

## **WHAT'S IN A CLAIM FILE? WHERE ARE THE "TIE BREAKERS"?**

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A "Tie Breaker" represents a piece of information that when added to the weight of evidence, defines a higher probability of a WIN or a LOSS in "Question of Liability" or "Injury Causality" situations. "Tie Breakers" also represent opportunities to promote early negotiation and to adjust reserves (e.g., UP for an adverse or positive liability probability, and DOWN for a negative one). "Coin flip" decision making e.g., guessing on WIN probabilities based on expected witness acceptance or jury reactions is thus refined or enhanced via the use of "Tie Breakers", particularly in situations where EXPERT witness or scientific analysis is introduced into evidence or as an actual "Tie Breaker" on its own.

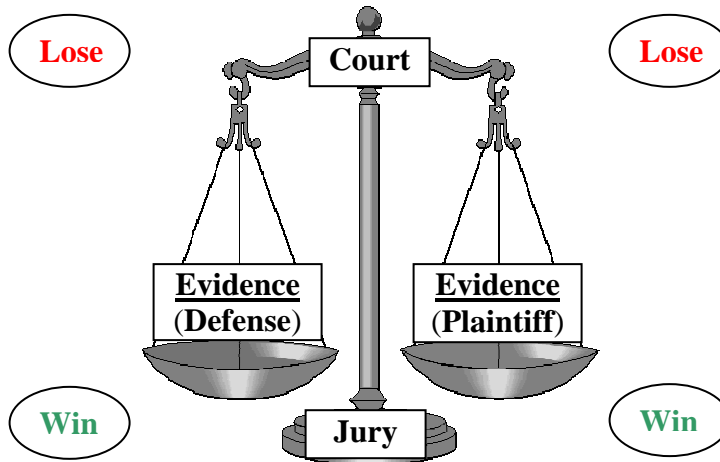
Information currently utilized to "build a case" or to determine liability or injury causation is reflected in the below claim file contents list. Where this information is used is identified via the codes as noted:

1. Coverage Verification cards and system access – **C**
2. Police Reports – **L,I**
3. Insured Reports and Statements – **L, I+C**
4. Claimant Reports and Statements – **L,I**
5. Witness Reports and Statements – **L**
6. Accident Scene Photos and Investigation Reports – **L,I**
7. Damage Estimates and Photos – **V,I**
8. Claim Data Base Reports for Third Party Providers – **L**
9. MVR and State Accident Report Data – **U, L**
10. Medical Reports and Data – **V, I + R**
11. BI Severity Analysis Tools and Consultation Reports – **V,R**
12. Employment (Wage) Reports and Data – **V, R**
13. Diary Notes – **L**
14. Expert Witness Reports – **L,I + V**

(**L**iability and Investigation, **I**njury Causation, **V**alue, **U**nderwriting, **R**eserving, and/or **C**overage Verification Use)

The below schematic represents the Defense, Collection and Subrogation process as it relates to jury or claims managements collection and analysis of final documentation. It displays the discovery and decision steps taken prior to actually deciding to enter a court room, to select a jury, or to begin formal arbitration or negotiations. Jury perceptions relative to witness strength can appear on either side of the below balance scale, and in many cases can be better managed via the development and use of more objective and scientifically based evidence.

## THE PROCESS



All file contents can represent or can contain “subjective” positions and versions (as no one is encouraged on either side of a claim to assume fault or responsibility – look at your insurance card that states “Do not admit liability”). **All information in a claims file today is subject to interpretation EXCEPT the information generated by the forces and operations of the vehicle or vehicles involved in the accidents. In this case, the information is generated mechanically or electronically and when captured is absent any interpretation, modification or embellishment of objective fact.**

Frequently, the process of Liability Determination becomes an extended “balance and counter balance” exercise. Each “side” of the liability argument investigates and gathers information in order to build an evidence and proof inventory, and often each side ends up facing a “balanced” scenario (e.g., when no one case is compelling or unbalanced to the point where the other “side” must capitulate to probable or feared court and/or jury perceptions or final decisions).

The “balanced” cases are those most often settled on the “Court House Steps”, as final court or jury decisions most often relate to which side can present the best story based on a jury or arbitration panel’s belief, trust and acceptance of one party (or case file vs another). In addition, “balanced” cases are those that typically remain open for the longest period of time, as given current court caseloads, it is now taking more and more time to get cases to a jury or peer review status.

Settlement, reserve average and loss payment statistics have long demonstrated that “as a claim grows older, it invariably becomes more costly to settle”. Both “sides” are regularly made aware of this, and on the defense “side” of this process, there is additional incentive to settle and close as a “coin flip jury” decision can also present an exposure and relate to Bad Faith decision making. Also, in many venues the belief is strong that insurance is actually a reward vs a group or shared protection against risk process. This is

exacerbated by the overwhelming percentage of the insurance buying public that it is acceptable to exaggerate or otherwise take advantage of the claims process. The net of this is an automatic or inherent weighting of the decision probability scale further towards a plaintiff decision. Juries often fail to recognize that the ultimate cost of a “coin flip” decisions ultimately falls to them in the form of higher insurance rates.

Obviously, what should be paid should be paid! Both “sides” involved with the Liability Determination and Investigation process agree with this. Reductions of risk involve both knowing when to “hold em and when to fold em”, as the net of the proper and correct application of this concept will in the end result in holding the line against ever increasing insurance cost to consumers.

### **EDR's ( Multiple Usage Areas )**

**Liability and Investigation, Injury Causality, Coverage, Underwriting, Value, and Reserving use)**

The newest (and best) “Tie Breaker” arrival in the areas of Liability Determination, Subrogation Pursuit and Defense are the data contained in Electronic Data Recorder Units. Recent regulatory changes relative to the availability, access and use of these data (issued by the National Highway Transportation Administration – NHTSA) makes EDR information available to both the insurance industry and to the Trial Bar. The attached White Paper summarizing the impact of the 206 page NHTSA document announcing their changes is attached to this document as Appendix A.

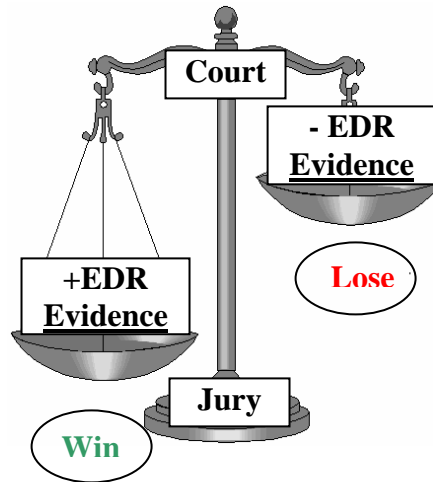
When these data are available (as is or as will soon be the case on most late model vehicles), it is possible to harvest additional “evidence “ in the form of objective accident facts as collected by the actual vehicles involved. From a claims perspective the evidence balance provided using more objective and scientifically based information and data is more truly the reflective of the objective facts of an accident case. The availability of EDR information assists not only in Liability and Injury Causality determination, it can also assist in both the pursuit and defense related to collection and to subrogation activities (including Inter Company Arbitration). In addition, the data generated from EDR information can also be used to assist insurers in further developing more balanced, fair and accurate Underwriting Selection, Product Pricing and Classification and related Consumer Risk Sharing and rating programs.

## CLAIMS AND UNDERWRITING OPERATIONS USAGE EXAMPLES:

1. **Underwriting Selection and Pricing**
  - a. Improved defense capability
  - b. Productivity increases generated by improved Settlement and Close cycle timeframes
  - c. Better defense capability means lower losses = lower rates
  - d. Lowered Bad Faith Exposure = Lowered Expense and Loss Ratios
2. **Coverage Verification – Accident Timing - Coverage Period Proof**
  - a. Improved ability to validate
  - b. Improved ability to defend non validated
3. **Liability Determination**
  - a. Speed, Braking, Avoidance – Last Clear Chance, Signals
  - b. Product (Vehicle) Defect – Brake Lights, Signals
  - c. Seat Belt Use – Passenger Positioning, Sequence Validation
4. **Reserving**
  - a. First Notice Processing – Average, Bulk, Individual
  - b. Investigation Complete
  - c. Court (Jury) Preparation
5. **Final Claim Value Determination**
  - a. Court (Jury) Preparation
  - b. Negotiations
  - c. Setting Settlement Expectations
6. **Suit (Offense and Defense) Positioning**
  - a. Liability
  - b. Injury Causation and Severity
  - c. Complete File Preparation and Full Documentation
7. **Recovery Processing (Subrogation)**
  - a. Physical Damage
    - i. Inter Company Arbitration Submissions
    - ii. Uninsured pursuits and Collections
  - b. Medical Payments/PIP
    - i. Arbitration
    - ii. Collections and Reimbursements
  - c. Workers Compensation Payment Recovery Pursuit or Defense for:
    - i. Work Loss
    - ii. Disability
    - iii. Medical

Weighting using ALL of the information available (e.g., using objective data from a vehicle itself) works to the benefit of all in that the uncertainties are reduced by the development of objective evidence. Last minute or “coin flip” decisions can be held to a minimum and claims cycles can be shortened. Payments can be released earlier, and reserves can be more accurately established early and directly related to the true exposures presented by each claim where EDR information is available.

## REVISED PROCESS RESULT



Applying the EXAMPLES to the claim evidence or investigation file adds weight to arguments and probabilities associated with BOTH win and loss scenarios. The net result is that more objective data can generate more informed decisions. This will take the guess work or work to eliminate “coin flip” decisions, and will also takes at least some of the venue “prejudice” out of the final award process.

EDR data when combined with new and emerging (scientific, system guided and technical) approaches to evaluating Accident Impact and Velocity and Injury Causality and Severity analysis will greatly contribute to automated best practices that ensures that:

1. ALL claims are settled in a **FAST , FAIR and APPROPRIATE** way
2. **Opportunism, Exaggeration and Fraud are Identified EARLY** during the claims investigative process
3. **Pricing, payment and claim settlement decision** processes are based on having and using ALL information available – **Legal challenges related to loss of evidence are eliminated**
4. Insurers can better **control** their **expenses** and the **costs** or their products to the insurance buying markets

## ACTUAL CASE EXAMPLES

### 1. LIABILITY DETERMINATION– Verify facts regarding liability and provide information for use in subrogation pursuit and defense

#### A. Who hit whom?

- Insured said that vehicle in front backed into them. Claimant vehicle said insured ran into them. EDR data verified that insured was backed into.
- Multi-vehicle chain reaction collision. Insured was in middle vehicle and claimed they were pushed into vehicle in front of them. EDR data verified that the Insured was struck before running into the vehicle in front of them.
- Witness statements in conflict
- Claimant vehicle pulled out in front of Insured vehicle. Claimant said Insured was speeding and Insured was adamant they were not. EDR data confirmed Insured’s story.
- Insured approaching intersection in inside lane of a four lane. Insured strikes turning claimant vehicle killing occupants. Insured said they had the light and were not speeding. Witnesses said they were going fast and the light was changing. EDR data confirmed the Insured was speeding prior to the impact.

#### B. Pedestrian Losses

- Pedestrian stepped in front of Insured vehicle. Insured said they had no time to stop because the pedestrian “came out of nowhere”. EDR data confirmed vehicle was not speeding and brakes were applied just prior to event.
- Headlamp/windshield wiper utilization in weather related losses

#### C. Mechanical failure Situations

- Insured claimed that cruise control “stuck” causing accident. EDR data corroborated story. Subsequent investigation revealed an after market cruise control was installed on the vehicle.
- Proper and/or regular maintenance validation

#### D. Other potential examples

- Angle of impact – how did the vehicles collide?
- Seat Belt usage and related defense positioning

### 2. INJURY CAUSALITY, SEVERITY AND MECHANISM

A. Insured vehicle “tapped” vehicle in front of them at a stop sign. Claimants claiming significant injuries. Client conducted biomechanical review which indicated minor impact. Collected EDR data as a backup to the biomechanical review. Lack of EDR data corroborated the biomechanical review and provided a “one-two punch” to defend the claim.

B. Insured backed up in a drive through and hit claimant. Three allegedly injured in claimant vehicle. EDR data confirmed a low severity impact and low injury potential

C. Seatbelt defense to reduce or deny damages

### 3. **FRAUD – FACTS OF CLAIM DETERMINATION**

A. Vehicle allegedly parked in parking lot, not in operation and was struck by another vehicle over night. EDR data was available which indicated that the vehicle was in operation at the time of the impact

B. Other examples:

- Timing of claim relative to when policy was in force
- Airbag replacement or lack of replacement
- Who was driving a vehicle?

About the Author

**Joe Jensen, Senior Vice President Marketing and Business Development, Injury Sciences.** Mr. Jensen has over 35 years of experience in insurance, claims and related systems design, development and implementation services. He is responsible for the creation and activation of Injury Sciences Marketing Campaigns and Alliance Relations. He is also responsible for Business Process and Work Management, Work Management and Best Practice Automation Design and Development initiatives at Injury Sciences. Before coming to Injury Sciences, Mr. Jensen served in various marketing and business development and product management positions at:

1. **Computer Sciences Corporation** as Financial Services Group. Executive Vice President, Cross Channel Business Development, Strategic Account Management, Claims Division Management, Group Marketing (Life, P+C and Banking and Cards Divisions). His development and support responsibilities included administrative systems, claims management tools and consulting services. 2. **Equifax Insurance Services:** Marketing Head for CLUE, MVR, and Background Information Validation and Evaluation Services (including Rate Price Management and Property Inspection Services. 3. **Insurance Services Office:** State Office Inspection and Rating Management, Telecommunications Company and Network Development, Client Services and Marketing and Sales. He also served as Regional and State Government and Industry Relations Manager (Rate, Rule, Form, Statistical Plan Filings and State Agent and Advisory Committee relations). 4. **Employers Mutual Casualty:** Claims and Commercial Underwriting Management and Agency and Employee Training. 5. **Allstate Insurance:** Subrogation and Salvage Management, Claims Management (BI Investigation, Claim Control and Represented Case Negotiations)

Mr. Jensen attended Scranton University, Columbia University and the Wharton School of the University of Pennsylvania with a curriculum focus on Psychology, Business, Marketing and Sales. He also has six years active and reserve military experience in the areas of Engineering and Army Aviation.