

# Judicial Settlement Databases: Development and Uses

By Hon. Morton Denlow and Jennifer E. Shack

Two hours into the settlement conference, the parties are at an impasse. Both sides express widely divergent views as to an appropriate settlement value. Unable to move the parties any closer, the judge pulls out a binder and shows the parties a report listing settlement amounts in similar cases. After considering this information, the parties reevaluate their positions and reach an agreement. This is just one of the ways in which magistrate judges in the U.S. District Court for the Northern District of Illinois are making use of the court's innovative settlement database.

Judicial settlement conferences are a principal means by which cases are resolved, with thousands of cases settled through these conferences each year. In contrast, only a tiny percentage of civil cases go to trial. Settlements therefore represent important practical precedent for courts and litigants, providing useful information that can assist clients, lawyers, and judges in settling other cases. Despite the importance of judicial settlement results, however, little effort has been made until recently to collect and distribute settlement data.

The federal court in Chicago has set out to change that. A group of federal magistrate judges initiated a project to collect and share data on completed settlements to assist them in their duties. After an agreement is reached in a settlement conference, the judge prepares and submits a confidential

settlement summary, which is compiled monthly into a report for the judges' use. This article describes the process by which the report is created and the ways in which the Chicago judges use it, discusses other applications and benefits that can be derived from the collection and dissemination of settlement information, and explains how other courts can initiate similar programs.

## The Need

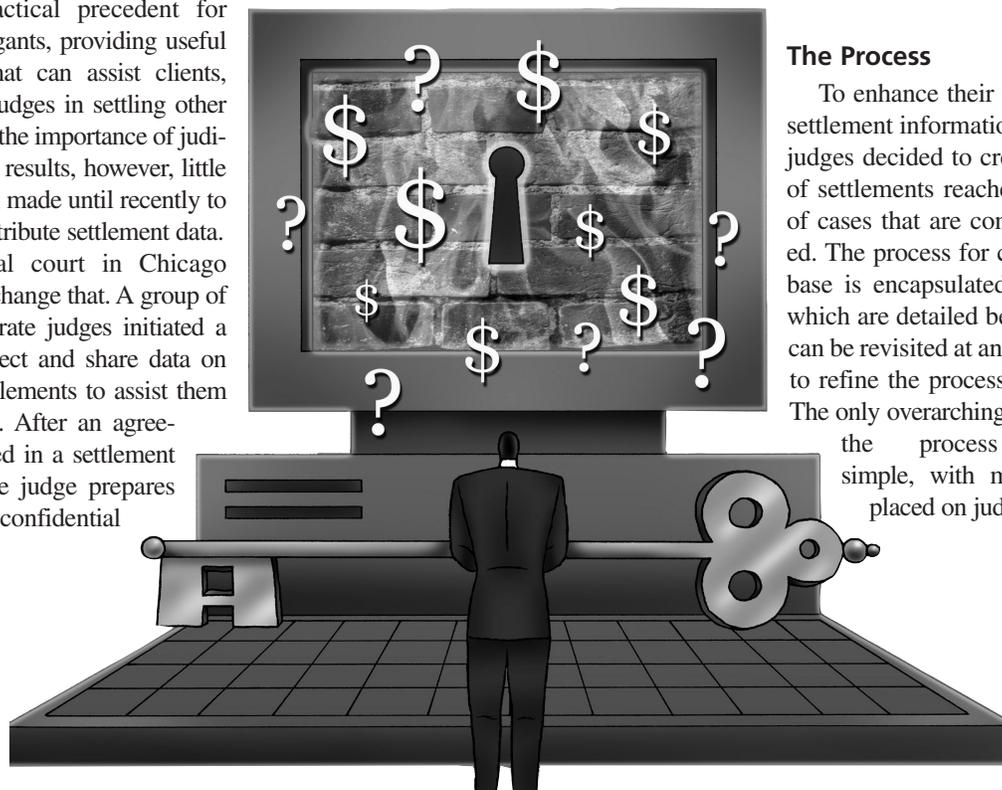
What constitutes a fair settlement for a particular case? What is the range of settlement amounts for similar types of cases? Is the settlement offer or the settlement demand reasonable? What is the relationship between the settlement amount and the initial demand and offer made by the parties? When is the best

time to conduct a settlement conference? How much discovery is necessary before parties should agree to a settlement conference? To what types of nonmonetary settlement terms do parties agree? What types of creative settlement solutions have been used in other cases?

These and a variety of other questions face lawyers and judges as they deal with their caseloads and consider their litigation alternatives, including settlement. Judges and lawyers bring their own backgrounds and experiences into the prosecution, settlement, and trial of a case. Individual experiences are necessarily limited, however. A system to collect and share settlement information broadens the knowledge base of individual judges and lawyers, helping them to be more effective in assisting the parties in analyzing the settlement alternatives and achieving settlement.

## The Process

To enhance their ability to share settlement information, the Chicago judges decided to create a database of settlements reached in the types of cases that are commonly litigated. The process for creating a database is encapsulated in five steps, which are detailed below. The steps can be revisited at any point in order to refine the process and the form. The only overarching concern is that the process be kept simple, with minimal burden placed on judges and staff.



**Step 1: Defining case categories:**

The selection of case categories for the summary report depends on how frequently certain types of cases come before the court. In the Northern District of Illinois, the nine magistrate judges conduct settlement conferences in more than one thousand cases each year. A large majority of these cases fall into the following eight categories: employment discrimination, civil rights, personal injury under the Federal Employers Liability Act, other personal injury, intellectual property, truth in lending, fair debt collection, and ERISA. Therefore these were the categories for which the judges decided to collect settlement information. The volume of cases is sufficient to show settlement trends that may be valuable in resolving other cases in settlement conferences. For example, parties to an excessive-force civil rights case in which the plaintiff suffered a broken wrist likely will find similar cases in the summary report to assist them in settling their dispute.

The judges excluded other categories from the data collection because the characteristics of each case are so different that recurring issues are unlikely to appear. For example, breach of contract cases are not tracked because every contract is different and the alleged breach varies from case to case. A settlement for one breach of contract case, therefore, would not be helpful in determining the value of a case involving a different contract.

**Step 2: Defining the information:**

In order to create a meaningful report, it is first necessary to determine the scope of the information and the relevant data required from each case. Because the primary motivation for the project is to assist judges during settlement conferences, the Chicago database includes only cases that settle and tracks settlements for only the three previous years. The list is updated regularly in order to keep it manageable and because comparisons with older settlements are not as useful as more recent settlements.

After the judges define the scope of the project, their next step is to deter-

mine what information should be gathered from each case. If the summary report is to be an effective tool in settlements, detailed information of each case must be included. The database in Chicago therefore tracks not only the nature of the case but also the subcategory (such as whether discrimination was by race or by gender, an employment claim was for wrongful discharge or for failure to promote, or the civil rights claim was for false arrest or for excessive force). Other important comparison information includes settlement terms, itemized damages claimed by the plaintiff, and the parties' initial settlement demands and offers. In addition, the status of the case at the time of settlement—the stage of litigation, the amount of discovery conducted, and whether a plaintiff survived a motion

for summary judgment—provides valuable information for case comparisons.

**Step 3: The settlement report:**

The next step involves creating the form that will track the information from each settlement conference in which an agreement is reached. Because judges are extremely busy, designing a form that they can easily complete in a short period of time is essential. The Chicago judges decided to use check boxes and fill-in responses.

The report form we currently use contains boxes for the case type and/or subcategories of employment discrimination and civil rights cases. The form can track multiple claims, such as a claim for age and race discrimination or a civil rights claim for excessive force and false arrest. Greater emphasis and detail are requested for

**SETTLEMENT REPORT**

TYPE OF ACTION (Check all applicable boxes): SETTLEMENT DATE: \_\_\_\_\_

<p><b>EMPLOYMENT DISCRIMINATION</b></p> <p><input type="checkbox"/> Age: _____ years old</p> <p><input type="checkbox"/> Disability: Describe condition: _____</p> <p><input type="checkbox"/> Race: Identify: _____</p> <p><input type="checkbox"/> Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male</p> <p><input type="checkbox"/> Sex Harassment: _____</p> <p><input type="checkbox"/> Retaliation: _____</p> <p><input type="checkbox"/> Other: _____</p>	<p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> Deliberate Indifference</p> <p><input type="checkbox"/> Excessive Force Describe Injury: _____</p> <p><input type="checkbox"/> False Arrest</p> <p><input type="checkbox"/> False Imprisonment</p> <p><input type="checkbox"/> Malicious Prosecution</p> <p><input type="checkbox"/> Other: _____</p>	<p><b>OTHER ACTIONS</b></p> <p><input type="checkbox"/> P.I. (FELA) - Describe Injury: _____</p> <p><input type="checkbox"/> P.I. (Other) - Describe Injury: _____</p> <p><input type="checkbox"/> Intel. Prop.: _____</p> <p><input type="checkbox"/> Truth In Lending</p> <p><input type="checkbox"/> Fair Debt Collection</p> <p>ERISA: <input type="checkbox"/> Union Benefits/Contrib. <input type="checkbox"/> Insurance policy; <input type="checkbox"/> Other _____</p>
---	--	---

TYPE OF ADVERSE EMPLOYMENT ACTION ALLEGED (Check all applicable boxes):

Failure to hire  Failure to promote  Wrongful discharge

Reduction in force  Other: \_\_\_\_\_

Length of Employment with Defendant: \_\_\_\_\_

SETTLEMENT TERMS: \$ \_\_\_\_\_ Other: \_\_\_\_\_

PLAINTIFF'S ITEMIZATION OF DAMAGES: Total \$ \_\_\_\_\_

BREAKDOWN OF DAMAGES SOUGHT: \_\_\_\_\_

PLAINTIFF'S INITIAL SETTLEMENT DEMAND: \_\_\_\_\_

DEFENDANT'S INITIAL OFFER: \_\_\_\_\_

STAGE OF LITIGATION (check all applicable boxes):

<input type="checkbox"/> Very early - little or no discovery	<input type="checkbox"/> Discovery cut-off date set
<input type="checkbox"/> Discovery in progress	<input type="checkbox"/> Final pretrial order date set
<input type="checkbox"/> Discovery completed	<input type="checkbox"/> Final pretrial order filed
<input type="checkbox"/> Dispositive motion pending	<input type="checkbox"/> Trial date set
<input type="checkbox"/> Dispositive motion denied	<input type="checkbox"/> Other: _____

JUDGE'S COMMENTS: \_\_\_\_\_

SUBMITTED BY JUDGE: \_\_\_\_\_

employment discrimination and civil rights cases because they represent the largest categories of cases for which the judges conduct settlement conferences. Subcategories within these cases are summarized separately so that settlement results in a particular type of case, e.g., civil rights excessive force, can be compared.

For employment discrimination cases, the form also tracks the length of employment and the type of adverse employment action alleged. These factors can be significant in comparing cases involving various forms of alleged discrimination. The data make it possible to compare settlements involving wrongful discharge claims in age discrimination cases with those in race discrimination cases.

Additionally, the Chicago form provides a space for settlement terms, particularly the dollar amount. Because most settlements are made on the basis of monetary considerations, the amount of each settlement is important. There is also space to describe other settlement terms such as confidentiality, reinstatement to employment, installment payments, and other creative resolutions. These can assist judges or parties to consider nonmonetary terms to help resolve a dispute.

Prior to a settlement conference, the Chicago magistrate judges generally require the parties to exchange a written itemization of claimed damages and settlement demands or offers, and a brief statement of the facts supporting the demands or offers. The letters are given to the judge before the settlement conference, and the information contained in them is entered onto the form, broken down into the total of itemized damages claimed and the damage components. This data enables comparisons of cases involving claimed damages for special damages such as backpay, medical expenses, and legal fees, and more general claims for pain and suffering and punitive damages. The parties' initial demands and offers coming into the settlement conference also are captured on the form, as well as any brief com-

ments the judge believes are relevant or can help place the settlement in context.

A judge can complete the report form in under five minutes at the conclusion of a successful settlement conference. To preserve the confidentiality of the parties, no party names or case numbers are included on the form, and the date of the settlement conference is entered only by month and year. The forms are gathered monthly and entered into the database, after which the summary report containing settlements from the last three years is distributed monthly by the coordinating judge's secretary.

**Steps 4 and 5: Database and summary report:** The database used to transform the individual settlement reports submitted by judges into the monthly summary report should gather information that will meet the specific needs of the court. The Chicago judges prioritized ease of use and flexibility in database structure. In order to minimize the burden of this new project on staff and to ensure that the process could survive staff turnover, the database was written to be as simple as possible. The input screen looks very similar to the settlement report form and contains all the same fields. Pull-down lists, self-filling fields, and check boxes are used whenever possible. The monthly summary reports can be created with the click of a button. All this makes entering the settlement reports into the database a quick and easy process that requires only about an hour each month.

The Chicago database incorporates flexibility in response to the reality that cases and their settlements do not easily fall into discrete categories. Because cases can include multiple causes of action, the database is structured to accept up to three subcategories for each case type: employment discrimination cases, for example, may be subgrouped by race, gender, age, etc.; civil rights cases by excessive force, false arrest, false imprisonment, and so on. A separate free-form field allows for entry of nonmonetary provisions of settlements. The subcategories are used to sort the summary report that is distributed to the mag-

istrate judges monthly. Because judges will most likely search the report to find cases similar to the one at hand, the data are sorted first by cause of action and then by subtype. The final sort is by settlement amount, with each subcategory presented in ascending amounts.

Thus judges, attorneys, and litigants have access to the range of settlement amounts for similar cases, yet the parties' anonymity is strictly maintained. All fields that might identify the case or the judge are omitted from the summary report.

### Use of Settlement Conference Results

The Chicago magistrate judges use the summary report in a variety of ways. First, because public data regarding settlement results is lacking, the report aids judges in preparing for settlement conferences. Both experienced judges and those conducting their first set of settlement conferences find useful background material regarding the range of settlements for a particular type of case or for cases with similar characteristics. Because few cases require jury verdicts, data in addition to jury verdict reports is extremely helpful.

Second, the lack of public data on settlements makes it difficult for parties to



**Morton Denlow** is a magistrate judge of the U.S. District Court for the Northern District of Illinois. His e-mail address is Morton\_Denlow@ilnd.uscourts.gov. **Jennifer E. Shack** is director of research for the Center for Analysis of Alternative Dispute Resolution Systems, located in Chicago, Illinois. She can be reached at jshack@caadrs.org.

evaluate a fair settlement for their case. The report provides the only available objective data on cases that actually settle and thus can be used as a tool to nudge parties toward settlement. During settlement conferences, judges can show the report to the parties and counsel to give them an idea of the range of settlements obtained in similar cases. This can be particularly useful where one side appears to be taking an unrealistic position regarding settlement.

Third, the report reassures parties that their settlement is consistent with other settlements of this type. Having the reports available to the judge before and during a settlement conference assists everyone involved. A magistrate judge in Chicago settled a civil rights claim filed by a former prisoner with appointed counsel. Because the plaintiff filed for bankruptcy, the trustee in the bankruptcy became the decision maker.

As the judge reported:

Neither he [the trustee] nor the appointed counsel had any experience in civil rights cases and thus no real sense of the settlement value of the case. They were very interested in learning the amounts that other cases had settled for. The [defendant] made a reasonable settlement offer, and we were able to settle the case. I think that the settlement database gave the trustee assurance that the offer was, in fact, reasonable, so he could justify accepting it.

Finally, judges may make settlement recommendations based on settlements recorded in the reports. In many situations parties seek evaluative assistance from the judge to determine a reasonable settlement. For example, a civil rights case involving a claim of excessive force resulting in the plaintiff's broken jaw settled for the same amount as a similar case—after the judge disclosed the settlement from the report.

### **Additional Uses**

Maintaining a database of cases that settle with the assistance of a judge can have other benefits beyond its utility for promoting settlements. Once a sufficient

sample of cases is collected, the information in the report can provide a good overview of settlements that courts then can use to develop more effective case management. By being able to track the point at which cases settle, judges would have a better understanding of when to introduce and conduct settlement conferences. If many cases settle before discovery, judges may be encouraged to conduct an early settlement conference. On the other hand, if most cases settle only after significant discovery, a settlement conference may be more beneficial at a later date. Additional insight can be gained from knowing average settlement figures for different case types—if, for instance, civil rights cases tend to settle for relatively small amounts, parties to these cases may be encouraged to participate in a settlement conference as early as possible.

The Northern District of Illinois has collected settlement data for 645 cases in three and a half years. This number is thought to be sufficient for analysis to check whether patterns emerge among the cases. The court is therefore looking to partner with an external organization to do further analysis.

### **Developing a Database**

The court in Chicago derives important benefits from a simple database that imposes little time or monetary cost on the court. This aspect of the database is essential in gaining judicial support for the project—without the support of the judges, obtaining a sufficient comparative sample of cases would be difficult.

Staff time required for such a project is minimal, and the database can be tailored to the technical expertise at hand. Development of the database requires somewhat sophisticated knowledge of Microsoft Access (although any database software will work well)—but not the services of a professional programmer. However, because courts have different opportunities and constraints, creativity may be necessary to find a resource to

create the database. For the Northern District of Illinois, it was more convenient to turn to a nonprofit organization, the Center for Analysis of Alternative Dispute Resolution Systems, to develop and maintain its database, than to tap into staff resources. Because the project's format was kept simple, the time spent to develop the database was not significant, nor is the amount of time necessary to update it each month. As mentioned above, one person spends approximately one hour a month entering data and preparing the monthly summary report. The only other time requirement involves copying the document at the court and distributing the report to the participating judges.

### **Conclusion**

The collection of settlement data from successful settlement conferences can help judges, counsel, and clients achieve settlements. Judges and the involved parties can review data reflecting final settlements and apply the information in evaluating a case. Although no two cases are ever identical, common case characteristics can result in settlements within a given range. These settlements constitute important practical precedents that help educate judges and parties regarding settlement outcomes. Given the importance of the data, courts might develop mechanisms to make this information available to the public to facilitate evaluations.

Perhaps even more importantly, settlement databases can improve the delivery of justice. By analyzing settlements of various types of cases, courts may be able to develop better systems for promoting early resolutions. This could benefit both the litigants and the courts by reducing caseloads and the resources involved in litigation.