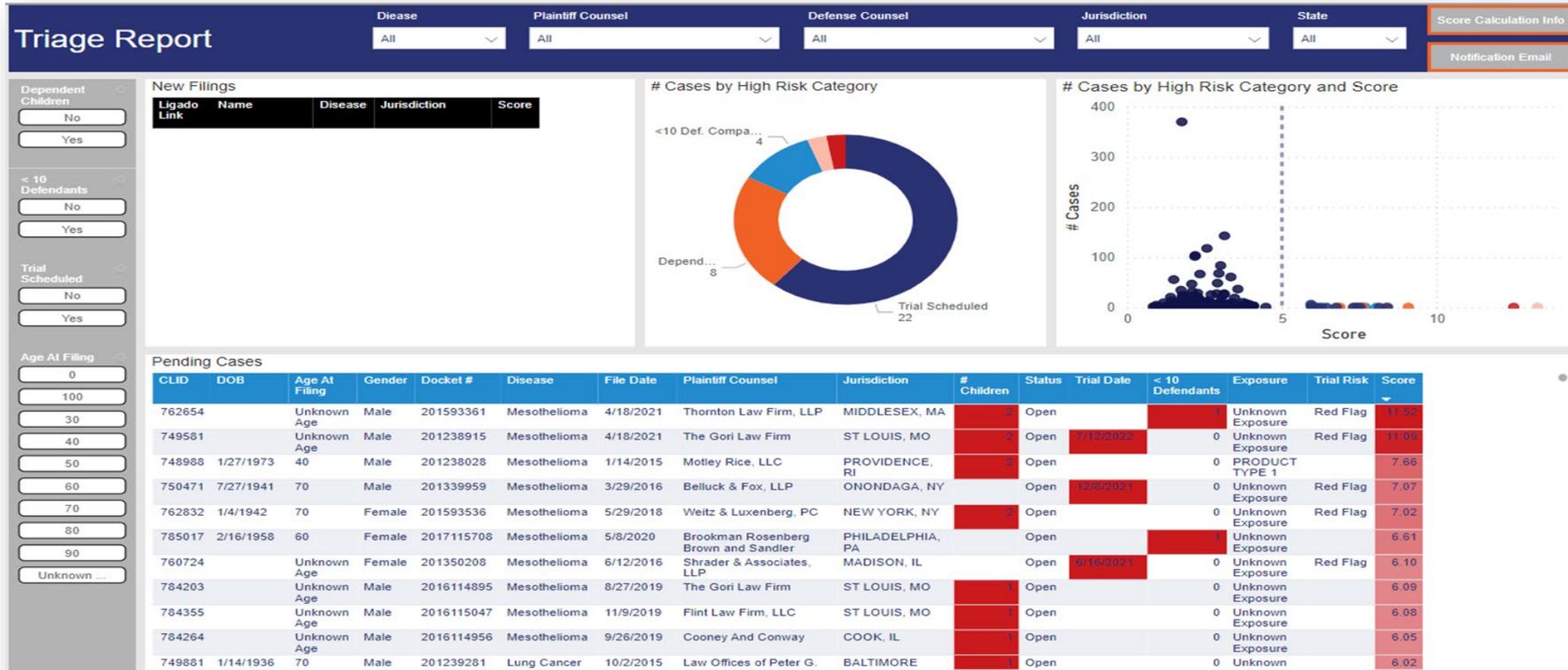
DATE PAID START: DATE PAID END: DEFENSE COUNSEL:

Showing 1-500 of 588

[EXPORT TO CSV](#)

CLAIMANT ID	CLAIM LAWUIT ID	CLAIMANT NAME	SSN	DATE OF BIRTH	DATE OF DEATH	MATTER	DISEASE	STATE	JURISDICTION	DOCKET NUMBER	NATIONAL PLAINTIFF COUNSEL	LOCAL PLAINTIFF COUNSEL	STATUS	STATUS DATE	FILE DATE	SERVICE DATE	DATE PROCESSED	ACTIVE TRIAL DATE	SETTLEMENT DATE	SETTLEMENT AMOUNT	SETTLEMENT PAID DATE	DEFENSE COUNSEL
100549	782217	BANKS, DOUGLAS	XXX-XX-2228			Client Matter B	Lung Cancer	NY	NEW YORK		Weitz & Luxenberg, PC	Weitz & Luxenberg, PC	Open				11/15/2017					Local Defense Counsel
100659	781774	BANKS, FRANCIS	XXX-XX-2234			Client Matter A	Lung Cancer	NY	NEW YORK		Weitz & Luxenberg, PC	Weitz & Luxenberg, PC	Open				5/25/2017					Local Defense Counsel
101229	782076	BANKS, JAMES	XXX-XX-2246			Client Matter B	Lung Cancer	NY	NEW YORK		Weitz & Luxenberg, PC	Weitz & Luxenberg, PC	Open	7/28/2018			7/28/2018					Local Defense Counsel
101382	783114	OSHTER, CHARLES	XXX-XX-2247			Client Matter B	Lung Cancer	NY	NEW YORK		Weitz & Luxenberg, PC	Weitz & Luxenberg, PC	Open				6/20/2018					Local Defense Counsel

Allocating Resources (KCIC Ligado)



Using AI to Improve Case Valuations



Trial and a regulatory attorney.



Products liability practice: emphasis on crashworthiness.



Regulatory attorney: CPSC and NHTSA



Statistics and AI Background

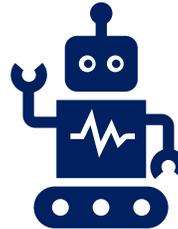


Extensive experience programming in R language

What is AI?



My traditional rule:



“Nobody Knows what AI actually is.”



“But whatever it is, they know that they like it.”

Real vs. Artificial Intelligence

Human Intelligence

- New Pattern Detection
- Understands what is Real
- Highly Adaptable
- Dreadful at Counting

Artificial Intelligence

- Struggles w/ New Patterns
- “Real” is a Relative Concept
- Follows defined patterns
- Phenomenal at Counting

Exposure

also known as the ...

Risk or Average Risk

No one universal definition.

Best definition is the *expected value* of the case.

Expectations are mathematically defined as the average value.

If I tried this case a 10 times . . .

Average of all the good results and the bad results we can foresee.

Challenge: Background Facts

You are managing the risk for a company facing a **high-exposure claim**

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Ready?

Your Lawyers' Assessment

- Your counsel believes jury finds no fault for your company 80% of the time.
- The case is pending in a modified comparative fault state where you think plaintiff gets a minimum of 20% of the fault about half the time, and the rest of the time most of it.
- Your counsel estimates the following potential damages: \$3M–\$10M for future medical bills; \$1M–\$5M for past pain and suffering, \$5–\$10M for future pain and suffering, and \$1M–\$2M in lost wages. She says the high and low values of each range are equally likely.
- Plaintiff plans to ask the jury for \$35M, although your counsel thinks that is completely unreasonable, and stands by her estimates above.

Question: What is the **average exposure at trial in this case**, based on your counsel's estimates of these various possible outcomes?

Average Exposure?

\$1.4 million

\$3.4 million

\$5.5 million

\$8.1 million

Average Exposure



Why Simulation was Needed

Unique Combinations	Simulations	Defense Verdict %	Average Plaintiff's Verdict	Maximum Plaintiff's Verdict	Average Result
34	1,000,000	90%	\$13,875,000	\$20,250,000	\$1,392,000

The Problem is Counting



Recommended Reading

- **Winning at Litigation through Decision Analysis** | John Celona
- **Thinking in Bets** | Annie Duke
- **How to Decide** | Annie Duke
- **Superforecasting** | Philip Tetlock
- **Beyond Right and Wrong** | Randall Kiser
- **Data-Driven Law** | Ed Walters
- **Legal Analytics: The Future of Analytics in Law** | Namita Singh Malik

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