

## DAMAGES : ESTIMATING PRODUCT LIABILITY

### INTRODUCTION

*Access to reliable forecasts of product liability claims gives lawyers and corporate executives a critical lever with which to drive settlement and litigation strategies. Far too often, back-of-the-envelope estimates prove to be off the mark. Despite the fact that these cases often have accumulated huge amounts of scientific and claimant data, we find that few stakeholders typically use the available data to estimate potential damages.*

*In this issue, we describe analyses that can be used to develop sound estimates and identify some of the common types of problems encountered. Two case studies are presented: one for a medical device damages valuation and one for an asbestos damages assessment.*

*For more information on The Brattle Group's work in the area of product liability and/or insurance recovery, please contact Gayle S. Koch in Cambridge at 617.864.7900.*

The number of product liability cases in the United States has been exploding over the past several years. In many instances, product liability claims can result in extended litigation and/or bankruptcy. Plaintiffs, defendants, and their insurers have a need to assess correctly the magnitude and nature of this exposure in order to manage risk, structure and price insurance, and estimate the value of a litigated matter to determine appropriate settlements and strategies.

At the heart of a product liability case are two questions: what is the likelihood that plaintiffs will be successful in pursuing their case, and what is the total dollar value of claims likely to be? Understanding the answers to these two questions requires knowledge of a wide range of sub-issues: the likelihood of class certification; the types of injuries claimed; the strength of the link between the defendant's actions and the claimed injuries; the expected awards (if any) by type of injury; the possibility of punitive damages; the expected litigation costs; and the allocation of liability among parties, including insurers.

Since each of these uncertainties may have many possible outcomes, the range of a company's product liability exposure can be wide. This can make it very easy for a company to be blind to potential small-probability, extreme-outcome events. Or it can cause firms in settlement negotiations to focus on the extreme small-probability events rather than on a probability-weighted outcome.

Fortunately, there is a framework that puts structure on the problem of correctly assessing a company's exposure. The framework involves using a combination of event trees and statistical analyses. Once constructed, an event tree enables companies to manage their litigation risk effectively, develop and evaluate settlement offers with confidence, improve their negotiating position, and structure and price insurance settlements. This newsletter draws on *The Brattle Group's* significant experience in quantifying these types of liabilities and describes the techniques used.