

# Attorney and Judge Experience in Torts Litigation: An Empirical Study<sup>†</sup>

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<sup>†</sup> A draft of this paper has been presented at the Theodore Eisenberg Empirical Legal Studies Conference held at Tel Aviv University Faculty of Law on June 2–3, 2015; Hamburg Lectures on Law and Economics on May 27, 2015; BACT seminar at Rotterdam Institute of Law and Economics on June 5, 2015; Staff Seminar at Singapore Management University Faculty of Law on July 29, 2015; the 2015 East Asian Law and Society Annual Meeting held at Waseda University, Tokyo on August 3–6, 2015; University of Pennsylvania Law School Ad Hoc Faculty Workshop on Oct. 27, 2015; Law and Economics Colloquium at Northwestern Law School on Oct. 29, 2015; 2015 Conference on Empirical Legal Studies held at Washington University at Saint Louis on Oct. 31, 2015; RCHSS Empirical Legal Studies Workshop on Nov. 6, 2015; Quantitative Empirical Legal Studies Conference held at International School of Finance Law, East China University of Political Science and Law in Shanghai, China on Nov. 30, 2015; Faculty Workshop at University of Iowa College of Law on Jan. 25, 2016; Law and Economics Colloquium at NYU School of Law on Feb. 9, 2016; Work-in-Progress Workshop at the University of Chicago Law School on Feb. 25, 2016. We thank David Abrams, Gail Agrawal, Janet Ainsworth, Shilpi Bhattacharya, Bernie Black, Arthur Bonfield, Gary Chan, Dawn Chutkow, Jacques deLisle, Thomas Eger, Michael Faure, Talia Fisher, Chris Reinders Folmer, Ezra Friedman, Hualing Fu, Thomas Gallanis, Jean Galbraith, Jonah Gelbach, Jerg Gutmann, Paul Heaton, Michael Heise, Han-wei Ho, David Hoffman, William Hubbard, David Hyman, Nicholas Johnson, Michael Knoll, Hon. James Leach, Pey Woan Lee, KK Lim, Kate Litvak, Jing Liu, Kee Yang Low, Peter Mascini, Sandra G Mayson, Alan Miller, Konstantinos Pilpilides, Victor D. Quintanilla, Jason Rantanen, John Reitz, Issi Rosen-Zvi, Max Schanzenbach, Margo Schlanger, Jeanette Shao, Matthew Spitzer, Agnes Strauß, Hang Wu Tang, Lea VanderVelde, Stefan Voigt, Franziska Weber, Keren Weinshall-Margel, Yixin Xu, Eyal Zamir, and Wei Zhang for helpful comments. With due respects, we thank the several judges and attorneys who attend the two round table discussions on judge and attorney experience for kindly sharing their insights with us. We also thank Alice Kuo, Jian-Hua Lai, Chieh-Yu Liu, Hilary Tsai, Yu-June Tseng, and Tien-hsin Wang for research assistance. Da-wei David Juang (the former CEO of pingluweb.com) provided us with the judge and attorney experience data, which are invaluable for this research.

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### Abstract

The effect of attorney and judge experience in litigation has not been fully explored, as detailed measures of jurist experience are not available. Using a unique data set from Taiwan, we measure attorney (judge) experience by the total number of civil cases they have represented (rendered) from 2000 to 2014. Combining these data with another unique data set we compiled from pain and suffering damages lawsuits regarding personal injury in a structural equation model, we find that both district court judges and plaintiff attorneys follow the recent changes in damages assessment practice in high courts. Court awards were subject to the anchoring effect cast by plaintiffs' claims. In addition, the more experienced the plaintiff attorneys were, the more the plaintiffs' claims deviated from the historical trend of court-adjudicated pain and suffering damages. Thus, through the indirect effect of higher claims, experienced plaintiff attorneys earned their clients higher amounts of pain and suffering damages. Whether defendants hire attorneys and whether defendant attorneys and judges are experienced do not affect whether court-adjudicated pain and suffering damages deviated from the historic trend.

### Keywords

Pain and suffering damages, compensation percentage, filing fee, deviation from historic trend, structural equation model (SEM)

Table of Contents

I.	Introduction.....	1
II.	Pain and Suffering Damages Law and Legal Practice in Taiwan.....	3
III.	Research Questions and Prior Literature .....	7
	A. Judges.....	7
	B. Attorneys.....	8
	1. Assignment of Cases to Attorneys .....	9
	2. Plaintiff Attorneys .....	14
	3. Defendant Attorneys .....	17
IV.	Models .....	18
	A. OLS Models to Predict District Court and High Court Awards.....	20
	B. Structural Equation Model on Deviation of Court Award from Trend .....	21
V.	Data.....	26
VI.	Findings and Implications.....	34
	A. Judges Pay Close Attention to High Court Decisions.....	34
	B. Attorney Influence on Plaintiff Claim .....	37
	C. Plaintiff Attorney Influence on Adjudication.....	38
	D. Judge Experience Does Not Affect Deviation Pattern <b>Error! Bookmark not defined.</b>	
	E. Defendant Attorney Has No Role .....	39
VII.	Conclusion .....	40
	Appendix A: Predicting Court-Adjudicated Pain and Suffering Damages.....	42
	Appendix B: Attorney Hiring Decisions.....	44

## I. INTRODUCTION

When you get involved in a legal dispute and the case is going to court, would you rather hire an experienced attorney than an inexperienced one, assuming you can afford to pay the fee charged by the former? If yes, why? Senior lawyers charge more, but what is the added value of their experience? In the long debate on the issue of “have versus have-not” in litigation, the premise is that the haves (i.e. the rich) are better able to mobilize litigation-useful resources, including hiring more expensive attorneys (Kuo-Chang Huang, Lin, and Chen 2014; Boyd 2015b: 296; Chen, Huang, and Lin 2015).<sup>1</sup> From intuitions of ordinary people to the legal literature, the often implicit assumption is that experienced attorneys are better. Nonetheless, very few empirical works have been able to demonstrate the differences between experienced and inexperienced attorneys.

A study on attorney experience would be incomplete if the role of judges (in a jurisdiction without juries) is ignored. The effect of attorney experience could vary according to the sitting judges’ experience. The effect of judge experience also has independent interests. Judges follow precedents that settle questions of law, but whether they follow precedents that deal with questions of facts, such as how to assess damages, has not been rigorously examined. To what extent judges’ experience affects their decisions to follow higher courts regarding assessment of damages has also not been studied, either. Powered by a unique data set that contains detailed measures of multiple facets of the experience of all attorneys and judges in Taiwan as of 2014, this article sets out to fill the gap in the empirical literature.

The legal issue used to examine the import of jurist experience is the assessment of pain and suffering damages for personal injuries incurred in car accidents. The effect of jurist experience can be better isolated when the judicial decisions are neither formulaic nor rule-based. Pain and suffering damages are

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<sup>1</sup> This article does not directly fit in the “have versus have not” literature itself. Most natural-person plaintiffs and defendants in car accident cases are “have-not”—our data on parties’ income can support this claim. As a result of the lack of variance, party capability and courts’ ideological preference would be a minor concern, if at all, in this study, so that the effect of jurist experience can be identified better.

highly discretionary in Taiwan,<sup>2</sup> and thus judges may be affected by extra-factual factors, including attorney “manipulation.” Albeit discretionary, the amount of pain and suffering damages is, to a certain extent, predictable. Two prior empirical studies (Chang et al. 2014; Chang et al. 2015) have demonstrated that pain and suffering damages can be captured by simple regression models<sup>3</sup>—this is important, as attorney experience would not matter if the amount of non-pecuniary damages is arbitrarily decided.

Assessments of pain and suffering damages provide a streamlined setting to examine judicial behaviors. A vast empirical literature is devoted to show that judges are ideological (for a recent review, see Epstein, Landes, and Posner 2013: 77–85). On the other hand, as Posner (2008) points out, easy cases can be determined by statutory texts. Assessing the amount of pain and suffering damages is neither a legalist nor an ideological exercise. Following the pragmatic labor-model of judges (Posner 2008; Epstein, Landes, and Posner 2013), this article empirically examines whether the career judges in Taiwan demonstrated reversal aversion and “audition (desire for promotion),” without the confounding influence of ideology and legalistic pressure, and whether the judges’ experience on the bench affects their behaviors.

This streamlined setting is also suitable for testing the effect of attorney experience, as attorneys’ ideology can be ignored. Granted, lawyer skills are not singular. Threading the statutory texts and judicial cases together to make an innovative and convincing argument is a hallmark of good lawyers. Nevertheless, this skill is largely useless in the assessment of pain and suffering damages. Thus, our finding regarding the effect of attorney experience is not readily generalizable to other legal contexts where statutory interpretation is critical. Yet, in terms of identifying the effect of attorney experience, perhaps it is better that the legal issue we study enables us to ignore other aspects of attorney skills and focus on the added value of experience when attorneys makes numeric claims based on facts.

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<sup>2</sup> No statute or supreme court precedent has provided clear guidance on how to assess this type of non-pecuniary damages.

<sup>3</sup> The R-squares of the multiple regression models used to predict these two types of pain and suffering damages rendered by courts in Taiwan between 2008 and 2012 are between 0.50 and 0.85.

Using structural equation models that can control for endogeneity problem, we find that district court judges detect the changing trend in high courts and dutifully follow the latest way high courts assess pain and suffering damages. Consistent with Chang, Chen, and Lin (2016), we again find that judges were influenced by the amount of plaintiffs' claims. Judicial experience does not affect whether judges deviate from the historical trend or not. Judges are suspicious of senior attorneys. Senior plaintiff attorneys tend to over-claim, and through the anchoring effect, win more pain and suffering damages for their clients. Whether the defendant hired an attorney and how experienced defendant attorneys are do not matter.

The structure of this article is as follows: Part II provides an overview of Taiwan law. Part III explains the research questions and summarizes the prior literature. Part IV lays out our OLS and SEM models. Part V describes the pertinent data. Part VI discusses the implication of our findings. Part VII concludes.

## II. PAIN AND SUFFERING DAMAGES LAW AND LEGAL PRACTICE IN TAIWAN<sup>4</sup>

Pursuant to Articles 193 and 195 of the Taiwan Civil Code, victims of a tortious act can request the tortfeasor to pay pecuniary damages and pain and suffering damages.<sup>5</sup> No formula exists for courts to determine the amount of pain and suffering damages. The civil code provides no guidance. A few leading cases rendered by the Supreme Court of Taiwan in the 1950s and 1960s declared that the following factors should be considered: the socio-economic status, total asset, annual income, age, educational background, etc. of both sides, the plaintiff's level of pain and harm, the victim's negligence, the defendant's repentance, and so on. Other than this, to date, no conventional wisdom or rules of thumb exists for quantifying pain and suffering. In practice, plaintiffs simply

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<sup>4</sup> Part of this section is adapted from Chang et al. (2014).

<sup>5</sup> Taiwan Civil Code art. 193I promulgates: "If a person has wrongfully damaged to the body or health of another, and caused the injured person to lose or decrease his laboring capacity, or to increase the need in living, the tortfeasors shall be bound to make compensation to the injured person for any injury arising therefrom." Taiwan Civil Code art. 195I prescribes: "If a person has wrongfully damaged to the body, health, reputation, liberty, credit, privacy or chastity of another, or to another's personality in a severe way, the injured person may claim a reasonable compensation in money even if such injury is not a purely pecuniary loss."

claim an amount and contend that it is just, with little supporting evidence. Court decisions typically start with a template discussion that carbon-copies the list of factors emphasized by the leading cases,<sup>6</sup> then summarize the facts of the case at hand, and conclude by awarding an amount. As judges have never elaborated on their formulas and rarely provided concrete information regarding the factors, it is doubtful to what extent those factors listed in the template arguments affect the final amount of pain and suffering damages.<sup>7</sup>

Courts in Taiwan will review the receipts of all pecuniary expenses and only grant plaintiffs with reasonable expenses. Due to the mandatory national health care system that covers most medical treatments and medication, only medical expenses that are not covered by the health care plans (such as co-payment, certain special medicines and operations, and domestic nursery cares) can be recovered by the victim from the tortfeasor.

Plaintiffs do not have an incentive to claim unrealistically high amounts of pain and suffering damages. First, filing fees are proportional to the amount of claimed total damages—roughly, around 1% of the total claimed damages; see (Kuo-Chang Huang 2008: 208 fn.17).<sup>8</sup> Second, the losing party has to pay filing fees and other court fees. In a tort lawsuit, a plaintiff usually has to pay part of the court fees (including the filing fee) if the court does not grant all her claims. The plaintiff generally has to pay  $[1 - (\text{court award} / \text{plaintiff's claim})] \times \text{court fee}$ . So claiming a high amount of pain and suffering damages increases both the amount of filing fees and the probability of bearing a higher percentage of court fees. One important caveat: when a plaintiff makes pain and suffering damages claims as part of the criminal proceedings against a defendant, and the defendant was found guilty, the plaintiff does not have to pay filing fees for her civil lawsuit in the court of first instance. Such plaintiffs still have to share other court fees

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<sup>6</sup> Not all courts use the same template. The factors that a court explicitly claims to take into account slightly differ.

<sup>7</sup> In unreported tables, we explored the factors that Taiwanese courts purport to have considered in determining pain and suffering damages. The tables, however, suggest no clear pattern.

<sup>8</sup> Pursuant to Article 77-13 of Civil Procedure Code of Taiwan, the filing fee is assessed in the following way: “1,000 NTD on the first NTD100,000 of the price or claim's value, and an additional amount shall be taxed for each NTD10,000 thereafter in accordance with the following rates: NTD110 on the portion between NTD100,001 and NTD1,000,000 inclusive; NTD99 on the portion between NTD1,000,001 and NTD10,000,000 inclusive; NTD88 on the portion between NTD10,000,001 and NTD100,000,000 inclusive; NTD77 on the portion between NTD100,000,001 and NTD1,000,000,000 inclusive; and NTD66 on the portion over NTD1,000,000,000. A fraction of NTD10,000 shall be rounded up to NTD10,000 for purposes of taxing court costs.”

(such as per diem given to testifying witnesses).

Taiwan can generally be considered a civil-law country. Almost all judges are career judges who may or may not have (most have not) practiced law before serving on the bench. A top law graduate can become a judge at 25 years old or so (the average in recent years is 28 years old). Most jurists in Taiwan major in law as an undergraduate, and only a minority of jurists are trained in a JD-like graduate program. Jurists who pass the bar exam and finish six months of practical training are qualified to practice law. Jurists who pursue a career as judges or prosecutors have to take the “court officer” examination. Those who pass the examination receive training in the Academy for the Judiciary for two years. At the end of their training, based on their grades, preferences, and openings, they will become judges or prosecutors. Judges are tenured, and thus presumably less influenced by external political influences. For civil matters, there are three levels of courts: district courts, high courts, and the supreme court. The former two can determine both questions of fact and questions of law, while the supreme court only deals with questions of law. Appealing to the court of second instance (for non-small claim cases, the high courts) is as of right, whereas large-stake cases represented by attorneys can be appealed to the supreme court, subject to its discretion (Eisenberg and Huang 2012; Chen, Huang, and Lin 2015).

As for attorney fees collected by plaintiffs’ and defendants’ lawyers, contingent fees and hourly fees in this type of tort litigation are very rare, though not prohibited.<sup>9</sup> Flat fees are mainstream. Thus, attorneys do not necessarily have incentives to select cases that are more likely to win, as they could receive similar amounts of fees. Also, according to the attorneys we interviewed, small

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<sup>9</sup> Zamir and Ritov (2010) provide a convincing behavioral account of why plaintiffs in tort litigation opt for the contingent fee structure while defendants do not. According to the Taiwanese attorneys we interviewed, however, fixed fees have been dominant in Taiwan. The contingent fee arrangement was used in the few cases where clients request it, and it was often used when the probability of winning is not high. The contingent fee percentages are 20%–30%. Also, the attorney fee arrangement is seldom purely contingent-based; usually attorneys will still charge a small amount of flat fee; small firms, rather than big firms, are more willing to consent to a contingent fee arrangement. More importantly, and strikingly opposite to the practice in the U.S. market, our interviewed attorneys believe that it is unethical to take contingent fees in car accident cases, as attorneys would be taking away money to compensate for the pain and injury of their clients. If tort victims cannot afford the usual attorney fees, attorneys may charge a lower fee rather than entering into a contingent fee arrangement. Legal aid is another way for poor plaintiffs to seek legal representation without resorting to contingent fee arrangements.



law firms and solo practitioners, who handle tort cases, do not have stable and wide clientele; thus, they are generally unwilling to turn down clients who are willing to pay a flat fee.<sup>10</sup> Attorneys often adjust the fees *ex ante* according to the complexity of the cases. Senior attorneys generally charge a higher fee. Case selection may be in the form of poor parties in search of attorneys who charge a lower flat fee. Charging low fees is not a good indicator of the effectiveness of the attorneys. Some attorneys may be cheap because they are incapable, while other attorneys may charge a lower fee because their marginal case-handling cost is lower.

The following facts are also worth noting. Insurance companies have a minor role in torts litigation. Insurance companies are rarely, if ever, a party in such litigation (no observation in our data set features an insurance company as a party).<sup>11</sup> Even when tortfeasors have bought liability insurance policies, in addition to the mandatory motor vehicle insurance, tort victims sue the tortfeasors, not the latter's insurance company. Also, there is no distinction between the plaintiff bar and the defendant bar (Kuo-Chang Huang 2008: 227).

Finally, Abrams and Yoon (2007) have raised the issue of the difficulty to evaluate the contribution of an individual attorney. This is not a problem in our study. While the prior literature mostly examines the effect of law firms, this research focuses on that of *individual* attorneys. Big law firms in Taiwan mostly practice in corporate law and IP law and usually charge by the hour. Seldom do they take car accident cases, mostly because plaintiffs who cannot afford the fee charged by big law firms will not seek their representation in the first place. After interviewing with several experienced attorneys, we identified 12 big law firms in Taiwan and coded the attorneys who work there as of September 2014. Only 5 observations in our database contain attorneys affiliated with these big law firms. Outside big law firms, most attorneys practice solo—sometimes hiring a few associates and sharing office space and secretaries with other attorneys. In other words, litigation outcomes can be attributed to individual efforts by attorneys,

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<sup>10</sup> Two very senior attorneys we interviewed (one of them recently became a justice in Taiwan's Constitutional Court) told us that they would refuse to represent meritless cases. They admit that they enjoy this privilege because they are not short of clients.

<sup>11</sup> Health insurance companies can subrogate victims to sue the tortfeasors, but it is very rare. Insurance companies may be sued if they refuse to indemnify an insured person. These are not the torts litigation we study here, as judges in those cases do not have to assess pain and suffering damages.

not law firms.

### III. RESEARCH QUESTIONS AND PRIOR LITERATURE

#### A. *Judges*

Our examination of judicial behaviors focuses on whether judges' experience affects the way they follow precedents. As pointed out above, in assessing pain and suffering damages, neither text nor ideology is the judges' guiding posts. The role of precedents presumably looms large. It is not breaking news that lower court judges largely stick to legal doctrines expounded by higher courts. The precedents under discussion here, however, refer to the pattern of how higher courts or district courts in prior cases have assessed damages according to case facts. More specifically, lower court judges may all refer to the same provision in the civil code and all cite the same Taiwan Supreme Court cases that laid out the key factors to be considered. Nonetheless, judges may give different weights to these factors. Following precedents in our empirical project means that judges give similar weights to factors such as injury level, medical expenses, and the length of declared incarceration.

We hypothesize that district court judges will follow the assessment pattern of appellate courts. In general, judges are averse to their decisions' being reversed. Overruling may tarnish the judges' reputation and affect their chance of being promoted to higher courts.<sup>12</sup> In Taiwan, according to our interview with judges, the aforementioned concerns do exist and district court judges thus strive to follow the immediately supervising courts.<sup>13</sup> We are not the first to empirically test whether lower courts follow higher court precedents.<sup>14</sup> Nonetheless, to the best of our knowledge, we are the first to empirically examine whether lower courts mimic the way higher courts evaluate facts to assess

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<sup>12</sup> Our hypothesis is consistent with Choi, Gulati, and Posner (2012: 518)'s empirical work that finds that judges in Federal District Courts in the U.S. "adjust their opinion-writing practices to minimize their workload while maximizing their reputation and chance for elevation to a higher court."

<sup>13</sup> Taiwan High Court even literally graded the District Court decisions appealed to the High Court. In each judge's personal web account, she can see the grades of all her cases that were appealed as well as the average grade of her fellow judges in the same district court. This rule was abolished as late as July 2015.

<sup>14</sup> For instance, Boyd (2015a)'s recent empirical study identifies the critical factors in enhancing the hierarchical influence of federal courts of appeals on federal district courts in the U.S.

damages.

Whether judges' experience affects the pattern of following precedents has yet to be studied extensively. Chang, Chen, and Lin (2016) report that experienced judges in real-world cases were not subject to the anchoring effect, while inexperienced judges were strongly influenced by anchors. Nonetheless, by counter-claiming, defendants can weaken, even fully erase, the anchoring effect created by plaintiffs' claims. Judges' experience, therefore, is useful in debiasing. As judges have incentives (reversal aversion and desire for promotion) to follow higher court precedents throughout their tenure, we expect that experience does not matter. Still, a rigorous empirical testing is warranted.

#### B. *Attorneys*

The effect of attorney experience has not been thoroughly studied, perhaps for lack of good data and the problem of selection effect. Several existent studies have found that senior attorneys perform better in litigation than unseasoned colleagues. Abrams and Yoon (2007) study almost 12,000 felony cases in which public defenders were randomly assigned to clients, and find that experienced attorneys, measured by their tenure in the public defender office, achieve substantially more favorable outcomes for their clients than less experienced attorneys. Harris, Peeples, and Metzloff (2005: 235–36, 241) measure experience of medical malpractice attorneys by the year of practice and the number of cases an attorney has handled within the 348 sampled cases, and find that attorneys who had handled more medical malpractice cases, had more trial experience, and went to better law schools performed better than attorneys without these attributes. Harris, Peeples, and Metzloff (2008: 267, 280), using “years since admitted to practice” and “number of med-mal cases handled during the study period” as a measurement of attorney experience, find that plaintiffs' attorneys who have handled at least four cases were more likely to obtain money for the plaintiffs. Krishnan, Davidoff, and Thomas (2014) and Hyman et al. (2015) find that top law firms are better at winning lawsuits. Sloan (1993: 196–201) finds that “specialist” plaintiff attorneys in medical malpractice fared better than “non-specialist” plaintiff attorneys in receiving court-awarded monetary recovery.

Specialist attorneys were defined as attorneys who have handled four or more cases regarding medical malpractice (based on court records available in county courthouses in Florida), attorneys who designated themselves as experts, and those who were listed by others as experts (Sloan 1993: 170). Lederman and Hrung (2006) use years of experience to measure attorney expertise and find that in tax litigation against the IRS, plaintiffs with attorney representation fare better than those pro se, and plaintiffs with more experience attorneys have higher recovery ratios. Feldman (2015) tallies the number of cases an attorney represents before the U.S. Supreme Court and finds that briefs of more experienced attorneys are more widely adopted by SCOTUS in its opinions.

Other studies dispute the results of the aforementioned studies. Greiner and Pattanayak (2011: 2125), using data from real-world randomized experiment on legal representation, find that they “could come to no firm conclusion regarding a use-of-representation effect on the win rate.” Goodman-Delahunty et al. (2010) survey 481 sampled litigating attorneys in the U.S. and find that they are overconfident in predicting the outcome of their own cases and calibration does not increase with years of legal experience. Kuo-Chang Huang (2008), based on crude yet comprehensive official data on civil court cases, argues that parties in Taiwan sought legal representation only when they believed they had some chances to win. That is, civil litigation results were driven mainly by merits of the cases, and the differences in winning percentages should be attributed to the selection effect of parties seeking representation based on perceived winning chances, not attorney representation itself.

### 1. *Assignment of Cases to Attorneys*

Random assignments of public defenders in Abrams and Yoon (2007) and those between public defenders and appointed counsels in Anderson and Heaton (2012) and Kuo-Chang Huang, Chen, and Lin (2010) avoid the selection effect—attorneys aim to represent stronger cases. Other prior empirical works on civil lawsuits, however, suffer from the problem of selection effect, as plaintiffs’ and defendants’ attorneys are rarely, if ever, randomly assigned to clients in civil cases.<sup>15</sup> Studies of plaintiffs’ attorneys in the U.S. found that they routinely turn

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<sup>15</sup> See the long list of literature cited and critiqued as “unworthy of credence” (for lack of random

away more than half of the potential clients seeking representation, as lawyers who take contingency fees risk a lot in handling meritless cases (Sloan 1993: 77; Kritzer 2004: 73; Harris, Peeples, and Metzloff 2008: 257).

Attorneys in Taiwan were not randomly assigned to torts cases as well. Thus, attorney representation and seniority of attorneys may be associated with case characteristics. Case characteristics observable to us do not confound our results, as their effects can be controlled for in the regression models. Many important case characteristics, including proxies for severity of injuries, were already coded and used in our model. Unobservable factors may cause problems. Yet the nature of car accident lawsuits and fixed attorney fee structure in Taiwan would greatly reduce the frequency of case selection. Below we advance a case selection story for fixed-fee attorneys (in particular plaintiff attorneys in Taiwan) based on rational choice theory and qualitative interviews.

The first stage of selection takes place when a tort victim search for an attorney. The solo practitioners we interviewed told us that they received new clients mostly via referral by non-attorney friends. The precondition for stronger cases systematically flowing to senior attorneys is that friends of senior attorneys referred on average stronger cases or that old clients of senior attorneys who came back with systematically stronger cases. Both scenarios strike us as implausible. Victims who search for lawyers by, say, comparing lawyer practice statistics (see below) on-line may try to find better attorneys, but while it is plausible that victims believed that senior attorneys are generally better, these victims who search by themselves do not necessarily have stronger cases. Hence, there appears to be no good reason to believe that senior attorneys systematically encounter clients with stronger cases.

The second stage of selection is when attorneys determine whether to take cases, the focus of the U.S. literature. In the U.S. context, a strong car-accident tort case for a plaintiff attorney is one in which the tortfeasor's negligence can be easily established and the victim is seriously injured, as this kind of case is more likely to lead to high amount of damages, a third or so of which goes to the attorney. Contingent-fee plaintiff attorneys are inclined to take only strong cases. By contrast, plaintiff and defendant attorneys in Taiwan most often received flat

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assignment of attorneys) by Greiner and Pattanayak (2011: 2175–2184).

retainer fees for their service in ordinary torts litigation (Kuo-Chang Huang 2008: 216). This fee structure should not motivate Taiwanese attorneys to turn down cases as aggressively as their American colleagues do (see Part II). Many lawyers we interviewed did inform us that they tend to turn down meritless cases, even though they can collect their fees anyway. A moralist reason for lawyers to do so is that these lawyers believe that the complainants have no legal case and should not sue or that they should simply use the attorney fees to pay back their debt, not defending legitimate claims. A practical concern is that clients who pay fixed fees and get nothing from the litigation will keep “bugging” the attorneys afterwards.

One might conjecture that senior attorneys may cherry-pick the best cases that go to them. While this might be true (we do not yet have data to examine this conjecture), this is largely inapplicable in car-accident tort cases. Our interviewees think that this type of cases might be the easiest cases among civil matters. No class action, complex contracts, or multi-national conglomerates are involved. The lawsuit is usually one-on-one, and judgments of causation and negligence can be aided by the wide-spread car-cams and CCTVs as well as other modern technologies. The items that victims can claim are clear, the only question is how much. The tortfeasors know that they have to compensate and occasionally contend that victims were comparatively negligent. The question is again how much. Therefore, attorneys do not seem to have strong incentives to turn down representing the plaintiffs or the defendants in a genuine car accident case. They could adjust the fixed fees according to the amount at stakes. We see no strong reason that senior attorneys would select to represent only clients with more serious injuries or more clearly negligent.

The third stage of selection is settlement. There are several existent empirical studies on settlement of civil cases in Taiwan. Kuo-Chang Huang (2008: 217) finds that attorney representation is associated with settlement rates and contends that it is due to the “representation selection”—“a party’s initial decision to litigate the case [leads] to him or her retaining counsel.” Kuo-Chang Huang (2009) finds that settlement rates after a civil case entered courts in Taiwan is about 30%. Kuo-Chang Huang (2016) finds that settlement rates before a civil dispute entered courts in Taiwan is on average 60%, and that the

scatterplot of settlement rate (Y axis) against amount of stakes (X axis) reveals an inverted-U shape relation. From our interviews, we learned that senior attorneys are better at settlement. There is, however, no empirical research on whether settlement rates vary by strength of plaintiff claims.

For our purposes, as long as pro se parties, attorneys represented by junior attorneys, and those represented by senior attorneys do not systematically settle different types of cases, settlement should not bias our empirical findings. That is, we contend that in the first two stages, no strong selection takes place. If disputes with different representation statuses were settled in different patterns, a statistically significant result regarding representation statuses may be spurious. Again, there seems to be good reason to believe that settlement rates among different representation statuses will correlate with a factor that is not already controlled by our regression models.

Finally, we conduct two-sample t-tests and Fisher's exact tests<sup>16</sup> to examine whether case characteristics are balanced across the following four comparison groups:

- 1) cases with pro se plaintiffs versus those with represented plaintiffs;
- 2) cases with pro se defendants versus those with represented defendants;
- 3) cases in which plaintiffs were represented by senior attorneys versus those in which plaintiffs were represented by junior attorneys; and
- 4) cases in which defendants were represented by senior attorneys versus those in which defendants were represented by junior attorneys.

As shown in Table 1, case characteristics on the plaintiff side are balanced. Only two associations are statistically significant at the 5% level and they do not correlate with case strength. Case characteristics on the defendant side are less balanced, as several case characteristics are statistically significant at the 5% level and some of them are proxies for severity of injury (also proxies for case strength).

As a whole, although our data are not produced by a (natural) experiment in which attorneys are randomly assigned to cases, thanks to the attorney fee structure, the selection effect appears to be minor, especially regarding selections

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<sup>16</sup> In these tests, we used, in rows, the variables used in the hedonic regression models; the column variables are either "hiring attorneys versus not hiring attorneys" or "hiring attorneys with above-median experience versus hiring attorneys with below-median experience."

on the plaintiff side. To the extent that attorney representation statuses are not associated with unobservable variables, our regression models should be able to tease out the effect of attorney representation and the value of attorney experience.<sup>17</sup>

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<sup>17</sup> For robustness check, we also tried propensity score matching method based on whether attorneys have above- or below-median experience. Due to the balanced case characteristics mentioned in the text, the regression results are very similar to those reported in Table 3.



Table 1 Homogeneity of Case Characteristics Across Legal Representation Statuses

Panel A: Continuous variables

	Pro se plaintiffs or not	Pro se defendants or not	Plaintiff attorney senior or junior	Defendant attorney senior or junior
Judge experience	0.584	0.745	0.745	0.887
Declared incarceration time	0.617	0.912	0.149	0.931
Incurred medical expenses	0.212	0.069+	0.402	0.049*
Plaintiff age	0.626	0.003**	0.423	0.003**
Plaintiff income	0.739	0.061+	0.304	0.139
Defendant income	0.551	0.394	0.739	0.365

Cells contain  $p$ -values for two-sample  $t$ -tests. Values in row variables are transformed to natural log before the  $t$ -tests.

\*\*\*  $p < 0.001$ , \*\*  $p < 0.01$ , \*  $p < 0.05$ , +  $p < 0.1$ .

Panel B: Categorical variable

	Pro se plaintiffs or not	Pro se defendants or not	Plaintiff attorney senior or junior	Defendant attorney senior or junior
Defendants include corporations	0.003**	0.152	0.189	0.095+
Driving under the influence of alcohol	0.594	1.000	0.843	1.000
Hit and run	0.114	0.563	0.567	0.569
Plaintiff pays filing fees	0.020*	0.808	0.465	0.808
7 injury levels	0.576	0.020*	0.167	0.019*
2 injury levels	1.000	0.002**	0.360	0.002**

Cells contain  $p$ -values for two-tailed Fisher's exact tests.

\*\*\*  $p < 0.001$ , \*\*  $p < 0.01$ , \*  $p < 0.05$ , +  $p < 0.1$ .

## 2. Plaintiff Attorneys

Plaintiff attorneys in Taiwan mostly charge fixed fees for tort damages cases, and their incentives are thus different from those in, for instance, the U.S. and Israel who charge contingent fees. The incentives of contingent-fee attorneys are aligned with the interests of their clients. As long as it is cost-justified, attorneys

work harder to win larger amount of damages, as they take home a third or so of the damages. By contrast, the principle-agent problem is more acute among fixed-fee attorneys. The financial income of these attorneys is independent of case outcomes. Attorneys, thus, to the extent that they cannot ex ante adjust the amount of fees, would prefer easy to complex cases. Attorneys also have incentives to settle early, even at a low figure. Other things being equal, fixed-fee attorneys may not work as hard as contingent-fee attorneys on cases.

Attorneys care about maintaining reputations and getting more clients in the future. In jurisdictions where plaintiffs have to spell out *ad damnum* clauses and blockbuster cases are rare, the claim-grant ratio can roughly measure the extent to which plaintiffs and defendants each “win.” Courts in Taiwan summarize the claim-grant ratio in the court fee percentage (see Part II). Assuming that attorneys control how much to claim, the court fee percentage can serve as a proxy for attorney skills. PingLuWeb,<sup>18</sup> a leading legal service provider in Taiwan, has used court fee percentages as the central statistics in comparing attorney skills. In the long run, a high average court fee percentage indicates that an attorney loses a lot of pleading or defenses. Using average court fee percentages to evaluate how goods attorneys are at persuading judges and predicting case outcomes ex ante and making claims accordingly is particularly apt in car-accident tort cases, as these cases are mostly about the amount of compensation.

Fixed-fee attorneys who care about their court fee percentages qua winning records would tend to make conservative claims, so that courts would grant most of their claims, keeping their court-fee-percentage statistics low and the clients’ fees low. Conservative claims, however, do not necessarily maximize client interests. Courts cannot award more than the amounts plaintiffs claim, and filing fees are about 1 percent of the claimed amount. When claiming 100 dollars more would lead to an increase in expected awards of more than 1 dollar or so, attorneys who care solely about the interest of their clients should and will do so. If the expected increase in awards is, say, 5 dollars, however, the attorney’s fee percentage is quite likely to increase, unless less than 5% of the other part of the claim is expected to be granted. Attorneys thus may not have incentives to advise

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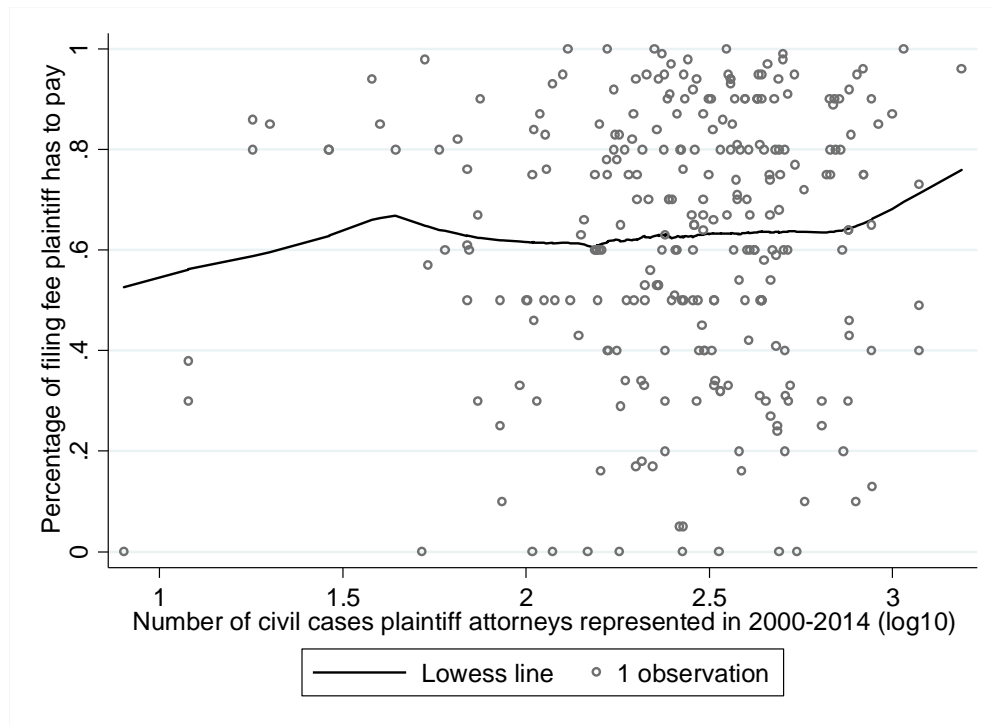
<sup>18</sup> PingLuWeb literally means the website for evaluating attorneys in Mandarin Chinese.

their clients to claim more.

Provided that judges were unbiased, claiming more than the attorneys' best estimates of court awards based on what higher courts have recently allowed is unlikely to sway judges. As a result, over-claiming is irrational for the attorneys and their clients. Nonetheless, if judges were subject to the anchoring effect, over-claiming makes economic sense for the clients, but attorneys who are sensitive to their winning records may be inclined to be conservative.

Our hypothesis is that experienced attorneys, as compared to inexperienced attorneys, tend to over-claim. The economic reasoning behind this hypothesis is that senior and junior attorneys have different business models. Experienced attorneys are more likely to have a firmer client base and retain new clients through words of mouth (referrals not just by personal friends but also by former clients). With a longer track record and reputation, their business is to a lesser extent influenced by an increase in average court fee percentage. Senior attorneys thus are more willing to make bolder claims than junior colleagues. As experienced attorneys generally charge a higher fee, they would need to show their clients that they are worth it, and beating the average (claiming more and getting more) is such a signal. Sometimes, according to attorneys we interview, winning an improbable claim would lead to a bonus ("red envelope") given by the client to the attorney. As Figure 1 shows, the filing fee percentages and the number of civil cases plaintiff attorneys have represented do appear to have a positive relationship.

Figure 1 Plaintiff attorney experience and court fee percentage



N=280. District court cases in our dataset in which at least one attorney was retained by the plaintiff are included.

There are also psychological reasons for different claiming patterns. Whether attorneys are aware of the anchoring effect or not, senior attorneys are more likely to over-claim, as they are more confident in their own persuasion skills (Goodman-Delahunty et al. 2010). One experienced attorney we interviewed advanced an interesting theory: for plaintiff attorneys, each case has a reasonable range for pain and suffering damages. Experienced attorneys tend to claim an amount that is at the upper echelon, because their higher income and other aspects of their life experience make the higher figure more “natural.”

### 3. Defendant Attorneys

Defendant attorneys are expected to prioritize dismissing cases against their clients. As cases in our data set are limited to those in which defendants were found liable. We are not able to test whether hiring (experienced) attorneys increase the chance of case dismissal.

Defendant attorneys are also expected to reduce the amount of damages.

Pecuniary damages are typically formulaic. Defense attorneys can greatly reduce the amount of compensation usually by proving that plaintiffs are comparatively negligent. As pain and suffering damages are discretionary, we conjecture that defense attorneys would challenge this claim. In practice, some defendants countered a specific amount of damages, some simply objected that the claimed damages are too high, and some failed to make any objection. We hypothesize that the counter-claiming pattern is affected by several factors including how much plaintiffs' claimed amount deviates from the historic trend, whether defendants or plaintiffs hire attorneys and how experienced they are, whether defendants include corporations, and defendants' income.

It is also worth noting that in the Taiwan cases we study, no defendant is an insurance company, and corporate defendants are only vicariously liable.<sup>19</sup> In other words, defendants are the real tortfeasors who drove a mobile vehicle while injuring the plaintiffs/victims.

#### IV. MODELS

A sophisticated structural equation model is specified to closely approximate a real-world decision-making process. Formally and informally, we interviewed many attorneys and judges of all experience levels in Taiwan in private and in focus groups. The core insight is that before the plaintiffs' attorneys formulate the requested amount of pain and suffering damages, and before district court judges make their decisions, both have searched in the official court case database (<http://jirs.judicial.gov.tw/Index.htm>) for similar cases previously decided in district courts and high courts, to be consistent with precedents. Therefore, the basic set-up of our regression model is to test whether district court judges at time T would deviate from the assessment pattern at the district court level at time T-1 if the assessment pattern at the high court level at time T-1 is different from that at the district court level at time T-1.<sup>20</sup> Case facts

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<sup>19</sup> In sharp contrast, defendants in personal injury cases elsewhere are often large firms or insurance companies (Zamir and Ritov 2010: 276).

<sup>20</sup> In this article, we focus on the interaction of district courts and high courts (which review the case *de novo*), leaving out the Taiwan Supreme Court. While a few "selected precedents" rendered by the Taiwan Supreme Court in the 1950s and 1960s were still frequently cited in district-court and high-court decisions. Those precedents provide hardly any guidance for lower court judges. No judges we interviewed suggest that they or any colleague derived the amount of pain and

(including victims' severity of injury), judges' and attorneys' experience, etc. are added to the regression models.

More specifically, under our model, district court judges would ask, given the facts of the cases at hand, how much pain and suffering damages the high courts and the district courts would award. To predict what judges would estimate as the two hypothetical damages awards, we use hedonic regression models to predict the amount of pain and suffering damages for each district court case in our main research period (Sep. 5, 2013 – Sep. 2, 2014), based on the high-court or district-court cases decided within the past 3 months<sup>21</sup> of each case. That is, the hedonic regression model was run 102(=51\*2) times, two for each week.<sup>22</sup> Therefore, each district court case in the research period is paired with two estimates of pain and suffering damages: one is what the high court would have rendered, and the other is what the district court would have awarded. These estimates are hereinafter referred to as the trend (of pain and suffering awards). More concretely, to estimate the pain and suffering damages for a district court case rendered in the first week of April, we used the cases decided in the first three months of the year rendered in the high court in a hedonic regression model. The coefficient of the model and the facts of the said case can provide estimated pain and suffering damages—the best estimate of what the high court would have done had this case come before it in January, February, or March. We then repeated the same procedure on district court cases, to get hold of the best estimate of what the district court would have rendered had this case come before it a few weeks earlier.

After further computations, we run structural equation models (SEM) to test whether the ruling on pain and suffering damages by district court judges and

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suffering damages from the selected precedents. Thus, the issue we study here is different from that in prior literature that focuses on the interaction between the highest court of a jurisdiction and its lower courts.

<sup>21</sup> We assume (based on interviews) that judges would search the most recent cases as references. Choosing three months as the scope is a somewhat arbitrary, *ex ante* decision, though. (We coded 4 months of cases prior to the main research period, because the plaintiffs were assumed to claim 1 month before adjudication, and we thus needed three more months prior to the first plaintiff claim to estimate what this plaintiff would have considered to be the trend.) We have tried to use 2.5 and 3.5 months as the cut-off, and the results regarding the attorney and judge experience variables are essentially the same.

<sup>22</sup> There are in total 51 weeks in our main research period (defined in Part V). 51 models use district court cases as observations, whereas the other 51 models use high court cases.

those claimed by plaintiffs were affected by the trend, and whether the deviation from the trend can be attributed to jurist experience and case facts. We expatriate the empirical strategy in the following:

A. *OLS Models to Predict District Court and High Court Awards*

Our OLS hedonic regression models take the following form<sup>23</sup>:

$$\mathbf{PSD} = \beta_0 + \beta_1 \mathbf{INJURY} + \beta_2 \mathbf{MED} + \beta_3 \mathbf{JAIL} + \beta_4 \mathbf{CRIME} + \beta_5 \mathbf{DCORP} + \beta_6 \mathbf{CHAR} + \varepsilon$$

where **PSD** is the natural log of the judge's pain and suffering damages award; **INJURY** is a dummy variable indicating whether the victim suffered from minor injury or serious injury (defined according to Article 10 of Taiwan's Criminal Code);<sup>24</sup> **MED** are a variable presenting the natural log of court-adjudicated medical-related expenses already incurred and expected to incur and a dummy variable that equals 0 if medical expenses are 0; **JAIL** is the natural log of months criminal courts have sentenced the defendants to be incarcerated; **CRIME** are a dummy variable that equals 1 if the defendant drove under the influence of alcohol and a dummy variable that equals 1 if the defendant hit the plaintiff and ran away without assisting the injured plaintiff (both are an independent type of crime under Taiwan's Criminal Code); **DCORP** is a dummy variable indicating whether any of the defendants is a corporation (which is vicariously liable for its employees); **CHAR** include plaintiffs' ages, plaintiffs' income, defendants' income, and three dummy variables that equal 1 when age or income information is missing. The coefficients to be estimated are  $\beta_n$ ;  $\varepsilon$  is an error term.

More specifically, utilizing the comprehensive, official court case website,

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<sup>23</sup> One of us has collaborated in joint research projects on pain and suffering damages for personal injury (Chang et al. 2014), wrongful death (Chang et al. 2015), and defamation (Chang, Ho, and Hsu 2016). Those works explore the determinants of court-adjudicated pain and suffering damages in Taiwan. Chang et al. (2014) in particular finds that the level of injury and medical expenses alone can explain more than half of the variation from the average amount. Thus, in this article, we also use the level of injury and medical expenses as the major determinants in the hedonic regression models (Section A).

<sup>24</sup> A serious injury is one of the following conditions: 1. Destruction of or serious damage to the sight of one or both eyes; 2. Destruction of or serious damage to the hearing of one or both ears; 3. Destruction of or serious damage to the functions of speech, taste, or smell; 4. Destruction of or serious damage to the function of one or more limbs; 5. Destruction of or serious damage to the power of reproduction; and 6. Other serious injury to body or to health that is either impossible or difficult to cure.

we are able to find whether the civil defendants have been convicted before the civil court rendered its decisions (most of them were). We chronicled the declared sentences (**JAIL**), among others, from the criminal court decisions. Our conjecture is that the length of the declared sentence might affect the amount of pain and suffering damages as civil court judges could have taken it as another measure of the severity of the tortfeasors' acts. The declared sentences, however, are not a good measure of how long the tortfeasors have suffered in prison. Tortfeasors whose declared sentences are six months or shorter can avoid being jailed by paying criminal fines instead, and 91% of our cases fall into this category. Many of the rest of the cases could still be appealed.

**DCORP** tries to capture the effect of the deep pockets of corporate defendants. Prior literature has shown that the deep pocket effect has its presence in Taiwanese court (Chang et al. 2014; Chang, Ho, and Hsu 2016).

When all district court cases were put into this OLS model, the R-square is 0.63. When all high court cases were put into this OLS model, the R-square is 0.60. See Appendix A for regression results.

#### B. *Structural Equation Model on Deviation of Court Award from Trend*

Judges in district courts surveyed recent similar cases (the historic trend) and then evaluated the cases at hand based on the historic trend in the previous period. Their main decisions are therefore how much the adjudicated pain and suffering damages ( $R$ ) for the current case should deviate from the trend. The deviation ( $R - b_l$ ) from the trend in district court ( $b_l$ ) is called "intra-court deviation." The intra-court deviation, as hypothesized, might be based on the "inter-court deviation" ( $b_h - b_l$ )—that is, the historic trend in high courts minus that in district courts. For example, assume that the district court at time T-1 awarded 1 million dollars to a victim in a certain type of case and the high court at time T-1 awarded 1.5 million dollars, we conjecture that district court at time T would deviate from 1 million dollars and move toward 1.5 million dollars. Simultaneously, the deviation of the plaintiffs' claim ( $P$ ) from  $b_l$  might serve as an anchor to the judges' decisions. Note that in this paper,  $R$ ,  $b_l$  and  $b_h$  are measured as the natural logarithm of the original values to promote normality. For the sake



of brevity, the words “natural log” or “ln” will be omitted.

To ascertain the values of the aforementioned variables, we first construct hedonic estimates of the historic trend set in the previous period by using the cases adjudicated 1 to 12 weeks before the verdict of the case at hand, as described in Section IV.A. We then plug in the characteristics of the current case to assess the best estimate of pain and suffering damages in that case. Finally, we calculate the intra-court deviation ( $R-b_l$ ), inter-court deviation ( $b_h-b_l$ ), and plaintiff-claim deviation (the plaintiffs’ claims minus the historic trend in district courts;  $P-b_l$ ).

A structural model is warranted to handle the endogeneity problem inherent in the nature of our inquiry.<sup>25</sup> First, the plaintiffs’ claims (or, for that matter, plaintiff-claim deviation) were affected by case facts but influenced court adjudication as well. The problem is accounted for in the structural model by using the plaintiff-claim deviation as one independent variable in the first equation and the dependent variable in the second equation. Second, some characteristics considered by judges and plaintiffs are not observed by researchers. Our structural model takes into account the correlations between the error terms of the two equations, thus controlling the endogeneity problem (Wooldridge 2010: 681).<sup>26</sup> Specifically, we run the following structural equation model:

$$R_i - b_{l,i} = (b_{h,i} - b_{l,i})\gamma_1 + (P_i - b_{l,i}^*)\gamma_2 + E^j\gamma_3 + E^a\gamma_4 + (b_{l,i}^* - b_{l,i})\gamma_5 + X_i\delta_1 + W_i\delta_2 + e_{1i}, \quad (1)$$

$$P_i - b_{l,i}^* = E^a\gamma_6 + (b_{h,i}^* - b_{l,i}^*)\gamma_7 + X_i\delta_3 + Z_i\delta_4 + e_{2i}. \quad (2)$$

In equations (1),  $R-b_l$  is the intra-court deviation;  $b_h-b_l$  is the inter-court

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<sup>25</sup> As our later result would show, the rho (Table 3) that captures whether the correlation between the two error terms in the two equations in the structural equation model is not statistically significant. In other words, the structural model informs us that no endogeneity problem was detected. The ex ante decision to use a structure equation model is still justified, as one should worry that omitted variables may exist.

<sup>26</sup> While it is traditionally difficult to analytically derive the conditional density and numerically maximize the likelihood in a multi-equation system, Roodman (2011: 681–685) provides a useful STATA procedure CMP (Conditional Mixed Process estimator with random effects and coefficients), which can be applied to instrumental system problems to estimate the system under the joint normality assumption. In the structural equation model we used and report later, Shapiro-Wilk  $W$  tests for normality suggest that we cannot reject the null hypothesis that the residuals of equation 1 and equation 2 are normal.

Applying the maximum likelihood approach in linear models to control the endogenous problem, see Greene (2003: 402); Davidson and MacKinnon (2004: 537–538); Davidson and MacKinnon (1993: 644–651); Cameron and Trivedi (2005: 191).

deviation;  $P-b^*_i$  is plaintiff-claim deviation;<sup>27</sup>  $E^a$  are a dummy variable that indicates whether plaintiffs retain attorneys, the natural logarithm of plaintiff attorneys' civil experience, and a dummy variable that equals 1 if the attorney started practicing before year 2000, thus his or her experiences under-estimated by our data;  $E^j$  represents the natural logarithm of judges' civil experience and a dummy variable that equals 1 if the judge started his or her career on the bench before year 2000;  $b^*_i-b_i$  is the historic change in district courts between estimated pain and suffering awards 1 to 12 weeks before the verdict ( $b_i$ ) and estimated pain and suffering awards 5 to 16 weeks before the verdict ( $b^*_i$ ).<sup>28</sup>

The common explanatory variables in equations (1) and (2),  $X$ , mainly capture the information or factors that could explain the decisions of the judges and plaintiffs. They consist of 6 dummy variables on levels of injury.<sup>29</sup>  $X$  also includes 18 dummy variables that control for which district courts made the

<sup>27</sup> To be more exact,  $P-b^*_i$  is the difference between plaintiffs' claims and estimated pain and suffering awards 5 to 16 weeks before the verdict. We deduct from the former the latter, rather than estimated pain and suffering awards 1 to 12 weeks before the verdict, because plaintiffs' claims were on average made about one month before judges' ruling. The new trend that happens 1 to 4 weeks before the verdict would be unbeknownst to the plaintiffs when they made the claims. See also footnote 28 for more explanation.

<sup>28</sup> This variable itself is not of interest. We added this to adjust this potential time-inconsistency of the historic trend. More specifically,  $P-b^*_i$  is used as an independent variable in equation (1) and as the dependent variable in equation (2) to account for the endogeneity problem. Nonetheless, the anchoring effect created by the plaintiffs' claims may not derive from the difference between the claim and the old trend (5–16 weeks before verdict), but between the claim and the new trend (1–12 weeks before verdict). To be able to ascertain the magnitude of the anchoring effect,  $b^*_i-b_i$  is added as adjustment. More specifically, equation (1) can be re-written as follows:

$$\begin{aligned} R_i - b_{i,i} &= (b_{h,i} - b_{i,i})\gamma_1 + (P_i - b^*_{i,i})\gamma_2 + E^j\gamma_3 + E^a\gamma_4 + (b^*_{i,i} - b_{i,i})\gamma_5 + X_i\delta_1 + W_i\delta_2 + e_{i,i} \\ &= (b_{h,i} - b_{i,i})\gamma_1 + (P_i - b_{i,i})\gamma_2 + E^j\gamma_3 + E^a\gamma_4 + (b^*_{i,i} - b_{i,i})(\gamma_5 - \gamma_2) + X_i\delta_1 + W_i\delta_2 + e_{i,i}, \end{aligned}$$

where the variable in the second term ( $p-b$ ) measures the anchoring effect created by the deviation of plaintiffs' claims from the new trend. As the above equation shows, ( $p-b$ ) and ( $p-b^*$ ) both have  $\gamma_2$  as its coefficient. That is, the regression coefficient  $\gamma_2$  can be regarded as the measurement of the anchoring effect. Conducting a regression of  $R-b_i$  on  $P-b_i$ ,  $b^*_i-b_i$  and other variable will result in the same coefficients (except that of  $b^*_i-b_i$ ) as conducting a regression based on equation (1).

<sup>29</sup> Here we classified the victims' injuries into 9 levels based on NAIC (National Association of Insurance Commissioners) scale, as it is a more detailed classification of injuries. The NAIC scale has been used in prior empirical studies. See, e.g., Vidmar, Gross, and Rose (1998: 283); Sloan (1993: 23). The 9 levels are: 1. Emotional only (fright, no physical damage); 2. Temporary insignificant (lacerations, contusions, minor scars, rash; no recovery delay); 3. Temporary minor (infections, fracture, fall in hospital; recovery delayed); 4. Temporary major (burns, surgical material left, drug side effect, brain damage; recovery delayed); 5. Permanent minor (loss of fingers, loss or damage to organs; includes nondisabling injuries); 6. Permanent significant (deafness, loss of limb, loss of eye, loss of one kidney or lung); 7. Permanent major (paraplegia, blindness, loss of two limbs, brain damage); 8. Permanent grave (quadriplegia, severe brain damage, lifelong care or fatal prognosis); 9. Death. No victim in our cases suffered merely level-one injury. We exclude death cases as they are categorically and doctrinally different.

decisions. In addition,  $X$  contains plaintiffs' age in natural log; plaintiffs' annual income in natural log;<sup>30</sup> two dummy variables that equal one when an observation contains missing values in age and income; whether defendants drove under the influence of alcohol; whether defendants hit and ran; the length of defendants' declared criminal sentences; and whether defendants include a corporation vicariously liable for the natural person who caused the accident.

$W$  represents variables that are only used in the first equation, including whether defendants hired attorneys, the civil experience of defendant attorneys, a dummy variable that equals 1 if the defense attorney started practicing before year 2000, natural log of court-adjudicated medical expenses, and a dummy variable that equals 0 when court-adjudicated medical expenses are 0.

The specification in equation (1) examines the driving force of judicial decision-making, whereas that in equation (2) teases out what drove the plaintiffs' decisions. As the plaintiffs' claims were on average made about one month before judges' ruling,<sup>31</sup> we again construct hedonic estimates of the historic trends in high courts and district courts by using cases rendered 5 to 16 weeks before court verdict (that is, 1–12 weeks before plaintiffs made their claims to courts). Then, we plug in the characteristics of the cases in question to estimate the adjudicated damages. Thus, the dependent variable in equation (2) is the deviation of the plaintiffs' claims away from the historic trend in district courts 5 to 16 weeks before court verdict. The difference of the estimated damages at district and high courts 5 to 16 weeks before court verdict ( $b_h^* - b_l^*$ ) is one of the major independent variables in equation (2).<sup>32</sup>

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<sup>30</sup> The annual income information was acquired by courts via the Ministry of Finance and reported in the court decisions.

<sup>31</sup> According to official summary statistics, the average handling time for a district court civil case is 30 days. As an approximation, we used 4 weeks as the differences in time between plaintiffs' claiming and judges' adjudicating. Each case, of course, is different. Some cases surely took more than 30 days to reach the conclusion of a trial, but we have no information as to how long. In addition, plaintiffs can change their amount of claims before making the closing statements. While some court decisions do contain information as to whether plaintiffs increased or decreased their claimed amount, those decisions did not spell out whether the claim of pecuniary damages or that of non-pecuniary damages was changed.

In short, there must be differences in time between plaintiffs' claiming and judges' adjudicating; that is, certain new cases could be taken into consideration by judges but not by attorneys. But we are not entirely sure how long the time gap is. Our model assumes that plaintiffs took into account district court and high court cases rendered in the previous three months when they formulated their requested amount of pain and suffering damages 4 weeks before court adjudication. See also footnotes 27 and 28.

<sup>32</sup> In unreported models, a dummy variable capturing whether defendants explicitly counter

Due to the nature of our data and for identification purposes, specific explanatory variables, in addition to  $X$ , are added for equation (2). These potential determinants of reactions ( $Z$ ) include the three following independent variables: whether plaintiffs have to pay filing fee, plaintiffs' incurred amount of medical expenses in nature log, and a dummy variable that equals 0 when the incurred medical expenses are 0. Whether plaintiffs have to pay filing fees should not affect the award of pain and suffering damages, as it has nothing to do with the losses of plaintiffs, while plaintiffs who did not have to pay the pro rata filing fees have incentives to claim above the trend. Plaintiffs' incurred medical expenses are larger than or equal to courts' adjudication, because courts evaluate medical expenses and usually award only part of them. We conjecture that plaintiffs and judges each use their own incurred and adjudicated medical expenses, respectively, as proxies for the level of pain; thus, they are put to equation (2) and equation (1), respectively. In addition, the variable  $(b_h^* - b_l^*)$  also serves the purpose of identification, as it is only included in equation (2).  $(b_h^* - b_l^*)$  should not affect judges, because judges should not care about the changing trend as of one month before the adjudication; rather, judges should care about the changing trend as of adjudication. Hence,  $(b_h - b_l)$  is put in equation (1) instead.

Finally, we assume that the error terms  $e_{ki}$  ( $k = 1, 2$ ) are jointly normally distributed with a mean of zero.<sup>33</sup>

Our main interest is in the values of the estimated coefficients  $\gamma_1$  to  $\gamma_7$ , except  $\gamma_5$ . If  $\gamma_1$  is statistically significant and positive, the district court tends to follow the latest trend in high courts. If  $\gamma_2$  is statistically significant and positive, there exists an anchoring effect created by plaintiffs' claims. The statistical significances of  $\gamma_3$  and  $\gamma_4$  demonstrate whether the increases in attorney and judge experience lead to district courts' deviating from their historic trends.  $\gamma_6$  informs whether attorney experience affects plaintiff claims.  $\gamma_7$  teases out whether plaintiffs take into account changes in trend when formulating their

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plaintiffs' claimed pain and suffering damages is included in the first equation. The result is not robust. Sometimes it is statistically significant (with the expected negative sign), while sometimes it is not statistically significant. This dummy variable is ultimately omitted due to potential endogeneity problem.

<sup>33</sup> We set the variance of  $e_{2i}$  to 1 to identify the parameters. Moreover, we allow for residual correlation between equations 1 and 2.

claims.

Finally, several technical and substantive checks have been done. Robust standard errors are used. Judge random effects are controlled in the first equation. The structural equation model is clustered by cases. Several different sets of variables have been added to unreported models to explore the relationship among case outcomes, judge experience, and attorney experience: the supreme court representation experience of plaintiff and defendant attorneys; age differences between attorneys; the number of times the plaintiff attorneys has appeared before the judges; the number of times the plaintiff attorneys and the defendant attorneys have represented opposite parties in litigation; and the gender combination of the judges and the plaintiffs. None of these unreported variables are statistically significant.

## V. DATA

A legal service provider, Ping-Lu Web ([www.pingluweb.com](http://www.pingluweb.com)), provides us with a rich data set on the experience of *all* Taiwanese attorneys and *all* Taiwanese judges as of June 30, 2014. Ping-Lu Web downloaded millions of cases, freely available on the official court case database (<http://jirs.judicial.gov.tw/Index.htm>), and tallied the number of times any lawyer (judge) appears as an attorney (judge) of a case. The only drawback of this data set is that, as most cases before year 2000 are not available in the official court case database, the experience of judges and attorneys who started their careers before 2000 will be under-estimated.<sup>34</sup>

As summarized in Part III, no prior work, to the best of our knowledge, has a comprehensive, continuous and accurate measure of jurist experience. Most data measure the number of practicing years or the number of cases an attorney represented *within the sample*. Our data set allows us to gauge judges' experience in terms of number of years on the bench and the total number of signed opinions regarding civil, criminal, and administrative matters. It also enables us

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<sup>34</sup> In the regression models, we have tried adding dummy variables that indicate whether plaintiffs' or defendants' attorneys started to practice before year 2000, in order to capture the potential effect of under-estimating the experience of these senior attorneys. The dummy variables are not statistically significant.

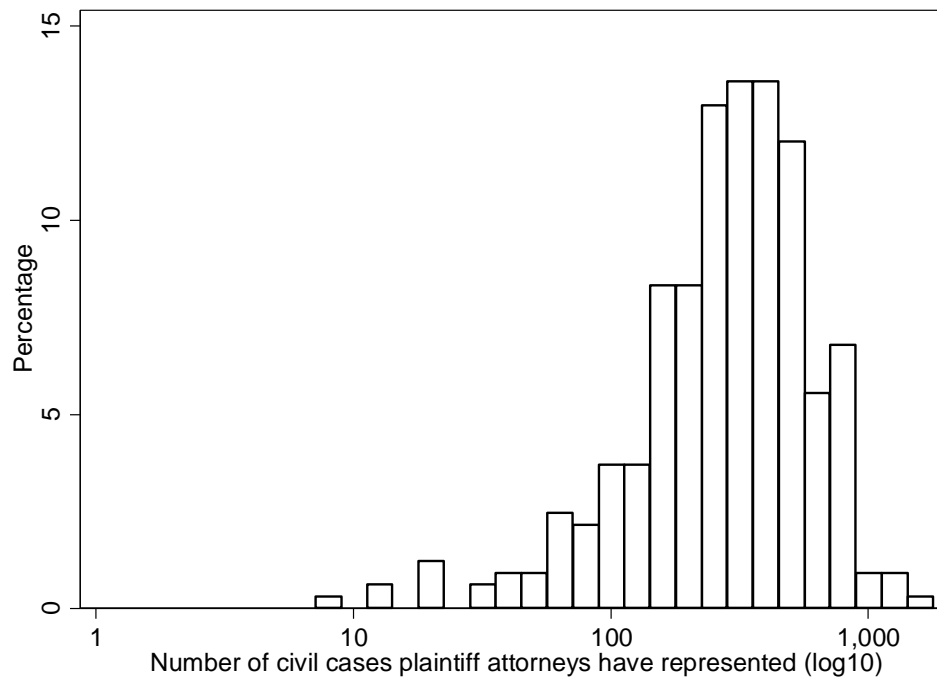
to measure attorneys' experience by the number of years since an attorney got her license; the number of years since an attorney first represented a client in a lawsuit; and the number of court cases in which an attorney is listed as a representative of either the plaintiff or the defendant. The percentages of cases in which an attorney represents an individual, a corporation, or the government is also known. See Figure 2, Figure 3, and Figure 4 for the distribution of attorneys' and judges' experience, as measured by the number of civil cases handled.

To capture the civil-litigation experience of plaintiffs' attorneys, defendants' attorneys, and judges, we use the number of civil cases (attorneys represent and judges adjudicate) as the measure of their legal experience.<sup>35</sup> When there are multiple attorneys hired by either party (sometimes one litigant hired multiple attorneys, and sometimes there were multiple plaintiffs or defendants in one case and they hired different attorneys), the experience of the most senior attorney is used. Usually, one judge sits on the bench for a district court trial. Nevertheless, when a junior judge with less than 2 years of experience on the bench is randomly assigned a case, two more senior colleagues would join him or her to form a panel. (There are 40 such cases in our data set.) In this scenario, we use the experience of the most senior judge (usually the presiding judge) to measure the judge experience of those cases.

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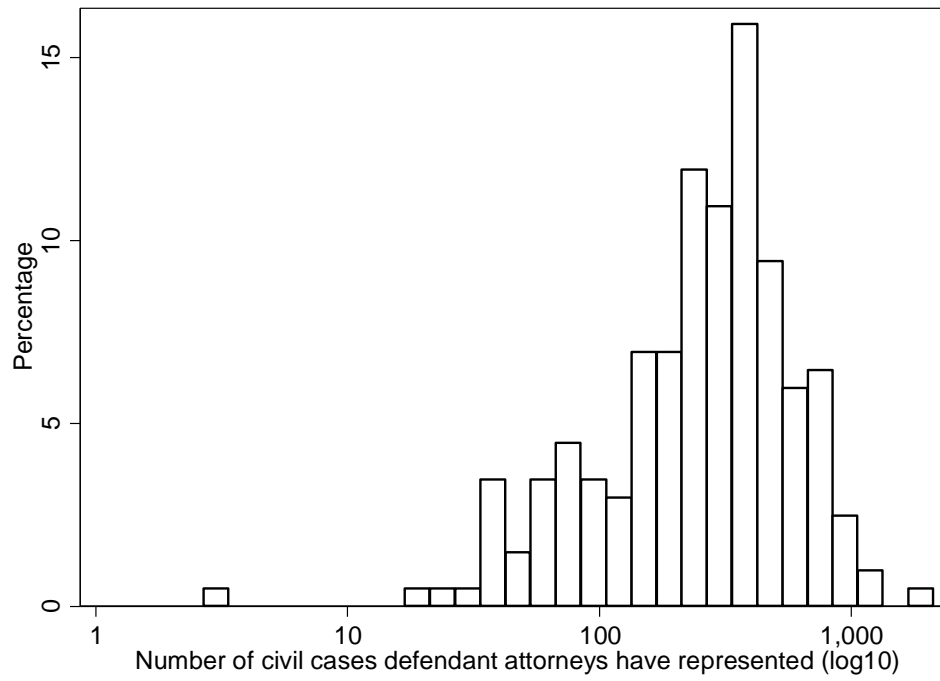
<sup>35</sup> Number of years of practice has been used in our regression models, with or without the variable on the number of handled cases. We found, however, that the former is not statistically significant in any model. This is an interesting contrast to the prior studies that used this as the measuring rod of attorney experience and found statistically significant results.

Figure 2 Distribution of Plaintiff Attorney Experience



N=324. In 63 observations, plaintiffs did not hire attorneys.

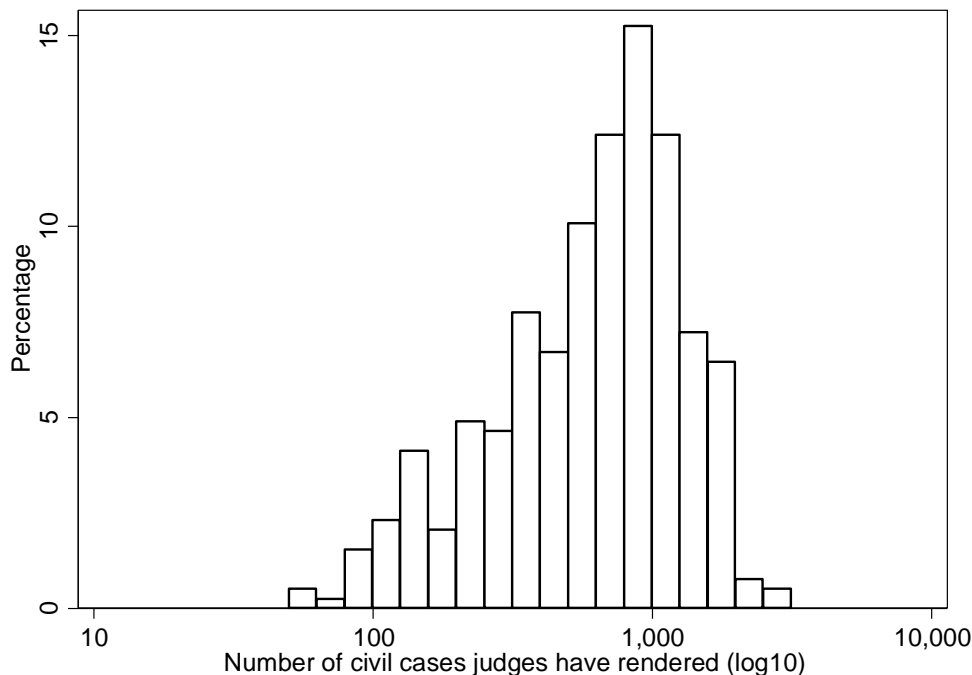
Figure 3 Distribution of Defendant Attorney Experience



N=201. In 186 observations, defendants did not hire attorneys.



Figure 4 Distribution of Judge Experience



N=387.

To match with this unique data set, this project has coded pain and suffering damages cases between September 5, 2013 and September 2, 2014 (during which no judge was transferred to another court).<sup>36</sup> To better control other facets of the cases and to isolate the effects of the experience of judges and attorneys, only cases involving pain and suffering damages for personal injury incurred in car accidents are included. In addition, only cases in which at least one party has hired at least one attorney-at-law are included in the database. Court decisions rendered in a previous period (T-1) were used to predict the current period (T); thus, pain and suffering damages cases between May 1 and September 4, 2013 were also coded. Both district court and high court cases during this 16-month research period were coded. The same selection criterion applies. The attorneys' and judges' experience as of June 30, 2014 will be used as their experience throughout the main research period without adjustment.

In total, we coded 484 civil district court cases (producing 546 observations)

<sup>36</sup> Every year, judge transfers in Taiwan take place in one pre-specified date in the first week of September.

and all the criminal cases against the defendants of those civil cases. Among them, 387 observations were 1) rendered in the main research period; 2) without missing information in key variables; 3) not extreme outliers (we only exclude four such cases). These observations were used in the structural equation model to tease out the effect of jurist experience. 164 appellant court cases have been coded in the same way as well. Major variables used in regression models are summarized below in Table 2, and the distribution of court-adjudicated pain and suffering damages and plaintiff-claimed pain and suffering damages are shown in Figure 5 and Figure 6.

This article focuses on district court cases rather than appellate court cases for the following reasons: first, almost all current studies focus on the appellate or supreme courts. The number of cases in appellate courts is limited; as a result, researchers have to include cases with different fact patterns to gain sufficient degrees of freedom. The advantage of this approach is to include plaintiffs and defendants with and without legal resources (the haves and the have nots). The downside of this approach is that the effect of attorneys' experience cannot be isolated if the controls for the nature of the cases are imperfect.

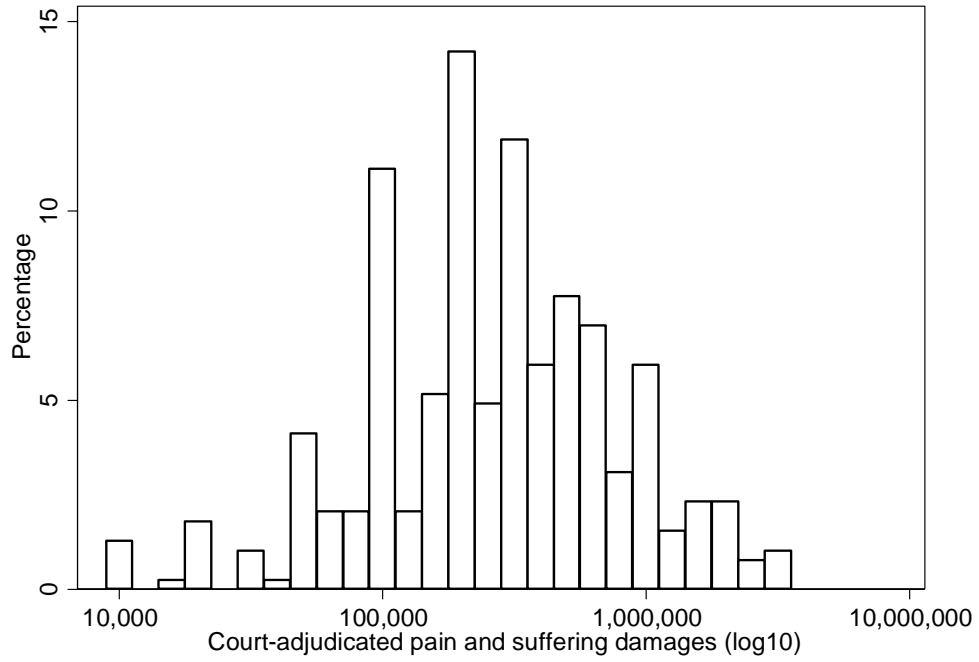
Second, a majority of cases (about 60% of the torts cases in Taiwan) were not appealed. Researches on appellate cases may suffer from the selection bias.<sup>37</sup>

Third, to control and compare the effect of judges' experience, examining district court judges is preferable, as appellate judges may be similarly senior, while district court judges are more diverse in terms of experience. In addition, under Taiwan's hierarchical judicial system, district courts are more likely staffed with inexperienced judges (in the absolute sense), who may suffer from the anchoring bias (Chang, Chen, and Lin 2016) and other types of biases. Similarly, attorneys representing appellate cases, particularly supreme court cases, would not be novices. Had this project chosen to study appellate decisions, the variances of judges' and attorneys' experience would not be large.

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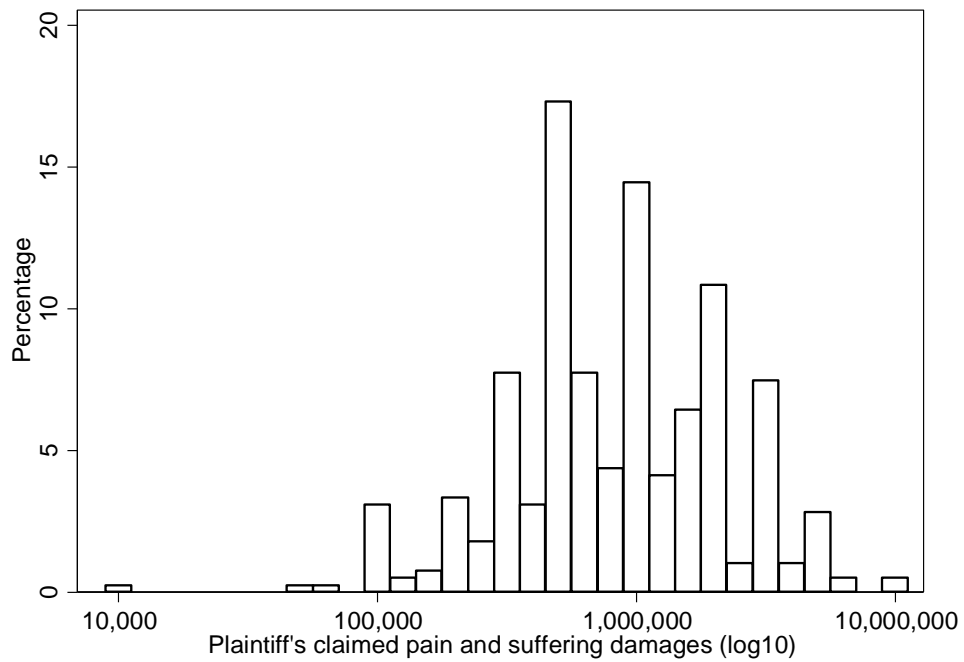
<sup>37</sup> Adjudicated cases are biased in the sense that most disputes are settled. Nonetheless, we are interested in studying judicial behaviors and the influence of attorneys on judges. Thus, lacking information on settled disputes will not bias our results.

Figure 5 The distribution of court-adjudicated pain and suffering damages



N=387. Damages in New Taiwan Dollars. US Dollars: New Taiwan Dollars=1:30.

Figure 6 The distribution of plaintiff-claimed pain and suffering damages



N=387. Damages in New Taiwan Dollars. US Dollars: New Taiwan Dollars=1:30.

Table 2 Summary Statistics of Variables

<b>Continuous Variables</b>	<b>Obs</b>	<b>Mean</b>	<b>Std. Dev.</b>	<b>Min</b>	<b>Max</b>
intra-court deviation	387	-0.006	0.8	-2.3	2.4
inter-court deviation, 1 to 12 weeks before verdict= A	387	0.4	0.9	-1.9	3.2
Inter-court difference, 5–16 weeks before verdict= B	387	0.5	0.8	-1.7	3.4
The difference between A and B	387	-0.003	0.3	-1.2	1.7
Estimated PS damages in High Court, 5–16 weeks before verdict	387	12.5	0.9	9.4	15.1
Estimated PS damages in District Court, 5–16 weeks before verdict	387	12.9	1.2	9.3	16.5
Deviation of plaintiff's claim from district court cases 5–16 weeks before verdict	387	1.2	0.9	-1.9	4.2
Court-adjudicated PS damages	387	444,786	519,466	10,000	3,000,000
PS damages claimed by plaintiffs	387	1,252,810	1,310,391	10,000	10,800,000
Judge's civil experience	387	760	500	55	2,857
Plaintiff attorney's civil experience	387	290	250	0	1,539
Defendant attorney's civil experience	387	170	245	0	1,813
Court-adjudicated medical-related expenses	387	1,104,264	2,912,387	0	22,700,000
Medical-related expenses incurred by plaintiffs	387	1,749,726	4,819,668	0	46,200,000
Defendant's number of months jailed	387	3.1	2.7	0.0	24.0
plaintiff's age	387	27.1	25.0	0.0	88.0
plaintiff's income	387	216,640	397,650	0	2,600,000
Deduction applied to damages	387	251,382	512,669	0	2,200,000
Plaintiff's comparative negligence	387	0.2	0.2	0.0	0.8

Note: All continuous variables except plaintiff's comparative negligence are in natural log.

<b>Categorical Variables</b>	<b>Obs</b>	<b>=1</b>	<b>%</b>
=1 if plaintiff hires attorney(s)	387	324	83.7
=1 if defendant hires attorney(s)	387	201	51.9
=1 if plaintiff has to pay filing fee	387	87	22.5
Level of injury (7 levels)	387		100.0
2. Temporary insignificant		2	0.5
3. Temporary minor		140	36.2
4. Temporary major		102	26.4
5. Permanent minor		74	19.1
6. Permanent significant		15	3.9
7. Permanent major		32	8.3
8. Permanent grave		22	5.7
=1 if defendants include a corporation which is vicariously liable	387	92	23.8
=1 if defendant drove under the influence of alcohol	387	27	27.0
=1 if defendant hit and ran	387	12	3.1
=1 if plaintiff's age is missing	387	132	34.1
=1 if plaintiff's income is missing	387	119	30.8
=1 if judge starts career before 2000	387	196	50.7
=1 if plaintiff attorney starts career before 2000	387	165	42.6
=1 if defendant attorney starts career before 2000	387	96	24.8
=1 if court-adjudicated medical expense is 0	387	4	1.0
=1 if plaintiff-incurred medical expense is 0	387	1	0.3

Note: Damages in New Taiwan Dollars. US Dollars: New Taiwan Dollars=1:30.

## VI. FINDINGS AND IMPLICATIONS

### A. *Judges Pay Close Attention to High Court Decisions*

The structural equation model shows that district court judges followed the historic trend set by high courts. The variable on inter-court deviation in the first equation in Table 3 has a positive sign and is statistically significant ( $p=0.002$ ). This suggests that when, in the three months prior to the district court decisions, high courts have increased the amount of pain and suffering damages relative to district courts, district court judges in the current period tended to increase the

awarded amount. Following the assessment patterns set by high courts could reduce the probability of reversal and in the long run increase judges' chances of being promoted to high courts. This is the first empirical finding that lower court judges mimic the weights given to facts by higher court judges.

To ensure that this finding is not spurious, we ran and passed a series of placebo tests. We found that changing trend in the past affected judicial decisions, but changing trend in the *future* should not in any way affect judicial decisions. The following variables are created: changing trend in the next three months (high court estimate at time T+1 minus district court estimate at time T+1), changing trend across time and court (high court estimate at time T+1 minus district court estimate at time T-1), and changing trend across time (district court estimate at time T+1 minus district court estimate at time T-1). These variables were then used to replace or supplement the changing trend variable in equation (1) in the structural equation model. None of these variables are statistically significant at the 10% level.

The judges' own experience does not affect intra-court deviation.<sup>38</sup> Unreported SEM models show that interaction terms of judge experience and other factors do not yield statistically significant results. This suggests that senior judges in district courts were not more or less inclined to deviate from historic trend set by high courts than junior judges. The interaction terms' lack of statistical significance could be interpreted in the following way: district court judges of all experience have equally prepared to follow high courts.<sup>39</sup> By doing so, district court judges expect to face lower reversal rates and thus increasing their chances of being promoted.

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<sup>38</sup> In unreported models, we used the number of years since a judge renders her first civil (or any) case to replace or complement the number-of-civil-case measure of experience. These new measures are not statistically significant.

<sup>39</sup> In unreported models, we divided the samples into 2 equal-size groups according to the experience of judges. The same structural model reported in the text was run on the 2 groups separately. The results are consistent with Chang, Chen, and Lin (2016)—experienced judges were not subject to the anchoring effect, whereas inexperienced judges were.

Table 3 SEM results

Dependent variable	intra-court deviation (ln)		Deviation of plaintiff's claim from district court cases 5–16 weeks before verdict (ln)	
	Coef.	Std. Err	Coef.	Std. Err
Plaintiff-claim deviation (ln)	<b>0.406 ***</b>	(0.090)		
Inter-court deviation, 1–12 weeks before verdict (ln)	<b>0.133 **</b>	(0.043)		
Estimated PS damages in district courts 5–16 weeks before verdict (ln) minus estimated PS damages in district courts 1–12 weeks before verdict (ln)	0.682 ***	(0.113)		
Judge's civil experience (ln)	0.084	(0.053)		
=1 if judge started bench career before 2000	-0.064	(0.082)		
=1 if defendant hires attorney(s)	0.248	(0.297)		
Defendant attorney's civil experience (ln)	-0.040	(0.055)		
=1 if defense attorney started practicing before 2000	0.114	(0.102)		
Court-adjudicated medical-related expenses (ln)	0.033	(0.023)		
=1 if adjudicated medical expense is 0	0.95 *	(0.410)		
Defendant's max income (ln)	0.005	(0.007)		
=1 if defendant's max is missing	0.056	(0.108)		
Deduction applied to damages(ln)	0.016 **	(0.006)		
Plaintiff's comparative negligence	0.099	(0.136)		
Inter-court deviation, 5–16 weeks before verdict			<b>0.142 *</b>	(0.058)
Plaintiff-incurred medical expenses			<b>-0.076 *</b>	(0.030)
=1 if incurred medical expense is 0			1.462	(0.939)
=1 if plaintiff has to pay filing fee			<b>-0.372 **</b>	(0.136)
=1 if plaintiff hires attorney(s)	-0.053	(0.285)	<b>-0.652 +</b>	(0.371)
Plaintiff attorney's civil experience (ln)	0.001	(0.051)	<b>0.128 +</b>	(0.068)
=1 if plaintiff attorney started practicing before 2000	-0.165 *	(0.081)	-0.086	(0.110)
6 injury-level dummies (baseline: 2. Temporary insignificant)				
3. Temporary minor	0.876 +	(0.473)	-1.056 +	(0.619)
4. Temporary major	1.213 *	(0.473)	-0.798	(0.621)
5. Permanent minor	1.214 *	(0.478)	-1.004	(0.624)
6. Permanent significant	1.136 *	(0.507)	-1.106 +	(0.664)

7. Permanent major	1.173 *	(0.497)	-1.209 +	(0.642)
8. Permanent grave	0.999 +	(0.513)	-1.186 +	(0.656)
Defendant's length of declared incarceration (ln)	-0.013	(0.058)	-0.234 *	(0.098)
=1 if defendants include a corporation which is vicariously liable	0.027	(0.079)	-0.036	(0.108)
=1 if defendant drove under the influence of alcohol	-0.035	(0.127)	0.186	(0.173)
=1 if defendant hit and ran	0.190	(0.212)	-0.043	(0.283)
plaintiff's age (ln)	-0.055	(0.083)	-0.040	(0.111)
=1 if plaintiff's age is missing	-0.079	(0.310)	-0.120	(0.415)
plaintiff's income (ln)	0.010	(0.007)	-0.008	(0.010)
=1 if plaintiff's income is missing	0.147	(0.100)	-0.056	(0.128)
18 court dummies		Yes		Yes
Constant	-2.725 ***	(0.756)	3.963 ***	(0.852)
$\sigma_1$	0.520 ***	(0.028)		
$\sigma_2$			0.824 ***	(0.030)
$\rho$	0.063	(0.128)		

Robust standard errors in parentheses. Clustered by cases. Judge random effects apply. PS damages= pain and suffering damages.

\*\*\*  $p < 0.001$ , \*\*  $p < 0.01$ , \*  $p < 0.05$ , +  $p < 0.1$ .

Log likelihood= -791.25

### B. Attorney Influence on Plaintiff Claim

Whether plaintiffs hire (experienced) attorney is significantly associated with how plaintiffs claim. Table 3 reveals that plaintiffs represented by attorneys with little experience claimed less than those self-represented or represented by non-attorneys ( $p=0.079$ ). This is intuitive, as pro se plaintiffs may be optimistically biased, while junior attorneys know better but claim conservatively. Plaintiffs' claims, however, increase with the experience of their attorneys ( $p=0.059$ ). This is consistent with the economic and psychological accounts laid out in Part III.B.2.

As argued above, (senior) attorney representation is close to random assignments. Table B.1 in the Appendix further shows that plaintiff incomes do not affect whether plaintiffs seek attorney representation. The major driver of



plaintiffs' decisions to retain attorneys is whether defendants include a corporation ( $p < 0.01$ ). Perhaps plaintiffs hire attorneys when they identify a deep pocket.<sup>40</sup>

All the four identifying variables in equation (2) are statistically significant.<sup>41</sup> The dummy variable on whether plaintiffs paid filing fees is worthy of more discussion. This variable has the expected negative sign, as economically rational plaintiffs who do not have to pay pro rata filing fees will over-claim as compared to those who have to pay. As said above, the judges we interviewed sense that our conjecture holds water, and the attorneys we interviewed admitted that they tend to do exactly as we hypothesize. Thus, this result should not be surprising.

We also find that inter-court deviation is positively associated with the deviation of plaintiffs' claimed amount ( $p = 0.015$ ), suggesting that plaintiffs in general paid close attention to the changing trend in high courts vis-à-vis district courts, too.

### C. *Plaintiff Attorney Influence on Adjudication*

Experienced plaintiff attorneys in general win higher pain and suffering damages for their clients. The plaintiffs' claimed amounts created the anchoring effect.<sup>42</sup> When plaintiffs' claims are higher than the point estimates based on cases of the previous three months, district court judges tend to award higher

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<sup>40</sup> Due to technical constraints, we cannot use plaintiff attorney experiences (or representation) and defendant attorney experiences (representation) as dependent variables in additional equations in the structural equation model.

When we added one or two more equations to the reported two-equation structural model, the model did not converge. We have tried excluding cases where plaintiffs were not represented by attorneys to focus solely on the effect of plaintiff attorney experience. Putting those cases into the reported model reveals a largely similar result. Our main story holds, though the  $p$ -values do shift a bit, sometimes crossing the threshold of statistical significance. We have also put those cases into a three-equation structural model—the reported model plus one equation to account for the defendants' decision to retain attorneys. Again the main story reported in the text and Appendix B.2 remains intact.

<sup>41</sup> The four variables, when added into the first equation to test whether they are valid instrumental variables, are jointly insignificant in the first equation. And three of the four variables are statistically insignificant at the 10% level. By contrast, the four instrumental variables are jointly significant in the second equation ( $p < 0.001$ ).

<sup>42</sup> The finding of the anchoring effect is consistent with our prior research on property disputes in Taiwan (Chang, Chen, and Lin 2016) and experimental results conducted by others (Chapman and Bornstein 1996; Campbell et al. 2014).

pain and suffering damages ( $p < 0.001$ ). As discussed above, plaintiffs' claims were further affected by attorney representation and attorney experience. Hence, through the anchoring effects, plaintiffs who hire senior attorneys were able to garner higher pain and suffering damages. For example, an increase of plaintiff attorney experience by 1% (3.47 cases) would on average lead to an increase of 0.128% (\$53) in claim, which further results an increase of 0.05% (\$21) in pain and suffering damages awards.<sup>43</sup>

This finding, however, does not imply that plaintiffs who seek higher pain and suffering damages have to retain senior attorneys to achieve this goal. As long as plaintiffs can identify the historical trends in high courts and district courts and are willing to gamble by over-claiming, they may be awarded with higher pain and suffering damages as well. As Table 3 suggests, plaintiffs not represented by attorneys tend to claim higher than those represented by attorneys ( $p = 0.079$ ). These unassisted plaintiffs received higher pain and suffering damages through the anchoring effects. Moreover, senior attorneys tended to be distrusted by judges when they over-claim. The dummy variable that equals 1 when a plaintiff attorney passed the bar and started practice before year 2000 (whose experience under-estimated) has a negative coefficient and is statistically significant ( $p = 0.042$ ). This is evidence that judges might be suspicious of senior attorneys' claims.

#### *D. Defendant Attorney Has No Role*

As Table 3 shows, whether a defendant hires attorneys and defendant attorney experience<sup>44</sup> do not affect the extent to which district courts deviate from the historic trend. Perhaps defendant attorneys work on dismissing the case altogether or arguing that plaintiffs are comparatively negligent. Our data do not allow us to test these hypotheses.

Defendants' decisions to retain attorneys are mainly influenced by the

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<sup>43</sup> These numbers are calculated based on the sample averages of plaintiff attorney experience (347) and plaintiff's claim of pain and suffering damages (\$41,760).  $0.128\% \times 0.405 = 0.05\%$ . The exchange rate used is \$1=NTD30.

<sup>44</sup> In unreported models, we used the number of years since a judge renders her first civil (or any) case or the number of years since admitted to the bar to replace or complement the number-of-civil-case measure of experience. These new measures are not statistically significant.

compensation risk they were exposed to, as Table B.2 in the Appendix shows. More specifically, natural log of the amount of total claims made by plaintiffs is positively and statistically significantly associated with the binary decision of defendants' hiring attorneys ( $p < 0.01$ ). This result is sensible, as defendants care more about how much they would have to pay than the categories of the damages. When defendants are more exposed to risks of high damages, they are inclined to seek legal representation. Besides, again, defendant incomes do not have statistically significant relation with defendant attorney representation.

## VII. CONCLUSION

The innovation and contribution of this article is using the most accurate measure of attorneys' and judges' experience to date in new and well-specified regression models to directly examine the effect of jurists' experience, which has not been fully explored. The structural equation model reveals that in adjudicating pain and suffering damages, district court judges deviated from the historic trend in order to follow the recent changes in assessment patterns in high courts. Senior plaintiff attorneys win their clients more pain and suffering damages by claiming higher amounts of damages, which create the anchoring effect. Judge experience and defendant attorney experience do not affect whether district court judges deviate from the historic trend. Our findings of judicial and attorneys' behaviors should be generalizable to other jurisdictions with similar institutional settings.

Plaintiffs' *ad damnum* creates an anchoring effect, and senior plaintiff attorneys have exploited this judicial bias in tipping the case toward their clients' favor—we also find evidence that judges might be aware of the higher claims made by senior attorneys. Policy makers in jurisdictions where *ad damnum* is a pre-requisite should seriously consider reform proposals that could reduce the undue bias creating by plaintiffs' claims.

We have demonstrated the added value of plaintiff attorneys' experience. Yet, this may not be the whole reason for the higher fee charged by seasoned attorneys. This study examines the impact of claim formulation by plaintiff attorneys, while they can change litigation outcomes in other ways as well.<sup>45</sup> There are still a lot of empirical studies on attorney experience to be done!

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<sup>45</sup> For discussions on how attorneys can change litigation outcomes via other ways, see generally, for example, Galanter (1974), Kritzer (1998), Aldisert (1992), and Haire, Lindquist, and Hartley (1999).



## APPENDIX A: PREDICTING COURT-ADJUDICATED PAIN AND SUFFERING DAMAGES

Table A.1 Hedonic Regression Models on Adjudicated Pain and Suffering Damages in District Courts

Dependent variable	Court-Adjudicated pain and suffering damages	
	Coef.	Std. Err
Ln of court-adjudicated medical expenses	0.284 ***	(0.023)
=1 if court-adjudicated medical expense=0	1.945 ***	(0.390)
injury-level dummy (baseline: minor injury)	0.651 ***	(0.090)
Defendant's number of months jailed (ln)	0.192 ***	(0.050)
plaintiff's age (ln)	-0.140 +	(0.082)
=1 if plaintiff's age is missing	-0.768 *	(0.315)
plaintiff's income (ln)	0.001	(0.007)
=1 if plaintiff's income is missing	0.047	(0.091)
defendant's income (ln)	0.010	(0.008)
=1 if defendant's income is missing	0.104	(0.105)
=1 if defendant drove under the influence of alcohol	0.158	(0.104)
=1 if defendant hit and ran	-0.432 +	(0.240)
=1 if defendants include a corporation which is vicariously liable	0.131 +	(0.071)
Constant	9.179 ***	(0.414)
N=520		
R <sup>2</sup> =0.628		

Robust standard errors in parentheses. Clustered by cases.

\*\*\* p<0.001, \*\* p<0.01, \* p<0.05, + p<0.1

Table A.2 Hedonic Regression Models on Adjudicated Pain and Suffering Damages in High Courts

Dependent variable	Court-Adjudicated pain and suffering damages	
	Coef.	Std. Err
Ln of court-adjudicated medical expenses	0.341 ***	(0.040)
=1 if court-adjudicated medical expense=0	3.107 ***	(0.843)
=1 if serious injury (baseline: minor injury)	0.429 **	(0.151)
Defendant's number of months jailed (ln)	0.064	(0.125)
plaintiff's age (ln)	-0.167	(0.162)
=1 if plaintiff's age is missing	-1.022 +	(0.583)
plaintiff's income (ln)	0.002	(0.013)
=1 if plaintiff's income is missing	-0.055	(0.175)
defendant's income (ln)	0.014	(0.014)
=1 if defendant's income is missing	-0.085	(0.200)
=1 if defendant drove under the influence of alcohol	0.253	(0.285)
=1 if defendant hit and ran	-1.117 ***	(0.248)
=1 if defendants include a corporation which is vicariously liable	-0.013	(0.149)
Constant	9.132 ***	(0.655)
N=164		
R <sup>2</sup> = 0.596		

Robust standard errors in parentheses. Clustered by cases.

\*\*\* p<0.001, \*\* p<0.01, \* p<0.05, + p<0.1

## APPENDIX B: ATTORNEY HIRING DECISIONS

Table B.1 Probit Regression Models on Plaintiffs' Hiring Attorney(s)

Dependent variable	=1 if plaintiff hires attorney(s)	
	Coef.	Std. Err
plaintiff's income (ln)	0.021	(0.017)
=1 if plaintiff's income is missing	0.311	(0.230)
plaintiff's age (ln)	-0.337	(0.226)
=1 if plaintiff's age is missing	-1.282	(0.844)
7 injury-level dummies (baseline: 2. Temporary insignificant)		
3. Temporary minor	-0.897 +	(0.541)
4. Temporary major	-1.053 +	(0.548)
5. Permanent minor	-0.847	(0.562)
6. Permanent significant	-1.419 *	(0.661)
7. Permanent major	-0.980	(0.600)
=1 if defendants include a corporation which is vicariously liable	0.672 **	(0.230)
=1 if defendant drove under the influence of alcohol	0.160	(0.358)
=1 if defendant hit and ran	-0.431	(0.429)
=1 if plaintiff is a male	0.097	(0.177)
18 court dummies		Yes
Constant	2.972 **	(1.048)

N=379

Pseudo R<sup>2</sup>=0.092

Robust standard errors in parentheses. Clustered by cases. PS damages= pain and suffering damages.

\*\*\*  $p < 0.001$ , \*\*  $p < 0.01$ , \*  $p < 0.05$ , +  $p < 0.1$ .

Log pseudolikelihood=-155.2775

Table B.2 Probit Regression Models on Defendants' Hiring Attorney(s)

Dependent variable	=1 if defendant hires attorney(s)	
	Coef.	Std. Err
Plaintiff attorney's civil experience (ln)	-0.022	(0.097)
Plaintiff's total claim	0.286 **	(0.108)
Defendants' maximum income (ln)	-0.015	(0.019)
=1 if all defendants' income are missing	-0.334	(0.253)
7 injury-level dummies (baseline: 2. Temporary insignificant)		
3. Temporary minor	-0.164	(0.840)
4. Temporary major	-0.165	(0.836)
5. Permanent minor	0.046	(0.843)
6. Permanent significant	-0.054	(0.915)
7. Permanent major	0.117	(0.882)
8. Permanent grave	-0.114	(0.903)
=1 if defendants include a corporation which is vicariously liable	0.309	(0.191)
=1 if defendant drove under the influence of alcohol	0.198	(0.277)
=1 if defendant hit and ran	-0.619	(0.501)
18 court dummies	Yes	
Constant	-3.966 *	(1.784)
N=318		
Pseudo R <sup>2</sup> =0.124		

Robust standard errors in parentheses. Clustered by cases. PS damages= pain and suffering damages. Cases in which plaintiffs do not hire attorneys are excluded in this Probit regression because in our sample, defendants always hire attorneys in those cases; thus, there is no variance.

\*\*\*  $p < 0.001$ , \*\*  $p < 0.01$ , \*  $p < 0.05$ , +  $p < 0.1$ .

Log pseudolikelihood= -190.1241



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