Kluwer Arbitration Blog

2025 PAW: Too Much or Too Little? Advantages, Disadvantages, and Alternatives Concerning the Amount of Information Available When Advocating a Damages Claim

Cecilia Sanchez Bango · Sunday, April 20th, 2025

Paris Arbitration Week ("PAW") 2025 featured a discussion on the complexities and possible answers to defending a damages claim when there is a lack or an excess of information on which to base the claim. The event, hosted by Oxera Consulting LLP, brought together the perspectives of professionals from different areas of expertise. Hannah Eckhoff (BioNTech SE) represented both the perspectives of in-house counsel and external counsel; Catalina Echeverri Gallego (Wordstone Dispute Resolution) presented her impressions both as outside counsel and as an arbitrator; Alexander G. Leventhal (Quinn Emanuel) brought his expertise as outside counsel; and Dr. Min Shi (Oxera Consulting LLP) as an expert in valuation and damages quantification, offered her technical insights on the assessment of damages. The panel was moderated by Mohammed Khalil (Oxera Consulting LLP), who also focuses on the quantification of damages.

The discussion was divided into two main parts: the first looked at the scenario of having a vast amount of information, while the second explored how to deal with a lack of information. This post provides a summary of the key issues discussed at the event.

Having Too Much Information

From an in-house counsel perspective, Hannah Eckhoff mapped out the first steps that are followed when launching a damages claim. The first challenge that must be tackled is identifying the following: the nature of the case, which teams are involved, and where the information concerning those teams is stored (keeping in mind the diversity of methods and locations that each team uses when managing information). Once this process has finished, it is necessary to filter out the relevant documents.

Following on this last point, Catalina Echeverri Gallego signaled how, in order to filter out the relevant documents, you must first organize all the information available. She highlighted how the use of Artificial Intelligence ("AI") can be extremely helpful in these instances, due to the precision of its work being significantly high. This brought up the question of when AI should not be used. From Echeverri's point of view, at AI's present stage of development, while it is a very useful tool for classifying information, it is not a reliable tool to determine the substantive relevance of legal documents.

Min Shi continued the discussion by contrasting the positive and negative aspects of dealing with a high quantity of information. The advantage of dealing with a lot of information is the ability of choosing how to use it, which renders the party in control. This comes with a contrasting negative side: the need of filtering out all the non-relevant information, taking into account the subsequent expenditure of time and resources.

Alexander G. Leventhal agreed with the general feeling of preferring to have as much information available as possible, even if that comes with added difficulties. Remarking how dealing with a lack of information can come in various ways, sometimes it is not a question of the information being readily available or not, but a mere question of its existence.

Arbitrator's Perspective

Echeverri also provided insights from the arbitrator's point of view. In order to ascertain a claim for damages, an arbitrator must deal with the question of certainty. This must be considered from two different perspectives.

On the one hand, the question of certainty must be considered from the perspective of the damage itself and the valuation assigned to it. This implies, firstly, certainty as to the existence of the damage and its nature. Secondly, certainty as to the economic quantification of the consequences of the damage.

On the other hand, certainty must also be considered in terms of causality—that is, establishing a link between the conduct of the opposing party and the damage being claimed. In this regard, the arbitrator should look for a high level of certainty, which should come from the analysis of the expert reports. A failure to properly engage with these reports may risk an annulment of the award.

Probability Proportional to Size ("PPS") Sampling: An Alternative to AI

Shi closed the discussion on the question of dealing with too much information by offering as an alternative to the classification of high amounts of information with the use of AI. She explained how she had successfully presented an analysis in which she implemented PPS sampling to study documentation accounting for a small percentage of the evidence needed for the case.

By way of context, sampling allows studying a target population in its entirety by means of a sample. The units studied may vary in size, with larger units generally containing more information. In order to avoid underrepresenting these larger units, PPS sampling is used. PPS sampling ensures a proportional increase in selection chances as the size of the unit increases.

In Shi's example, PPS sampling was applied in order to manage a very large amount of documentation concerning expenses. Said documentation had already been sorted in the following way: the top 25 suppliers accounted for 80% of the expenditure, therefore, all the documentation concerning these suppliers was reviewed. For the remaining 20% of the expenditure, 1/3 of it was reviewed by ranking the expenditure by size and then reviewing the top 100. Lastly, for the 2/3 remaining, PPS sampling was applied.

The two approaches, the use of AI and of PPS sampling, are examples of creative and innovative ways of dealing with too much information. The former incorporates the latest developments of AI, whilst the latter illustrates the advantages of resourceful and multidisciplinary thinking.

Having Too Little Information

According to Eckhoff, when dealing with having too little information, it is very important to manage the client's expectations. As many clients are not necessarily familiar with legal proceedings, they may be surprised when they learn just how critical evidence is to secure a favourable outcome. It is therefore necessary to realistically present the damages that may be claimed on the basis of the evidence available.

Eckhoff also signals the important role that experience plays in these cases. When encountering this problem, the most seasoned experts will propose alternatives to help overcome the lack of evidence through creative strategies.

Additionally, Shi illustrated the importance of creative thinking when faced with limited information through a compelling example. She shared that she was involved in a case where the opposing party (a corporation) claimed that, if it had not been for the damage that its reputation had suffered, the company would have grown to be a multi-service financial institution. Encountering a claim based on such concepts may prove difficult to refute as there is no evidence that can refute "what would have happened." To overcome this, her team conducted two analyses. First, they examined similar asset management companies that had started their activities at the same time and place, analysing how many had grown to be multi-service financial institutions. Second, they conducted a historical analysis of current multi-service financial institutions, examining how these institutions looked like at the time when the company allegedly suffered reputational damage that hindered its development, and asking whether these institutions resembled one another during that period. The analysis concluded that they did not. This illustrated how drawing parallelisms can be a powerful method for addressing gaps in information to refute or confirm mere presumptions.

AI: A Friend or a Threat for Aspiring Lawyers?

Once the panel opened up for questions, there was a keen interest in learning about additional ways AI could be applied. One suggestion was its use in drafting, which sparked an engaging debate about the future role of interns and junior lawyers, as document review and drafting constitute a significant part of their responsibilities. On a more positive note, AI may create opportunities for junior lawyers to engage in more meaningful and intellectually stimulating work. One could argue that the time saved through the use of AI should be reinvested in mentoring junior lawyers and guiding them through more complex and advanced tasks. In this way, AI does not replace human work; rather, it frees up time for the kind of nuanced, thoughtful activities that require human reasoning.

Shi concluded the debate on the future of interns and junior lawyers by observing how, even if AI will not replace lawyers, the employability of those who do not embrace its use may be seriously diminished.

On a separate note for further reference, the use of AI was addressed in 2025 International Arbitration Survey, the fourteenth empirical project of Queen Mary University of London's School of International Arbitration. A separate PAW event on this was covered by another post.

Concluding Remarks

The consensus seemed clear: having too much information is always for the best. While such situations can be challenging to manage, the panellists demonstrated various ways to overcome these difficulties, ranging from the use of statistical analysis to the integration of AI. The latter drew particular interest, not only for its current implications, but also for the vast potential further developments in AI that we may experience in the future.

The absence of information, however, does not preclude a successful claim for damages. In such situations, creativity and experience become your most valuable assets.

A combination of AI capabilities and inherent human qualities seems to offer the most effective solution for advocating a claim for damages—whether in the face of too little or too much information.

*This post is part of Kluwer Arbitration Blog's coverage of **Paris Arbitration Week 2025**.*

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