



2020 Annual Conference  
March 18-20, 2020  
Dallas, TX

## **Predictive Analytics – You Don’t Need a Crystal Ball to Predict the Future**

### **I. Insurance, Data, and Predictive Analytics**

#### **Data Analytics**

Over the past couple of years, the amount of data being collected by businesses of all types and sizes has grown exponentially. According to IDC, the Global Datasphere will grow to 175 zettabytes by 2025 (*The Digitization of the World From Edge to Core*, David Reinsel, John Gantz, and John Rydning, IDC and Seagate, November 2018).

P&C insurers are no different and those that view analytics as a vital component of their business – from marketing to underwriting to claims resolution – will continue to have a powerful tool in a highly competitive market.

“At a time when companies in many industries offer similar products and use comparable technology, high-performance business processes are among the last remaining points of differentiation. [ . . . ] What’s left as a basis for competition is to execute your business with maximum efficiency and effectiveness, and to make the smartest business decisions possible. And analytical competitors wring every last drop of value from business processes and key decisions.” (*Competing on Analytics: The New Science of Winning*, Thomas H. Davenport and Jeanne G. Harris, Harvard Business Press, 2007).

Although claims departments are collecting an enormous amount of data, much of it is raw information that by itself isn’t very useful because it’s not operationalized. It doesn’t provide users with the actionable insights they need, when they need them. Nor does it provide them with information that can help them predict how long a litigated claim might take to complete, how much budget to allocate to the matter, or which law firm partner will be the right fit. It’s up to claims managers to make their own judgements on these issues. That can be time-consuming, headache-inducing, and—more often than not—inaccurate, costing organizations money, and reducing efficiency, and adding time to the resolution process, which can impact customer satisfaction. Predictive analytics offers a better way to look at data, to think about it, and to use it to better manage claims litigation.

## **What Is Predictive Analytics?**

Predictive analytics involves the use of historical and current data to provide accurate predictions of future outcomes. For example, using predictive analytics, a claims adjuster can estimate how much time it might take to resolve a claim based on data collected from past claims with similar attributes. Or, a claims department can gain a better understanding of what budget range to expect for a case from a particular firm for more accurate reserve setting. Or whether and when a case should be settled and what the expected settlement amount may be.

This is where artificial intelligence (AI) and machine learning come into play. These technologies can delve into the deep pools of data that your organization has collected to provide claims professionals with objective and accurate information. They can then use this information to better inform their decisions about which firms to use for any specific matter and how to best manage the litigated claim from a holistic perspective.

In short, predictive analytics can be used to provide insights into potential future performance and help you make better decisions based on actionable intelligence. Your ability to estimate and align your resources with litigation matters can be greatly improved beyond what would normally be possible using traditional means of data analysis and extrapolation, leading to better, more predictable outcomes and better claims handling for the policyholder. It also lends to more transparency between carrier and firm because the claims professional has a good basis of information to better communicate with outside counsel.

## **II. Making Predictive Analytics Possible**

### **The Role of Artificial Intelligence**

AI and machine learning are core components of predictive analytics, but there's often some confusion as to what these terms mean. Let's take a moment to define them and put them in their proper context.

**Artificial Intelligence:** AI is actually a broad category that incorporates many different types of technologies (including machine learning). AI analyzes vast amounts of information and identifies patterns that humans cannot easily detect. Insurers are already using AI technologies to improve their business processes, provide better customer service to policyholders, and create differentiated services. Examples include apps to access auto damage and generate repair estimates, fraudulent claim detection (which costs P&C insurers an estimated \$34 billion each year according to the Insurance Information Institute, May 2019), and more accurate underwriting decisions based on better risk assessment, red flag identification, and a wider range of available data to analyze.

**Machine Learning:** Machine Learning is a branch of AI in which software "learns" through continuous data analysis. As the data is analyzed, the data model becomes "smarter" and able to provide users with more intelligent and actionable information based on past precedents.

Together, these technologies can help claims teams add meaning to their big data and offer actionable insights when working cases.

### **Historic Data Versus Predictive Analytics**

It's important to understand the difference between historical data analysis and predictive analytics. Historical data is what we typically examine when analyzing metrics such as legal spend by practice area or geography or litigation length. Historical data is often looked at in a spreadsheet or dashboard and while you can use that data to make some educated guesses to the future, historical data might lead one to believe that tomorrow will look a lot like today. What it does not show is how outliers – risk, behaviors, trends, unfamiliarity – will affect future performance.

As data sets grow over time, it becomes harder and harder to rely on traditional reporting techniques to make sense of all the data, requiring technologies like AI to crunch large quantities of data to the specificity needed to hone in on one particular claim and all the factors that might affect its outcome. Is there complexity or jurisdictional risk? Does the plaintiff attorney take longer than usual with e-discovery? Are there other red flags, outliers, or contributing data that may move the parameters of how much a litigated claim may cost that puts it outside the “norm” of what traditional reporting would expect?

Predictive analytics needs to be able to interpret a mix of different data points to correctly forecast what to expect during the life of a matter, which firms may produce the best results for your case, and answer the questions of “how much will it cost?” and “how long will it take?” to a more accurate degree.

### **III. Predictive Analytics and Claims Litigation**

#### **Tapping Into Institutional Knowledge**

Imagine you have to find a cardiologist. Without experience or data, you have very few resources to depend on, mainly just word-of-mouth. You would have to rely on the experiences of friends and family if you didn't have access to the internet and doctor ratings, or worse, you'd just have to pick in the dark, hoping that you're picking the right doctor. But because of the internet and crowdsourcing opinions and experiential data, you can make better, more confident decisions because of the large wealth of knowledge recorded and made available.

Adjusters can rely on their experience or their gut when choosing a firm, and certainly adjusters with years of experience in the industry and relationships with firms and attorneys make what they believe are sound decisions when choosing representation for their policyholders. But are they truly choosing the best firm? How can they be more confident in their decision? And for newer adjusters, how can they truly know how to find the best firm to represent their policyholders from a multitude of choices? A quick survey of their peers will help, but if the data is available, it can help everyone find the best outside counsel that will fulfill their fiduciary responsibility to the policyholder and uphold the tripartite relationship.

Anecdotal experience using a firm or attorney certainly counts for a great deal, but associates need to be able to support their experience with proof of effectiveness of counsel among a myriad of metrics including legal costs, settlement costs, and length of legal engagement. There needs to be a foundation of solid historical performance metrics to back up anecdotal experience.

### **Operationalize Your Data**

Adjusters can be responsible for managing a large caseload of litigated claims and need to balance their responsibility to their policyholders with making sound financial decisions for their organization. Many claims professionals responsible for managing litigation face difficult decisions choosing counsel to represent their policyholders, basing those decisions on limited information about the quality of the counsel when aligned to the specific details of the case.

Relying on gut or experience, the adjuster still faces the same question: is this truly the best counsel for this particular case? Is the budget in line with past cases with the same type of details? How long should this case take so I can set expectations among all involved parties? When should I settle the matter?

Claims adjusters, litigation managers, and claims executives have a deep well of institutional data at their organization. The key to extracting value out of that data is operationalizing it, making it a part of daily work-flows to put information directly at the user's fingertips when they need it while making decisions such as firm assignment to a litigated claim.

### **Measure What You Want to Manage**

Determine your Key Performance Indicators (KPIs) to measure firm performance. These KPIs will help you identify your go-to partner firms that are aligned with your business objectives and can further help you when evaluating firms for cases or panel selection. Carriers that truly understand how to measure firm performance and communicate those performance factors to their attorneys and firms, are the ones best positioned to manage their litigation most effectively and produce better results for their policyholders and the business.

Determine what you value in your firm partners, measure those qualities (whether subjective like "firm responsiveness" or objective, like "average rate"), and weigh those values to build a firm performance metrics program that will have an impact on all firm relationship decisions, from case assignment to panel inclusion.

## **IV. Predictive Analytics, Budgeting, and Cycle Time**

### **Cascading Costs**

Two areas of predictive analytics that can have a big impact on firm selection are budgets and cycle times. Understanding the predicted monetary impact and cycle time of a case before engaging with counsel can help steer clear of the cascading effects that are felt from questionable initial decisions.

In our research at Wolters Kluwer with just one P&C carrier, we found that 88% of their litigated matters in a year were incorrectly budgeted, with a real financial impact of over \$50 million overspent.

A number of decisions can contribute to cascading costs: wrong firm choice, inaccurate budgeting, cases going on longer than expected, settlements that are too high. And these are all decisions that could be positively affected by predictive data or, in the case of settlements, data that provides a historical reference for settlement ranges and time to settle.

### **Predicting Budgets**

“[L]itigation budgets drafted by a litigator without significant involvement of corporate counsel or the client are not particularly valuable as a tool to control litigation costs. There should be a direct correlation between a client's litigation goals and the planning and projected cost of litigation.” (“The Litigation Plan: An Alternative to Traditional Litigation Budgets”, Charlotte E. Thomas, *Corporate Counsel Business Journal*).

Carriers can use predictive analytics to look at how a firm would budget a particular matter, and compare firms by overall budget and budget breakdowns into UTBMS matter phases. Where artificial intelligence makes its biggest impact on predictive analysis is finding the details that would regularly be missed or not considered when only looking at historical results. For instance, AI technology can not only look at the case type and its dimensions and specifics, it can detect anomalies or outliers that might affect a case due to geography, complexity, risk, performance traits of involved parties (e.g. a defense attorney taking longer with e-discovery than their peers).

These different factors can affect case costs and length; understanding from the beginning how a firm or attorney may budget a case can help not only in counsel selection, but setting up a clear set of expectations and a line of communication around those expectations. Adjustors can avoid decisions that will cost money down the line or affect settlement timing, indemnity costs, and total case costs.

### **Predicting Case Cycle Time & Early Case Resolution**

Predicting budgets by firm is just one side of the analytics coin; one of the harder metrics to quantify is cycle time. But aside from case cost, it is the one metric that often affects the policyholder the most. Waiting for resolution can affect customer satisfaction, and for the carrier, cases that take more time tend to cost more. Understanding the timing of a case helps the carrier and counsel better understand when it's time to turn towards settlement/resolution.

Cycle time predictions help with the management of cases in general; if a case is nearing the upper end of its predicted cycle time and there hasn't been discussion or offer of a settlement yet, then this is a red flag to the adjuster that something is holding up the usual process and expectations either need to be adjusted (as do budgets, most likely) or a communication with outside counsel needs to occur to realign activities.

For organizations that value early case resolution, cycle time predictions can help them better see if their resolution strategies are working and which firms are providing value and alignment

with early resolution goals. Viewing predicted cycle times by firm for quick comparison allows adjusters and litigation managers to understand which firms are performing to expectation and which firms may need further instruction.

## **V. Understanding Settlement Expectations**

### **Gain a Historical Perspective**

The “holy grail” of insurance claims litigation metrics is understanding total case cost – legal expenses plus whatever settlement/judgement amounts comprise a case’s outcome. Better controlling either of these factors can greatly impact the bottom line for a carrier. There are a lot of moving pieces that make controlling outcomes equally an art and a science. The people involved in a claim – the adjusters, the attorneys, the experts – all leverage their years of experience and expertise to provide the work. Simple data or technology alone cannot replicate or replace.

A high percentage of cases settle, anywhere from 90-97% depending on which statistics you follow. Deciding when to settle and for how much is therefore critical to the success of a claims litigation program, especially those seeking early case resolution.

When using past case data to draw assumptions about new cases, using that data as a historical reference to understand how to best proceed is a powerful tool when determining the timing and cost of a settlement. For example, a claims adjuster may look at a case and see historically where it tends to fall in settlement, if the amount of settlement is less than what they’re projected to spend in trying to drive the settlement down, and then decide to settle early.

For the carrier, the factors of cost of legal expenses are weighted against the cost of settlement and knowing the range those metrics by pulling a historical perspective in greatly improves the adjuster’s ability to hit the right spot of when to settle and for how much. For the policyholder, the litigation is resolved sooner. For many carriers, getting an idea about settlement timing and approximate cost expectations can help them understand where the “sweet spot” is for a case, so they’re resolving the claim at a cost and time frame that fits resolution goals and policyholder satisfaction.