



Procedural events, judge characteristics, and the timing of settlement[☆]



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ABSTRACT

We draw on a unique, detailed dataset of civil cases adjudicated at a major Belgian court and use the competing risks framework to examine how the timing of settlement depends, first, on the completion of key procedural events and, second, on the characteristics of the adjudicating judge. Congruent with recent research that emphasizes the importance of information flows, we find that the time to settlement is negatively associated with the completion of those procedural events that most effectively facilitate the revelation of new factual information. Consistent with both rational-choice and behavioral theories of litigation, other procedural events are unassociated or even positively associated with the time to settlement. Finally, exploiting the de facto random nature of within-chamber assignment of cases to the serving judges, we find robustly statistically significant evidence of a judge gender effect.

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1. Introduction

Court delays are a significant policy concern in many jurisdictions. Overly long duration of court cases increases private and public legal expenditures, perpetuates the uncertainty faced by the disputing parties, redistributes wealth from plaintiffs to defendants, and provides incentives for vexatious litigation which in turn further increases court backlogs (see, e.g., Fenn and Rickman, 2014).

Accordingly, one important objective in the administration of justice has been to encourage disputing parties to settle their disputes (see, e.g., Farmer and Pecorino, 1996), and in particular to settle them in due time.

What factors influence when a settlement will take place? While a voluminous body of scholarship in law and economics has explored the disputing parties' incentives to settle per se (see, e.g., Cooter and Rubinfeld, 1989; Spier et al., 2012; Spier Kathryn, 2007; Daughety and Reinganum, 2012), the determinants of the timing of settlement remain incompletely understood. Scarce empirical work on the topic has emphasized the role of institutionalized rules about attorney fees (Fournier and Zuehlke, 1996; Helland and Tabarrok, 2003), liability (Kessler, 1996; Chang and Sigman, 2000), and case management (Spurr, 2000), as well as the impact of bargaining costs (Fenn and Rickman, 1999), compensation uncertainty (Ayuso et al., 2015), plaintiff identity (Eisenberg and Farber, 1997), and attorneys' cooperation (Johnston and Waldfoegel, 2002). Recent research, focused on Anglo-Saxon legal systems, has begun to uncover the importance of procedural stages of litigation and the corresponding informational exchange occurring during the stages of discovery (Spurr, 1997), non-discovery motions (Boyd and

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Hoffman, 2013; Cooper, 2017), and experts' involvement (Fenn and Rickman, 2014). Intuitively, instances of revelation of factual information reduce the divergence of parties' expectations and thereby speed up settlement.

Due to data scarcity, much less is known about the potential information-revealing, and thus settlement-facilitating, role of procedural events in civil-law jurisdictions of continental Europe, where the rules of litigation, and hence the drivers of the timing of settlement, can differ substantially from those in common-law systems (see, e.g., Grajzl and Zajc, 2016). Furthermore, despite abundant evidence that extra-legal factors matter for court outcomes (see, e.g., George and Epstein, 1992; Danziger et al., 2011; Peresie, 2005, Ramseyer 2012), with the exception of Boyd and Hoffman (2013) scholars have thus far not examined whether, and if so how, the timing of settlement depends on the specific characteristics of the adjudicating judge. Given that the duration of litigation has important policy implications, the analysis of procedural as well as judicial determinants of the timing of settlement constitutes a relevant but underexplored research avenue.

In this paper, we aim to fill these gaps in the literature by examining how the timing of settlement in a continental legal system is shaped by the completion of procedural events and by the characteristics of the adjudicating judge. To this end, we draw on a large and detailed case-level dataset of civil disputes collected from a major first-instance court of general jurisdiction in Belgium, a EU member state where litigation delays have been a persistent policy concern (High Council of Justice, 2012). Our dataset contains comprehensive information about the timing of all key procedural events in the course of Belgian court litigation. Utilizing the competing risks regression framework to take into account the heterogeneity in the modes of court case resolution and employing a wide range of party and case level controls as well as judge fixed effects to mitigate endogeneity concerns, we are thus able to assess how the timing of settlement varies with the completion of each of the key procedural events.

In addition, we have information about several theoretically relevant characteristics of the judges that adjudicate the cases under consideration. Exploiting the *de facto* random assignment of filed cases to the serving judges within the court's chambers, in a separate set of estimations we are thus also able to investigate if the timing of settlement varies with the adjudicating judge's gender, age, and both the length and the type of prior legal experience. To our knowledge, Boyd and Hoffman (2013) is the only contribution that has been able to explore the association between judge characteristics and the timing of settlement. Boyd and Hoffman (2013), however, have access to very limited data about the presiding judges. In comparison with their analysis, we are able to better mitigate endogeneity concerns due to judge-level unobserved heterogeneity that can confound the effect of observable judge characteristics on the timing of settlement.

Our empirical results show, first, that the time to settlement is statistically negatively associated with the completion of the mandatory opening hearing and the arrival of the expert report. This finding resonates with the existing literature (Boyd and Hoffman, 2013; Fenn and Rickman, 2014; Grajzl and Zajc, 2016; Cooper 2017) demonstrating that the revelation of factual information in the course of litigation facilitates timely settlement. However, our results also indicate that not all procedural events facilitate settlement. In particular, the exchange of pleadings and completion of the trial hearing are either not statistically significantly associated with the timing of settlement or, in the case of the initial pleading, are positively associated with the time to settlement. This result is consistent with the view that, much like certain motions in U.S. courts (Boyd and Hoffman, 2013: 904), the very intent to exchange pleadings, on the one hand, signals the parties' intent to bear the cost of prolonged litigation and, at the same time,

possibly increases the level of antagonism between the disputing parties (see, e.g., Blumenthal, 2005), thereby impeding settlement.

Second, the only judge characteristic that is all else equal robustly statistically significantly associated with the time to settlement is the judge's gender. Specifically, the time to settlement is *ceteris paribus* longer for cases adjudicated by female judges than for cases adjudicated by male judges. This finding is, on the one hand, consistent with a subset of the social psychology literature on gender effects and, at the same time, provides an interesting contrast to Boyd and Hoffman's (2013) result that the duration of litigation to settlement in U.S. district courts is shorter when the presiding judge is a woman. At the very least, our analysis suggests that an examination of the role of judge characteristics for the timing of settlement deserves further investigation.

The rest of the paper is organized as follows. Section 2 provides a brief institutional background on Belgian civil procedure and judiciary. Section 3 reviews the theory and articulates our hypotheses concerning the effect of procedural events and judge characteristics. Section 4 introduces the data and variables. Section 5 describes our empirical strategy. Section 6 presents and discusses the results. Section 7 concludes.

2. Belgian civil procedure and judiciary: a brief institutional background

2.1. Civil procedure

Belgium has a civil law tradition largely influenced by the French legal system. Civil proceedings start with the filing of a claim at the court. Forum shopping is not allowed, but the law in general allows the parties to mutually agree on the court of jurisdiction in the event of a dispute. Unlike in common law systems, there is no discovery stage in the Belgian civil procedure. Most Belgian courts currently also do not provide recourse to mediation. After the claim is filed, the court schedules one or more opening hearings to discuss the basic facts of the case and the timeline of the exchange of written pleadings. Written pleadings, which include both legal and factual arguments concerning the dispute, take precedent over oral arguments presented in court. The judge is therefore required to motivate his or her decision based on the submitted pleadings, but is under no legal obligation to take into account the oral arguments. Setting up of the calendar for exchange of pleadings is the prerogative of the parties. The judge prepares the calendar upon his or her own motion only when the disputing parties fail to agree on the pleading schedule.

When the subject of a dispute entails a complex or technical matter, the court appoints an expert. Court expert may be requested by one of the disputing parties or upon the judge's own motion. The expert prepares and delivers a report on the case. The expert's advice is not binding. In practice, however, judges tend to attach considerable importance to the expert reports.

Trial hearing is expected to be completed in a single session that presents the judge and the parties with the final opportunity to examine and argue matters of the case. In practice, trial hearing sometimes gets rescheduled because one or more of the parties failed to appear, or because a judge requested a subsequent session. Upon completion of the hearing, the judge deliberates on the merits of the dispute. The judge is expected to announce the verdict within one month from the completed trial hearing.

2.2. Judges

Judges are appointed for life following a selection procedure supervised by the High Council of Justice. Candidates without any professional legal experience are required to pass an entrance exam

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