FOCUS ON PERSONAL INJURY

Spreadsheet software makes settlement calculations a snap

By Darcy Merkur

Personal injury lawyers everywhere continue to punch away at their primitive calculators, trying to determine how much their clients would receive from the latest offer to settle. Many don't realize that spreadsheets have replaced calculators, the same way that word processors have replaced typewriters.

Let's take a simple example. You are at mediation and the defendant has just offered an all-inclusive amount of $145,000 to settle your client's claim. Your client tugs on your jacket and asks the only question they understandably care about, "how much would I receive if I accept that offer?"

You are armed with the information you require — your assessable disbursements are $10,000 inclusive of GST, the defendant's offer included 15 per cent plus GST towards your partial indemnity costs, and your client will be paying you 15 per cent plus GST of their damages.

You start to think about how to do the calculation. OK, first subtract the disbursement total from the all-inclusive number, then take the $135,000 balance and divide it by 1.15 to determine your client's damage amount before the defendant's contribution towards your costs, no wait, don't forget the GST!... it is at this point you suggest that lunch be brought in. Several minutes later, you think you have it figured it out, but realize that you better recheck it.

Personal injury lawyers still using calculators are forced to check and recheck their calculations to make sure the numbers balance before they explain the breakdown of the all-inclusive settlement numbers to their clients. These "balance chasers" can often be distracted by the mathematics of the offers during the course of an important mediation.

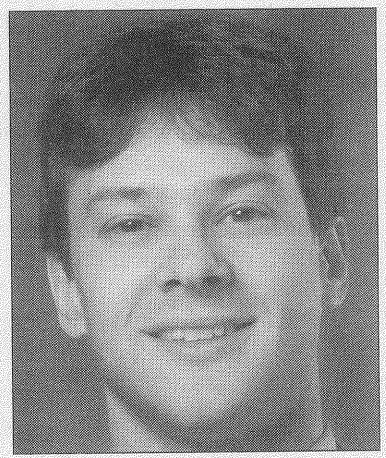
Spreadsheets solve these regularly occurring and time-consuming mathematical problems. Spreadsheet software allows the user to develop simple formulas that can be used over and over again to instantaneously and accurately calculate the answers to these and other very important questions. Virtually all computers come with a spreadsheet program, the most common of these programs being Excel.

But spreadsheets can do much more than break down settlement offers. They can also be used to effectively calculate the precise value of personal injury claims.

During the course of any personal injury claims the following mathematical issues arise: properly and accurately applying prejudgment interest on general damages and on past pecuniary losses, applying the appropriate statutory deductibles in motor vehicle cases, calculating life expectancies, calculating present values using the appropriate discount rate and mortality factors, accounting for collateral benefits, and, often most importantly, properly applying contributory negligence reductions.

All of these mathematical calculations are items that can be addressed in a sophisticated spreadsheet program.

Take the issue of prejudgment interest on general damages. Many personal injury lawyers simply ballpark the duration for which their client is entitled to prejudgment interest. Rather than adopting this inaccurate ballparking approach, you can go into a spreadsheet and subtract the date of the incident from the date of the mediation. It is that simple. As an example, you would know that it has been 3.62 years since the date of the incident, instead of ballparking it at roughly 3½ years.



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How about calculating prejudgment interest on past pecuniary losses? While many wrongly apply the 5 per cent interest rate mandated for non-pecuniary damages under Rule 53.10 of Ontario's *Rules of Civil Procedure*, the proper way to calculate interest on past pecuniary losses is to refer to the appropriate interest rate as set out in ss. 127 and 128 of the Ontario *Courts of Justice Act*. Then a half rate convention may be applied if the pecuniary loss was an accrued benefit. Again, a sophisticated spreadsheet program can look up the rate of interest and can calculate the interest totals properly.

Turning to issues of discount rates and life expectancies, most personal injury lawyers keep a discount rate chart handy. These charts, kindly provided by the structured settlement companies, are very useful but they do not account for part years.

In other words, there is no convention in place on how to properly apply the chart multipliers if your client is, say, 32.4 years old. Moreover, the charts do not provide mortality information for retirement ages other than age 65, so they are of limited use in calculating a multiplier with mortality factors to age 62. A sophisticated spreadsheet program can incorporate all this data so that part years are addressed and so that mortality issues can also be addressed.

In the end, while personal injury lawyers slowly become more comfortable with using spreadsheets at mediations, calculators should continue to be used as a supplement. As the comfort level grows, spreadsheets will prove to be incredibly more valuable than a calculator, since they have the ability to eliminate and reduce the need to cross-check calculations, and since formulas developed within a spreadsheet program can be reused regularly.

It is just a matter of time, but soon calculators will be a way of the past for personal injury lawyers.

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