Note

Attitude, Evaluation, and Decision-Making by Civil Litigants and Their Lawyers

Findings from the Nationwide Surveys

(Part 1 of 2)

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Preface

In this and following issue, we present a collection of essays based on our presentations at the mini-symposium held in the annual meeting of the Japanese Association of Law and Society on 10 May 2008.

We appreciate it that the Meijo University Law Association has given us the opportunity to publish these essays all together just as in the original mini-symposium. It helps us very much to present the results of the Civil Litigation Behavior Research Project from various angles and to provide a comprehensive general view of this extensive research project.

Nationwide Survey of Civil Litigation Behavior
Introduction and Overview

Daniel H. Foote

The essays contained in this special collection (which will appear in this and the following volume of Meijo Law Review) explore various facets of the research and findings from a major multi-year study of civil litigation behavior in Japan, the Civil Litigation Behavior Research Project. That research project, which commenced in 2003 and is still underway, is part of an even broader study of civil disputes, the Nationwide Survey on Civil Disputes (Japan): Dispute Resolution and Civil Justice in a Legalizing Society.

The overall research project, which is headed by Professor MURAYAMA Masayuki of Meiji University, includes several teams of researchers. The research builds on such models as the (Wisconsin) Civil Litigation Research Project[1], a path-breaking study conducted in the United States in the early 1980s, which sought to provide a clearer picture of the civil litigation process through an analysis of case files and interviews with the parties and lawyers involved, and Paths to Justice (Genn, 1999), another path-breaking study conducted in England in the late 1990s, which focused on the questions of how often people experience problems that might have a legal solution ("justiciable events") and how they set about solving such problems. Here in Japan, the overall research project seeks to elucidate what kinds of legal problems Japanese citizens have, how those problems develop into legal disputes, and how and why disputants bring those cases to court. Other teams of researchers involved in the overall project have investigated such matters as the types of legal problems Japanese citizens experience, the approaches disputants have taken to resolving

their problems, dispute consciousness, and the roles played by lawyers and extrajudicial dispute resolution processes.

Our group, the Civil Litigation Behavior Research Group (otherwise known as Group C), has focused primarily on the civil litigation process. Group C consists of sixteen researchers: myself as the research representative; the following six principal researchers: KAMINAGA Yuriko (Senshu University), KAWAI Mikio (Toin Yokohama University), MORIYA Akira (Kwansei Gakuin University), WADA Yasuhiro (Osaka Prefecture University), and OTA Shozo and KAKIUCHI Shusuke (both of The University of Tokyo); and the following nine cooperating researchers: MAEDA Tomohiko (Meijo University), FUJITA Masahiro (National Graduate Institute for Policy Studies), HASEGAWA Kiyoshi (Tokyo Metropolitan University), IIDA Takashi (Seikei University), and HIRATA Ayako, IRIE Hideaki, ONO Hiroaki, SAEKI Masahiko, and SAKAI Masahiro (all of The University of Tokyo).

There are four principal components to the research our group has undertaken: (1) compilation of data from the court files for 1132 randomly selected civil cases, from courts throughout Japan; (2) a questionnaire survey addressed to all individual litigants and lawyers involved in those 1132 cases; (3) a questionnaire survey addressed to members of the general public, utilizing identical or similar questions to those utilized in phase (2) of the research; and (4) an Internet survey, utilizing several case scenarios to elucidate perceptions of the civil litigation process. (I have deliberately used the word "components," rather than "stages" or "phases," because the various components have overlapped substantially.) The following brief essay provides an overview of each of those components.

1. Case File Research

The first major component of our research is a compilation of information

from the official court files for well over 1000 civil cases from throughout Japan. This component proceeded in two stages, a preliminary stage undertaken in 2003 and 2004, and the main stage, conducted primarily in 2005. For both stages, the Supreme Court of Japan and the court staff at courts throughout Japan afforded us unprecedented cooperation in conducting the research.

The preliminary stage was designed to pre-test and refine the data collection process. During the preliminary stage, research teams (for which researchers from other groups assisted researchers from Group C) collected information from the case files for 125 cases, 25 cases each from five district courts (those in Tokyo, Osaka, Sapporo, Fukuoka, and Okayama). In this stage, we were rather ambitious with regard to the types of information collected. For example, for the 125 cases examined in the preliminary stage, researchers compiled information regarding the contents of each hearing date throughout the proceedings. Cases examined during the preliminary stage included both ordinary civil cases and family matters.

The preliminary stage provided us with many valuable lessons. Perhaps the most important lesson was the need to streamline and refine the data collection process. Otherwise, given the relative unwieldiness of the coding process we were using and the amount of information we were seeking to assemble, experienced researchers found that processing even relatively straightforward cases was rather time-consuming, with more complex cases sometimes requiring a full day. Given our plan to examine over 1000 cases nationwide, utilizing students to assist in the data collection effort, feasibility concerns necessitated streamlining the process. Bearing the above lesson in mind, over the subsequent year members of Group C, with the assistance of a computer software design professional, devised a special software package for coding and inputting case file information, which included guidance on difficult and/or frequently arising questions; and we also prepared a manual for researchers.

After the preliminary stage, the members of Group C also decided to focus on

ordinary civil cases during the main stage of the research and leave out family matters. While recognizing the importance of empirical study of family cases, we reached this decision for several reasons. These included the low proportion of family matters in the caseload of district courts and the likelihood of low response rates by parties in such cases, both of which would make it difficult to reach meaningful conclusions unless the sample size was expanded greatly, as well as a major change in jurisdictional standards, shifting most family matters that previously had been under district court jurisdiction to family courts right at the time on which the main stage of our research would focus.

In the main stage, teams of researchers compiled information from the case files for 1132 ordinary civil cases concluded during calendar year 2004. The research focused on cases involving at least one individual litigant (in other words, business-business disputes and other disputes involving only institutional litigants were excluded), and excluding family matters. The Supreme Court's General Secretariat provided us with a list of the case numbers for all civil cases nationwide that met our research criteria. We were then allowed to randomize that list ourselves, in order to specify the cases we would investigate. In doing so, we calculated the proportion of the total nationwide caseload occupied by each of the 50 district court districts throughout Japan (the area of which is identical to that of each of the 47 prefectures, with the exception of Hokkaido, which is divided into four districts), and weighted our sample of 1132 cases accordingly. Utilizing the list of cases we had compiled, we then made arrangements, with the assistance of the Supreme Court's General Secretariat, for court clerks at district courts in each of the districts to assemble the files for those cases and facilitate our investigation of the files.

In the summer and fall of 2005, teams of researchers (including members of Group C, researchers from other groups, and students who had attended special training sessions and who were supervised by team members) visited each of the 50 districts and compiled data from the case files, in accordance with the data-

input software package prepared by Group C. Through the above process, we assembled data on 1132 randomly selected civil cases concluded in 2004. In addition to information on court district, docket number, and date on which the case was closed, researchers compiled information on the following matters: names and addresses (and, if identifiable, gender, approximate age, occupation, etc.) of all parties; whether parties were represented or not and, if either or both sides were represented, names and addresses (and, if identifiable, gender, approximate age, etc.) of all attorneys; number of court dates, by category (e.g., preparatory sessions, oral testimony sessions, settlement sessions, etc.); nature of claim (as recorded by the court clerk); summary of claim (as set forth in the pleadings); amount claimed; existence of counter-suit; preliminary dispositions; orders relating to payment, evidence, or other matters; certain other procedural matters; result (including, where applicable, terms of decree, existence of provisional disposition, award of court fees, amount of settlement, etc.); and existence of appeals (and, if appealed, result (s) of appeal (s)).

2. Survey of Litigants and Lawyers

The second major component of our research is a survey of individual litigants and lawyers involved in district court civil cases. As with the case file research, the survey of litigants and lawyers also proceeded in two major stages: the preliminary, pre-test stage and the main stage.

Over the course of numerous workshops and retreats held during 2003 and 2004, the members of Group C prepared survey instruments (questionnaires) aimed at those who had actually experienced litigation, in a total of six versions (unrepresented [self-represented] plaintiff, unrepresented [self-represented] defendant, represented plaintiff, represented defendant, plaintiff-side lawyer, and defendant-side lawyer). In compiling these questionnaires, we referred to a wide range of sources (including consideration of the survey instruments utilized in

the Wisconsin Civil Litigation Research Project and in the Paths to Justice project, the survey instruments utilized by other groups in the Nationwide Survey of Civil Disputes (Japan), discussions with lawyers, and numerous other sources. Members of Group C also devised numerous questions of our own, aimed at exploring such matters as the impact of gender, as well as features of the Japanese civil litigation system that have attracted widespread attention, such as the weight said to be placed on settlement. In early 2005, the questionnaires prepared for the pre-test stage of our research were implemented (by Central Research Services, Inc., an opinion research instituted based in Tokyo), targeting the 301 individual litigants and lawyers who were involved in the 125 cases investigated in the preliminary stage of the case file research. Of those 301 subjects, 76 responded, yielding an overall response rate of 25.2%.

Based on the results from the pre-testing of the questionnaires, discussions with researchers from Central Research Services who had directly implemented the survey, interviews with five individual litigants, and other considerations, during 2005 and 2006 the members of Group C extensively revised the questionnaires. As with the case file research, one of our goals was to streamline the questionnaires so as to reduce the burden on respondents (with the further hope this might improve the response rate). Thus, for example, the questionnaires addressed to represented litigants were reduced from 66 to 48 questions (plus face sheets). Even after the streamlining, the questionnaires addressed a rather broad range of topics, including the following: access to lawyers; access to litigation; the respective roles of the litigants and lawyers in making decisions related to litigation; factors influencing the decision whether to settle the case or proceed to judgment; evaluation of the result; evaluation of the courts, procedures and judges by litigants and lawyers; and evaluation of lawyers by litigants. In addition, a number of the questions sought to explore the impact of gender and other factors.

In the main stage of this component of our research, Central Research

Services implemented the revised questionnaires from December 2006 through March 2007, targeting all individual litigants and lawyers involved in the 1132 cases investigated in the main stage of the case file research. Calculating the response rate of course depends on what one uses as the base. In conducting the main stage of our survey, we sent advance notification and requests for cooperation to all the individual litigants and lawyers involved in the 1132 cases (or, more precisely, to all we could locate). At that time, we provided a reply card in which one of the options they could choose was to decline to take part in the survey, because, even though their names were listed in the court files, they had not actually participated in the litigation. (In many cases, for example, several lawyers were listed, but only one or two had significant responsibility.) Leaving out those who asked to be excluded because they had not actually participated in the litigation, the total numbers of subjects, total numbers of respondents, and response rates for each of the six categories are as follows: unrepresented plaintiffs: 82 subjects, 37 respondents, 45.1% response rate; unrepresented defendants: 521 subjects, 116 respondents, 22.3% response rate; represented plaintiffs: 677 subjects, 243 respondents, 35.9% response rate; represented defendants: 461 subjects, 137 respondents, 29.7% response rate; plaintiff-side lawyers: 828 subjects, 211 respondents, 25.5% response rate; defendant-side lawyers: 569 subjects, 113 respondents, 19.9% response rate. Combined, the total litigant response rate was 30.6% and the total lawyer response rate was 23.2%.

3. Survey of General Public

To enable us to compare the knowledge and perceptions of members of the general public with the knowledge and assessments by those who have actually experienced litigation, we also undertook a survey addressed to members of the general public. That survey, the third major component of our research, utilized questions identical or, in cases where identical questions would have been

unnatural (such as, for example, questions inquiring about litigants' actual experiences), similar to those used in the surveys addressed to litigants described above. Two versions of this questionnaire were prepared; the two versions were essentially the same, except that one specified "civil litigation" every time the word "litigation" appeared, whereas the other left out the word "civil." (As it turned out, in nearly all respects the results were very similar for the two versions.) These surveys were administered in March 2007 (again by Central Research Services) to 500 randomly selected respondents each. For this survey, Central Research Services utilized a quota sampling procedure, drawing respondents from twenty locations in total from ten regions across Japan (adjusted to reflect the population of each region).

To our knowledge, the use of a survey of the general public, paralleling the survey of litigants, represents a novel feature of the research conducted by Group C. In the Wisconsin Civil Litigation Research Project and other surveys of litigants of which we are aware, no parallel survey was conducted of the attitudes of the general public, utilizing the same or closely similar questions. As some of the essays in this collection will show, we have found this parallel survey highly valuable in providing a basis for comparing the views and attitudes of the general public and those who have experienced litigation.

4. Internet Survey

The fourth and final major component of our research is an Internet survey. Through this survey, we seek to explore attitudes of the Japanese public regarding use of lawyers, litigation, and other aspects of the legal system, by reference to several concrete situations. In doing so, we seek to explore the impact of differences in such factors as the amount at stake or degree of injury, duration and outcome of proceedings, gender, and existence or non-existence of apology. In addition, this survey seeks to explore the impact of personality.

To explore these issues, over the course of numerous workshops and meetings during 2007, the members of Group C prepared a new set of survey instruments. The survey instruments contain questions relating to experiences with litigation and legal disputes, perceptions of litigation and the courts, and attitudes toward law and the legal system. The survey instruments also include a series of personality profile questions. Above all, however, the key feature of these survey instruments lies in a series of three concrete case scenarios: a loan between relatives, a physical assault by a stranger, and a case involving domestic violence. For each of the case scenarios, several variations were prepared, based on such matters as degree of injury, gender of the parties, etc.

Through combinations of the various permutations of the case scenarios, Group C prepared twelve different survey instruments. In early 2008, Central Research Services administered this survey via the Internet, on behalf of Group C, with 100 respondents for each of the twelve variations, resulting in a total of 1200 respondents.

5. Concluding Remarks

This brief introductory essay has summarized the principal components of the research undertaken by the Civil Litigation Behavior Research Project. While the analysis of the results is still ongoing, subsequent essays in this special collection explore a number of the findings from our research and identify some of the avenues we will be pursuing in our further analysis of the data. In closing, let me express, on behalf of myself and the other members of Group C, our appreciation to Meijo Law Review for providing us this opportunity to share our research with your readers.

[Notes]

1　See, e.g., Sarat et al. (1983).

[Bibliography]

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Characteristics of Japanese Litigants
—— Analysis of questionnaire survey ——

Mikio KAWAI

1. Introduction

It seems that many people think Japanese people dislike litigating. Some people do not admit this because there is lack of concrete evidence. It is a kind of mystic belief for them. Any way, it is true that the number of litigations is very low in comparison with those of Occidental countries.

This low rate of litigation means that it is not normal but special to bring a lawsuit in Japan. It let us question whether Japanese people bring a lawsuit in special case or it is special persons who bring a lawsuit in Japan. The purpose of this paper consists of an analysis about the characteristics of Japanese litigants, utilizing our questionnaire survey done in 2006.

At the beginning we have a description about our survey in detail, especially the sampling method.

And then, we have a comparison between the result of our survey and the one when done by Japanese Supreme Court in the same year. This comparison must allow us estimation of our research. At the end, we will analyze the characteristics of Japanese litigants from the data.

2. Civil Litigation Behavior Research

We, Civil Litigation Behavior Research Group (Group C of the Nationwide Survey on Civil Disputes research project, "Dispute Resolution and Civil Justice

in a Legalizing Society") selected randomly, with the assistance of the Supreme Court' General Secretariat, 1132 civil cases terminated in 2004. One or more of our research member visited every 50 district courts in Japan with assistant teachers of law faculty, graduates students of law faculty, or law school students (University of Tokyo, University of Kyoto, University of Kobe, Senshu University, Kanseigakuinn University, and Toin University of Yokohama).

The records of the selected cases were prepared by the district court before our arrival. And we referenced them in the formal way. We had hand-in the application form, which with fiscal stamp and seal, for each civil litigation record individually.

The court reserved a reading room for us. We collected Data by our own computers.

We compiled the name and address of litigants, then we contacted with those litigants to finish our questionnaire.

3. Sampling method

We did a research about the civil cases concluded in2004. This decision is based on the experience of our civil litigation.

There are 50 district courts in Japan. These district courts are scattered geographically to protect the right to litigation. By the way, the district courts situated in big cities have a large amount of litigations in proportion to their populations. We sampled the cases in proportion to the number of cases of each district court. In consequence, we selected 321 cases (28.4%) from Tokyo District Court and 169 cases (14.9%) from Osaka District Court within 1132 cases in total.

Family law cases are omitted. These cases are conserved in the family court but not in the district court. The most important reason is the litigants of Family law cases would not apply to questionnaire.

On the other hand, those case files, which sent to the upper courts, were omitted too.

In addition, we excluded about those cases that both parties are legal (judicial) person. Fortunately, it was under 10%. And there was only one case file, which was refused to read by the court.

To keep the balance of the district, about those cases that both parties are legal (judicial) person and the refused case, we substituted cases from the same district court separately.

4. Effect of the civil litigation document research

Let us look at summaries 1132 cases of Japanese civil trials. The Supreme Court has released the report of these cases at the same period. (July 2007 Supreme Court Office 'the report on the relatively regarding the speediness of trial') This research is subject to over 100000 cases from first instance trail between April and December 2004.Personal status cases are also included, but very few. By contrasting the report from the Supreme Court, you can understand the relativity of this research.

(1) Natural person or legal person

According to the research, there are around 50% of the plaintiff and 80% of the defendant is natural person.

Then, almost all of the case that the plaintiff is legal person are only one legal person proceed against. On the other hand, there are some cases that more than one legal person as the defendant. And most of them are against Consumer credit for overpayment.

Number of individual plaintiff	Frequency	Percentage
0	504	44.5
1	499	44.1
2	68	6.0
3	24	2.1
4	18	1.6
5	3	0.3
6	6	0.5
7	3	0.3
9	1	0.1
14	1	0.1
16	1	0.1
27	1	0.1
30	1	0.1
38	1	0.1
Unknown	1	0.1
Total	1132	100.0

Number of individual defendant	Frequency	Percentage
0	237	20.9
1	646	57.1
2	155	13.7
3	46	4.1
4	20	1.8
5	9	0.8
6	6	0.5
7	1	0.1
8	2	0.2
9	2	0.2
10	1	0.1
11	1	0.1
13	2	0.2
14	1	0.1
Unknown	3	0.3
Total	1132	100.0

Number of individual plaintiff (Legal person)	Frequency	Percentage
0	593	52.4
1	525	46.4
2	8	0.7
3	2	0.2
4	1	0.1
7	2	0.2
Unknown	1	0.1
Total	1132	100.0

Number of individual defendant (Legal person)	Frequency	Percentage
0	766	67.7
1	313	27.7
2	31	2.7
3	13	1.1
4	3	0.3
5	1	0.1
9	1	0.1
15	1	0.1
Unknown	3	0.3
Total	1132	100.0

(2) Variation of civil cases

Usually, the substance of cases divides the variation of civil cases. Since there must be some difference in standard between every district court, so we examined case by case to re-classified them once again.

Heading and Variety of case

	Frequency	Percentage
Eviction from land or building	249	22.0
Torts (excl. traffic accidents)	142	12.6
Loan-related	127	11.2
Credit-related [incl. credit card-related claims]/Indemnification	112	9.9
Other	98	8.7
Traffic accidents	73	6.5
Surety-related	53	4.7
Unjust enrichment (incl.overpayment of interest on consumer loans)	51	4.5
Contract-related damages	37	3.3
Real property title registration-related	36	3.2
Labor	24	2.1
Purchase money-related	21	1.9
Subcontract-related	21	1.9
Inheritance-related	19	1.7
Rent-related	16	1.4
Confirmation of non-existence of obligation	16	1.4
Deposit	12	1.1
Ownership of land or building	9	0.8
Promissory note	7	0.6
Determination of boundary	5	0.4
Divorce-related	2	0.2
	1130	100.0

According to the research, 'Eviction from land or building' is the most, which is 22%. The second is 'Torts (excl. traffic accidents)', which is 12.6%. The third is 'Loan-related', which is 11.2%.

(3) Form of conclusion

The following table is the result of the first instance in District court. Single result of cases are collected as 'settlement' and 'Affirmation of Claim', except multiple results from a portion of multiple parties which were 'Settlement and Affirmation of Claim', and 'Settlement and Withdrawal'.

Result of the first instance	Frequency	Percentage
In-court settlement	389	34.4
Affirmation of claim	371	32.8
Withdrawal	146	12.9
Partial affirmation of claim	86	7.6
Dismissal with prejudice on the merits	66	5.8
Acknowledgment	13	1.1
Dismissal without prejudice	8	0.7
Multiple results	36	3.2
Other	16	1.4
No record	1	0.1
Total	1132	100.0

(4) Amount in dispute

We made a comparison between the Stake values of our research and the one of the Supreme Court. Definitely, the result of us is very close to the one of the Supreme Court. It proofed the high representatively of 1132-selected case.

Category of the Stake values

	Frequency	Percentage	Data of the Supreme Court
Below 5 million yen	733	64.9	63
Below 10 million yen	135	11.9	14.3
Below 50 million yen	175	15.5	16.2
Below 100 million yen	39	3.5	3.1
Below 500 million yen	27	2.4	2
Below 1 billion yen	1	0.1	0.1
Below 5 billion yen	3	0.3	0
Incalculable・non-property	17	1.5	1.1
Total	1130	100	100

(5) Participation of lawyers

The numbers of plaintiff's lawyer and the numbers of defendant's lawyer are shown as below

Number of plaintiff's lawyers	Frequency	Percentage
0	212	18.7
1	472	41.7
2	202	17.8
3	108	9.5
4	50	4.4
5	36	3.2
6	16	1.4
7	14	1.2
8	5	0.4
9	3	0.3
10	3	0.3
11	1	0.1
12	3	0.3
13	2	0.2
18	1	0.1
40	1	0.1
47	1	0.1
Unknown	2	0.1
Total	1132	100.0

Numbers of defendant's lawyers	Frequency	Percentage
0	625	55.2
1	270	23.9
2	104	9.2
3	36	3.2
4	33	2.9
5	21	1.9
6	14	1.2
7	9	0.8
8	4	0.4
9	2	0.2
10	4	0.4
11	1	0.1
12	1	0.1
13	2	0.2
16	1	0.1
17	1	0.1
20	1	0.1
51	1	0.1
Unknown	2	0.2
Total	1132	100.0

We compared our research with the one of the Supreme Court in 2 different ways.

The first table is to compared the statistics, which took into account the fact that whether the party with lawyers or not.

We found that the result was fairly similar to the Supreme Court's one.

	Frequency	Percentage	Data of The Supreme Court
Both with lawyers	460	40.7	40.1
Plaintiff's lawyers only	470	41.6	35.6
Defendant's lawyers only	54	4.8	4.5
Both without lawyers	145	12.8	19.7
Total	1129	100	100

However, the statistics, which we took account of the number of lawyers only. Due to the difference of the counting method it showed a great difference to the one of Supreme Court. We counted up all the lawyers on the record of civil litigation, but the Supreme Court was counted up the lawyers who are practically attended only.

Number of lawyers	Frequency	Percentage	Data of The Supreme court
Plaintiff 1・Defendant 1	139	30.8	69.3
Plaintiff 1・Defendant 2～9	96	21.2	22
Plaintiff 1・Defendant 10～	5	1.1	0.5
Plaintiff 2～9・Defendant 1	98	21.7	5.4
Plaintiff 2～9・Defendant 2～9	100	22.1	2.6
Plaintiff 2～9・Defendant 10～	4	0.9	0
Plaintiff 10～・Defendant 1	3	0.7	0.2
Plaintiff 10～・Defendant 2～9	5	1.1	0.1
Plaintiff 10～・Defendant 10～	1	0.2	0
	451	100	100

4. Questionnaire Survey

To finish our questionnaire we compiled the name and address of litigants. The result is shown as below.

	Number of the people on the list	Object of research	Responses	Response rate	Refuse	Out of contact	Named on the list without participation	Other
Plaintiffs represented by lawyers	888	749	243	32.4%	292	244	72	23
Defendants represented by lawyers	627	502	137	27.3%	198	210	41	20
Unrepresented Plaintiffs	100	82	37	45.1%	28	29	0	0
Unrepresented Defendants	734	531	116	21.8%	9	160	10	6

The follow is the examination of the answerer's attribution in the society.

We also handed out 1000 questionnaires to the public and we made a comparison between the litigants and Japanese public. The distribution this 1000 questionnaire is based on age and gender geographically.

(1) GENDER

For the gender data, the number of male is more than the number of female.

For male case, the number of the unrepresented party is greater than the party with lawyer. The number of the Unrepresented party in male is more than the party represented by lawyers in male. The reason is if the party is couple, the male will be the represented, as female would be domesticated non-career housewives.

		MALE	FEMALE	TOTAL NUMBERS
Plaintiffs represented by lawyers	Frequency	152	91	243
	%	62.6	37.4	100.0
Defendants represented by lawyers	Frequency	90	47	137
	%	65.7	34.3	100.0
Unrepresented plaintiffs	Frequency	27	10	37
	%	73.0	27.0	100.0
Unrepresented defendants	Frequency	85	31	116
	%	73.3	26.7	100.0
General public	Frequency	479	521	1000
	%	47.9	52.1	100.0
	Frequency	833	700	1533
	%	54.3	45.7	100.0

(2) EDUCATIONAL BACKGROUND

There is no clear relationship between the substance of the case and the educational background of the parties.

It is not difficult to imagine that the defendant of cases, that about not getting out of the debt or asked for evacuate, has low educational background. However, many plaintiffs are low qualification too. Since the people who started their own business and becoming wealthy is the feature of Japan

		No formal education	Primary school, Junior high school	High school	Junior college, Technical college	University	Graduate school	Total
Plaintiffs represented by lawyers	Frequency	0	43	96	32	56	6	233
	%	0.0	18.5	41.2	13.7	24.0	2.6	100.0
Defendants represented by lawyers	Frequency	0	28	55	8	44	2	137
	%	0.0	20.4	40.1	5.8	32.1	1.5	100.0
Unrepresented Plaintiffs	Frequency	0	6	19	2	10	0	37
	%	0.0	16.2	51.4	5.4	27.0	0.0	100.0
Unrepresented Defendants	Frequency	0	23	59	7	25	0	114
	%	0.0	20.2	51.8	6.1	21.9	0.0	100.0
General Public	Frequency	1	134	494	122	206	18	975
	%	0.1	13.7	50.7	12.5	21.1	1.8	100.0
	Frequency	1	234	723	171	341	26	1496

(3) Household income

The family income of most of the party,which litigated with lawyers, is high income group.Relatively,most of the unrepresented party is low income group.

		No income	Below 700 thousand yen	700 thousand yen to 2.5 million yen below	2.5 million yen to 5 million yen below	5 million yen to 7.5 million yen below	7.5 million yen to 10 million yen below	10 million yen to 12.5 million yen below	12.5 million yen to 15 million yen below	Over 15 million yen	Total
Plaintiffs represented by lawyers	Frequency	5	10	31	57	46	20	19	6	22	216
	%	2.3	4.6	14.4	26.4	21.3	9.3	8.8	2.8	10.2	100
Defendants represented by lawyers	Frequency	3	2	22	26	27	19	8	12	12	131
	%	2.3	1.5	16.8	19.8	20.6	14.5	6.1	9.2	9.2	100
Unrepresented Plaintiffs	Frequency	3	2	4	12	7	1	4	2	1	36
	%	8.3	5.6	11.1	33.3	19.4	2.8	11.1	5.6	2.8	100
Unrepresented Defendants	Frequency	5	7	20	42	17	10	5	1	1	108
	%	4.6	6.5	18.5	38.9	15.7	9.3	4.6	0.9	0.9	100
General Public	Frequency	19	17	117	268	215	119	52	24	18	849
	%	2.2	2	13.8	31.6	25.3	14	6.1	2.8	2.1	100
	Frequency	35	38	194	405	312	169	88	45	54	1340

(4) Household net worth

Most of the litigants are wealthy. However, 70% of Unrepresented Defendants, their gross property is extremely lower than the others. To add up the figures with family income, we can see that no matter the party is wealthy or not, the litigant is being taken or they are being involved in the litigation.

		Below 10million yen	10million yen to 30million yen below	30million yen to 50million yen below	50million yen to 70million yen below	70million yen to 100million yen below	Over 100 million yen	Total
Plaintiffs represented by lawyers	Frequency	80	47	28	17	14	20	206
	%	38.8	22.8	13.6	8.3	6.8	9.7	100.0
Defendants represented by lawyers	Frequency	49	24	13	9	9	15	119
	%	41.2	20.2	10.9	7.6	7.6	12.6	100.0
Unrepresented Plaintiffs	Frequency	13	3	1	3	3	8	31
	%	41.9	9.7	3.2	9.7	9.7	25.8	100.0
Unrepresented Defendants	Frequency	67	15	3	2	3	6	96
	%	69.8	15.6	3.1	2.1	3.1	6.3	100.0
General Public	Frequency	409	188	89	37	25	27	775
	%	52.8	24.3	11.5	4.8	3.2	3.5	100.0
	Frequency	618	277	134	68	54	76	1227

5. Conclusion

We did a research about the civil litigations, which terminated in2004, by sending questionnaire to the litigants. To make an analysis of the attribution of the litigants in the society, we divided the parties as Plaintiff represented by lawyers, Unrepresented Plaintiff, Defendant represented by lawyers and Unrepresented Defendants.

As a result, most of the party is male. Especially the ratio of male in 'unrepresented party' is over 70%.

Most of the parties are coming from both high-level educational background and low-level educational background. However, only a few of the parties are coming from the mid-level. Considering the factor of family income and gross property, only a few people are coming from the mid-level too.

Analyzing these data, we can conclude those who have experienced the litigation are some how special kind of people.

Factors Contributing to In-court Settlement in Japan:
Recognizing the Gaps between Litigants' Expectation for Judgment and Lawyers' Preference for Settlement

Akira MORIYA

1. Introduction

This paper examines the expectations of disputing parties for litigation and the reasons why only half of litigations are ended by judgments and the other half by in-court settlements or withdrawals, based on the findings from the nationwide survey on litigants, their lawyers and the general public. It has been said that the Japanese try to settle their disputes through negotiations to avoid litigation, especially when disputes arise among families, neighbors and friends, but that once they come to decide that they will go to court, their relationship breaks down completely, and that judges are expected to bring clear-cut justice for them.

Even if this is the popular image of Japanese civil justice process, only half of the cases placed in court are decided by judges. The other half are either settled in court or assumed to have been settled out of court. The percentage of judgment, roughly 50%, may be high when compared with the judgment rates in Western countries, but it is still worth examining why litigants who are supposed be confrontational to each other can agree to a settlement proposal during the court procedure.

In this paper, we will first make clear that litigants have a strong expectation for having right and wrong decided clearly in court, and that the majority of litigants show negative intentions to negotiate with the opponents in court.

Then, we will try to find some reasons why many litigants nevertheless settle their cases in court.

2. Results of Survey on Litigants

(1) Number of respondents

The survey of litigants includes four categories of respondents. The number of each category is as follows (see, table 1).

Table 1: Number of Respondents

	N	Percent	Valid %	Cumulative %
Plaintiffs represented by lawyers	243	45.6 %	45.6 %	45.6%
Defendants represented by lawyers	137	25.7 %	25.7 %	71.3%
Unrepresented plaintiffs	37	6.9 %	6.9 %	78.2%
Unrepresented defendants	116	21.8 %	21.8 %	100.0%
Total	533	100.0 %	100.0 %	

(2) Results of the first instance: judgment or in-court settlement

In our survey, 49% of respondents answered that their procedures were ended by judgment and 43% by settlement in court (see, Table 2). The percentage of in-court settlement in our survey is higher than the one shown in the annual report of the Supreme Court[1]. One of the possible explanations is that some litigants mistook their out-of-court settlements for in-court ones because they did not actually participate in the settlement procedure. But we found, through the comparative analysis between respondents' answers and court records, that not only some litigants who ended by settlement but also some who ended by judgment mistook their results. We also found that the rate of mistakes is especially high among plaintiffs represented by lawyers and unrepresented defendants. Finding the reasons why so many litigants mistook their results is an important but separate theme for research.

Table 2: Results of the First Instance

		N	Percent	Valid %	Cumulative %
Valid	Judgment	230	43.2	49.4	49.4
	In-court settlement	202	37.9	43.3	92.7
	Withdrawal	25	4.7	5.4	98.1
	Other	9	1.7	1.9	100.0
	Total	466	87.4	100.0	
Missing	Don't Know	61	11.4		
	No answer	6	1.1		
	Total	67	12.6		
Total		533	100.0		

(3) Results of the first instance and categories of respondents

Though the overall percentage of in-court settlements of the first instance is 43%, the percentage differentiates according to respondent categories. As shown in Table 3, the percentage of settlement is highest among unrepresented defendants (55.1%), and is lowest among unrepresented plaintiffs (24.3%).

Table 3: Results of the First Instance and the Categories of Respondents

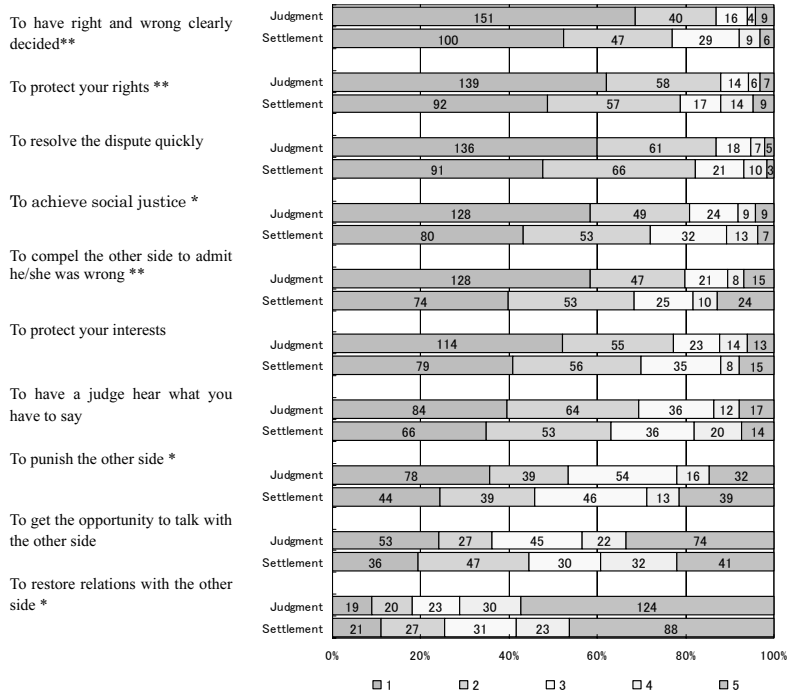
	Results of District Court			Total
	Judgment	Settlement	Other	
Plaintiffs represented by lawyers	100 48.5%	88 42.7%	18 8.7%	206 100.0%
Defendants represented by lawyers	70 56.0%	51 40.8%	4 3.2%	125 100.0%
Unrepresented plaintiffs	26 70.3%	9 24.3%	2 5.4%	37 100.0%
Unrepresented defendants	34 34.7%	54 55.1%	10 10.2%	98 100.0%
Total	230 49.4%	202 43.3%	34 7.3%	466 100.0%

3. Expectations for Lawsuit

(1) Overall results

In the survey, respondents were asked several questions concerning the expectations for their lawsuits (or goals of litigation). Each question is asked on a 5-point scale; 1 representing "I expected", 3 "Can't say one way or the other", and 5 "I didn't expect". The questions and answers are shown in Figure 1.

The expectation for "having right and wrong clearly decided" was the highest, even for those who ended their lawsuits by settlements. It was followed by "pro-



"1"="Expected", "3"="Can't say one way or the other", "5"="Did not expect"

Figure 1: Litigants' Expectations for Lawsuit

tecting their rights", "resolving the disputes quickly", "achieving social justice", and so on. On the other hand, the expectations for "restoring relations with the other party", and "getting opportunities to talk to the other party" were the lowest.

Compared with the group who ended their lawsuits by settlement, the group who ended by judgment shows stronger expectations for most of the terms. The only exception was the expectation for "restoring relations with the other party"[2].

(2) Strong preference for "having right and wrong clearly decided"

Among the expectations of litigants for lawsuits, two items are especially interesting for our present concern; one is their expectation for "having right and wrong clearly decided", and the other is; "getting the opportunity to talk with the other side". As to the question of whether they expected to have right and wrong clearly decided, we found that the average score of the general public was 1.6, and that of litigants was 1.7, which means that there is no significant differences between the two groups and that both the general public and litigants seem to have strong interests in having their cases decided clearly through litigation.

On the other hand, as to the expectation for getting the opportunity to talk with the other side, the score of the general public was 2.2 and that of litigants was 3.2, which means that litigants' expectation was significantly lower than that of the general public. This may be because litigants had already lowered their level of expectation for reconciliation before they decided to come to court, or because disputing parties who had strong expectations for reconciliation preferred non-judicial processes for resolving their disputes.

In any case, the Japanese, not only the litigants but also the general public, seem to have a much stronger preference for having their case clearly decided than for getting the opportunity to talk with the other side, as long as they are

asked as real or supposed litigants.

When litigants are divided into two groups according to the results of their lawsuits, those whose cases were ended by judgment showed significantly higher expectation for having right and wrong clearly decided than those whose cases were ended by settlement (see, Table 4). As seen above, litigants as a whole showed as strong an expectation for having right and wrong decided clearly as the general public, but expectations of those whose cases ended by settlement were comparatively weak (which is statistically significant). On the other hand, as to the expectation for getting the opportunities to talk with the other side, the two groups did not show any difference (see, Table 5).

Therefore, comparatively weak expectations for having right and wrong decided may explain, at least in part, the reason why some litigants chose settlement, but the expectations for getting the opportunity to talk with the other side did not seem to affect the result of cases as a whole. It is partly because not only those who did not expect to get the opportunity to talk but also those who did expect to get the opportunity to talk show a tendency to judgment rather than settlement (see, Figure 1).

Table 4: Goal of Litigation: to have right and wrong decided clearly

	N	Subgroups by α = .05	
		2	1
Litigants who ended by judgment	220	1.55	
General public	973	1.62	
Litigants who ended by settlement	191		1.82

Table 5: Goals of Litigation: to get the opportunity to talk with the other side

	N	Subgroups by α = .05	
		1	2
General public	948	2.15	
Litigants who ended by settlement	186		2.97
Litigants who ended by judgment	221		3.17

(3) Expectations for lawsuits and categories of litigants

As shown in Table 6 and Table 7, when expectations for lawsuits are compared according to the categories of litigants, unrepresented plaintiffs showed the strongest preference for "having right and wrong decided clearly" (average point is 1.3), while unrepresented defendants showed the lowest (average point 2.2). As to the expectation for getting the opportunity to talk with the other side, the average point of unrepresented plaintiffs and unrepresented defendants is both 2.9, which is significantly higher than that of plaintiffs represented by lawyers (average point is 3.3).

From the results above, we may guess that unrepresented plaintiffs and plaintiffs represented by lawyers should have preferred judgments to settlements, since the former showed the strongest expectation for "having right and wrong decided clearly" among the four categories (but this might have been set off partly by relatively strong expectations for "getting the opportunity to talk"),

Table 6: Expectation for Lawsuit: to have right and wrong clearly decided

Categories of litigants	N	Subgroups by α = .05		
		1	2	3
Unrepresented plaintiffs	37	1.32		
Plaintiffs represented by lawyers	230	1.53	1.53	
General public	973	1.62	1.62	
Defendants represented by lawyers	127		1.76	
Unrepresented defendants	96			2.15

Table 7: Expectation for Lawsuit: to get opportunity to talk with the other side

Categories of litigants	N	Subgroups by α = .05		
		1	2	3
General public	948	2.15		
Unrepresented defendants	98		2.86	
Unrepresented plaintiffs	37		2.86	
Defendants represented by lawyers	124		3.12	3.12
Plaintiffs represented by lawyers	228			3.33

and the latter showed the weakest expectations for "getting the opportunity to talk" and strong expectations for "having right and wrong decided clearly". Also, unrepresented defendants should have preferred settlements to judgments because their expectation for "having right and wrong decided clearly" is the weakest and their expectation for "getting the opportunity to talk" is comparatively high.

Checking the hypothesis with the data, it seems to apply to the categories of unrepresented plaintiffs and unrepresented defendants, but not to the category of plaintiffs represented by lawyers, since its rate of judgment is under average and is even lower than that of defendants represented by lawyers. Then, we need to look for other factors to explain why more than 40% of plaintiffs represented by lawyers chose settlement in court. Since defendants represented by lawyers showed more or less similar tendencies with plaintiffs represented by lawyers, it would help explain their reasons to settle too. It seems that the very fact that they were represented by lawyers is critical. Their expectations for their lawsuits might be the cause and/or the result of their decision to hand their case to lawyers. We will see the lawyers' role later in this paper.

4. Litigants' Choice of Settlement

(1) Litigants' concerns for settlement

Despite the fact that litigants had strong expectations for having right and wrong decided clearly, nearly half of them ended their case by settlement. Many factors must have influenced their decision. Among them, when plaintiffs and defendants are represented by lawyers, their recommendations or suggestions could have been vital for their clients.

Asked about considerations they took into account when they decided to settle their cases, more than 80% of litigants answered that they took into account "recommendation by lawyers" at least to some extent, and more than 70% of

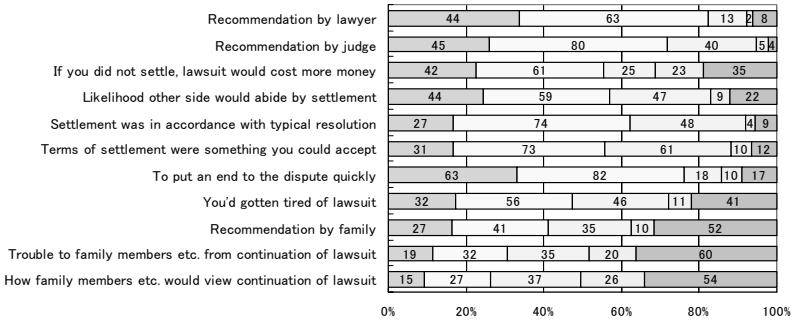


Figure 2: Terms Taken into Account when Litigants Decide to Settle their Case

them took into account "putting an end to the dispute quickly" and "recommendation by judges". On the contrary, "troubles to family members, colleagues at the workplace and neighbors from continuation of the lawsuit" and "how family members, colleagues at the workplace and neighbors would view continuation of lawsuit" did not seem to affect their decision strongly.

Each question is asked on a 5-point scale; 1 representing "I took into account", 3 "Can't say one way or the other", and 5 "I didn't take into account". The questions and answers are shown in Figure 2.

(2) Three factors determining litigants' concerns for settlement

From the survey results, three factors could be extracted relating to the considerations of litigants at the time of settlement. The first factor can be characterized as "relational": the concerns of litigants for their family members, colleagues at their workplace and neighbors, who may have their own opinions or feelings about, or be troubled by, continuation of the lawsuit. The second factor can be stated as "practical": the concerns for reasonable gains, including the likelihood of the other party abiding by the settlement. And the third factor may be called "de-motivating": the concerns for putting an end to the dispute quickly, without further monetary and mental exhaustion (see, Table 8).

Table 8: Litigants' Concerns in Settlement (factor analysis)

	Factor 1	Factor 2	Factor 3
Recommendation by judge	0.121	0.139	0.112
Trouble to family members etc. from continuation of lawsuit	**0.950**	0.110	0.262
How family members etc. would view continuation of lawsuit	**0.874**	0.162	0.253
Recommendation by family	**0.469**	0.300	0.332
Terms of settlement were something you could accept	0.229	**0.775**	0.111
Recommendation by lawyer	0.166	**0.680**	0.309
Settlement was in accordance with typical solution	0.120	**0.679**	-0.098
Likelihood other side would abide by settlement	0.006	**0.651**	0.200
You'd gotten tired of lawsuit	0.268	-0.045	**0.817**
If you didn't settle, lawsuit would cost more money	0.397	0.185	**0.576**
To put an end to the dispute quickly	0.145	0.234	**0.568**
	Relational	**Practical**	**De-motivating**

Generally speaking, litigants took practical and de-motivating factors more into consideration than relational ones. The average score of practical and de-motivating factors is 2.5 each on a 5-point scale, while the average score of the relational factor is 3.3. And it should be noted that "recommendation by lawyer" is classified as an element of the practical factor, although it is only meaningful for litigants represented by lawyers.

Among these three factors, only the practical factor had statistically different effects on plaintiffs and defendants: average score of plaintiffs' concern for the practical gain (2.3) is significantly higher than that of defendants' (2.6). This suggests that decisions to settle by plaintiffs were more likely to be based on practical considerations than those of defendants. The other two factors seem to have had no different effects whether litigants were plaintiffs or defendants.

(3) Lawyers perceptions of the litigants' concerns for settlement

More or less the same factors of litigants' concern for settlement can be discernable in the answers of their lawyers. In lawyers' eyes too, litigants seemed to take into account three settlement factors, i.e. relational, practical and de-motivating, with some differences. In the case of lawyers, "pressure from family" belonged to de-motivating factor instead of relational factor (but it should be noted that the wording was different), and "to put an end to the dispute quickly" was a practical factor instead of a de-motivating one. And "likelihood the other side will abide by the settlement" did not seem to be influencing significantly in the case of lawyers, while it was part of the practical factor in the case of litigants (see, Table 9).

Table 9: Concerns for Settlement of Clients, Perceived by Lawyers (factor analysis)

	Factor 1	Factor 2	Factor 3
How family members etc. would view continuation of lawsuit	**0.916**	0.140	0.197
Trouble to family members etc. from continuation of lawsuit	**0.895**	0.128	0.227
Terms of settlement were something your client could accept	0.065	**0.793**	-0.067
Recommendation of you as a lawyer	0.250	**0.629**	0.254
To put an end to the dispute quickly	0.107	**0.595**	0.256
Settlement was in accordance with typical solution	0.011	**0.414**	0.291
Your client had gotten tired of lawsuit	0.196	0.138	**0.824**
Pressure from family	0.360	0.126	**0.627**
If your client didn't settle, lawsuit would cost more money	0.130	0.376	**0.462**
Likelihood other side would abide by settlement	0.143	0.358	0.362
Recommendation by judge	0.261	0.283	0.192
	Relational	**Practical**	**De-motivating**

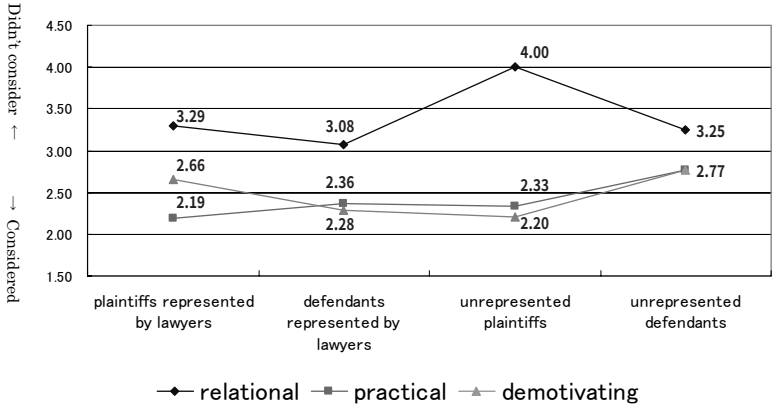


Figure 3: Factors of Settlement and Categories of Litigants

(4) Litigants' concerns for settlement and the categories of litigants

Three factors of settlement might have different effects on the four categories of litigants. Results of the variance analysis shows that average score of the practical factor is lowest (that means the factor is most considered) in the category of "plaintiffs represented by lawyers" and is highest (that means the factor is least considered) in the category of "unrepresented defendants". Since the difference of those average points is statistically significant, plaintiffs represented by lawyers are more practical than unrepresented defendants in deciding to settle in court. The average score of the other two factors also seemed to have different effects on the four categories (for example, unrepresented plaintiffs seemed to show especially weak interests in relational concerns), but the differences were not significant statistically.

Overall, three factors of litigants' concern for settlement did not have strong relations with the four categories of litigants.

(5) Litigants' concerns for settlement and the types of litigants

Litigants might be classified into groups according to their concerns for

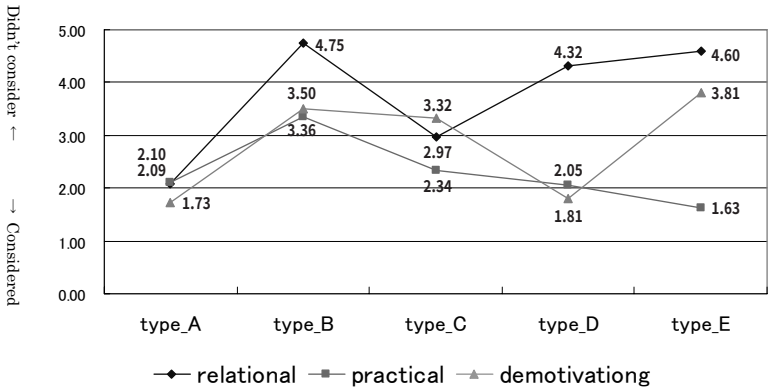


Figure 4: Measures of Settlements and Types of Litigants (cluster analysis)

settlements, despite the fact that they are not strongly influenced by their positions as litigants. Using cluster analysis, we divided litigants who ended by settlement into 5 groups[3].

The result shows that litigants as a whole were a mixture of sub-groups (see, Figure 4) ; type A are the litigants who took all three factors into consideration, and type B are those who did not take all three factors into consideration. Type C are the litigants who showed combined characteristics of type A and B, and type D showed the least concern for the relational factor but had a strong concern for practicality of settlement and were affected by de-motivating factors.

Compared with these four types, litigants group of type E showed a strong concern for practicality of settlement but showed the least concern for relational and de-motivating factors. In other words, litigants of type E are those who took into consideration only the positive aspect (practical factors) when they decided to settle cases and were not worried by the negative factors (relational and de-motivating factors).

Moreover, litigants of type E showed especially important features; they evaluated the results of lawsuits significantly on winning and just, compared

Table 10: Evaluation (Won or Lost) and 5 Types

Evaluation of Outcome (Won="1" or Lost ="5") subgroup α=0.05			
	N	1	2
Type _E	21	1.33	
Type _A	70		2.76
Type _D	24		2.83
Type _C	31		2.87
Type _B	31		3.19
significance		1.00	0.6

Table 11: Evaluation (Just or Unjust) and 5 Types

Evaluation of Outcome (Just="1" or Unjust="5") subgroup α=0.05			
		1	2
Type _E	21	1.86	
Type _C	30	2.60	2.60
Type _A	69		2.74
Type _D	24		3.08
Type _B	30		3.40
significance		0.12	0.08

Table 12: Number in Each Cluster

cluster	n	percent
Type _A	73	40.3%
Type _B	32	17.7%
Type _C	31	17.1%
Type _D	24	13.3%
Type _E	21	11.6%

with the other four groups (see, Table 10 and 11). As shown in Table 12, the percentage of the litigants who belong to type E is the lowest (only 11.6% of the litigants who ended by settlement), this type nevertheless seems to be the group who finished their lawsuits most satisfactorily by settlement[4].

5. Recommendation for settlement by judges and lawyers

(1) Recommendation by judges

Litigants, especially those who actually decide to settle in court, are usually recommended to settle by judges. In our survey, 94% of litigants answered that they were advised to settle by judges. But the lawyers do not seem to agree to it, and 24% of them answered that they got no recommendation for settlement

by judges. Instead, nearly half of litigants said that they were moderately recommended to settle by judges, while only 30% of lawyers said they were so recommended. The pattern of litigants' recognition of recommendation by judges (Figure 5) was more or less the same in case of litigants represented by lawyers (Figure 6). From this result, it may be determined that litigants, especially those who represented by lawyers, were likely to have mistaken that they were recommended to settle by judges, through information from their lawyers.

Nevertheless, at least three quarters of litigants were likely to be advised to settle by judges, and this fact must have affected the result of the case.

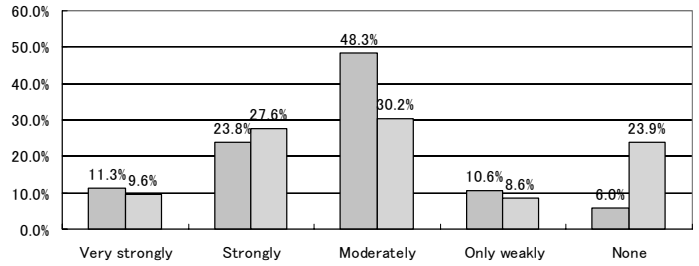


Figure 5: Level of Recommendation for Settlement by Judges (All Litigants and Lawyers)

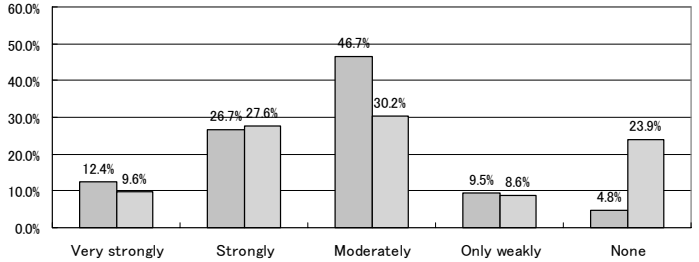


Figure 5: Level of Recommendation by Judges (Litigants represented by Lawyers, and Lawyers)

(2) Judges' recommendation for settlement and the results of the case

When we analyzed the relationship between litigants' assessments on the strength (or level) of recommendation by judges and the actual result of the case, there seems to be only a weak tendency that stronger recommendations have brought about actual settlement. But it is not significant enough statistically (Variance analysis: p=0.058), shown in Figure 6. Statistically significant differences were not found in every category of litigants.

But as shown in Figure 7 as to lawyers' assessment, the strength of judges' recommendation for settlement had a clear effect on the end result of the case (Variance analysis: p=0.000). Judges' recommendations seems to have been taken seriously by lawyers depending on their strength, which was reflected in the settlement rate in each category. Since litigants represented by lawyers usu-

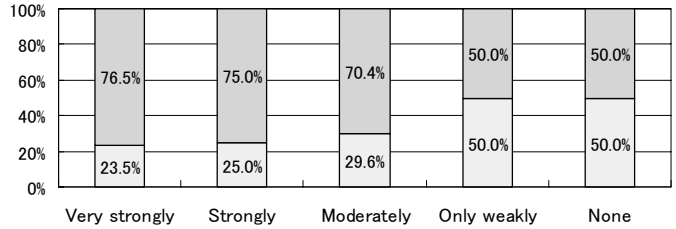


Figure 6: Level of Recommendation for Settlement by Judges and the Results of Cases (Litigants)

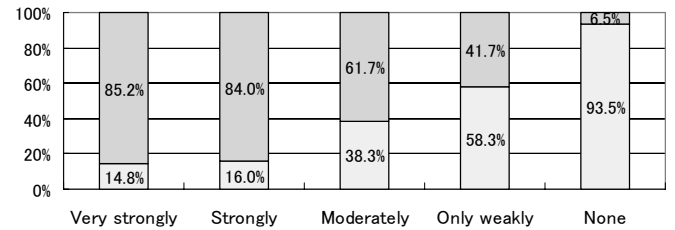


Figure 6: Level of Recommendation for Settlement by Judges and the Results of Cases (Lawyers)

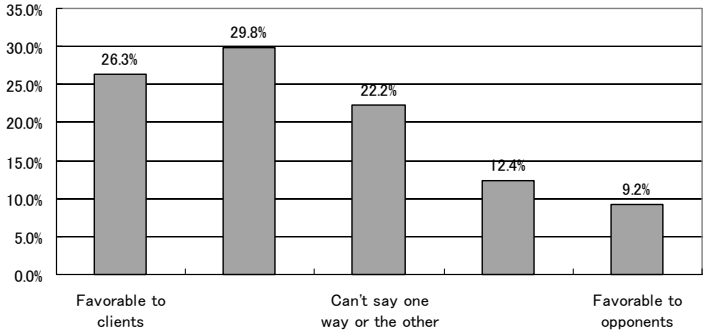


Figure 7: Prospects of Cases at Acceptance by Lawyers

ally get judges' recommendations through and modified by lawyers, the fact that litigants' perceptions of judges' recommendations did not seem to have significant effects on the end results of the cases does not necessarily mean that litigants were free in deciding whether to settle or not. Rather, judges' recommendations might have decisively influenced, either directly when litigants were unrepresented, or indirectly when they were represented by lawyers.

Even if litigants' decisions to settle in court were materially led by judges and lawyers, it may not have raised serious problems as long as litigants were satisfied to leave the management of their dispute to their lawyers from the outset. But there seems to be a large gap between a lawyer's judgment as to his/her client's benefits and the litigant's expectations for the lawsuit when they brought their dispute to court, considering the fact that litigants represented by lawyers showed relatively strong interest in having right and wrong decided clearly and weak interest in getting the opportunities to talk to the other side. If the gaps remained unclosed, advices or persuasions by lawyers to settle the case may have aroused vague dissatisfaction or frustration among litigants, leading to negative evaluation of in-court settlement and the lawsuit as a whole. Roles of judges' recommendation for settlement and lawyers' advice should to be analyzed in more detail.

(3) Prospect of the case and settlement; lawyers' view

When accepting the case, lawyers estimated that majority of cases (56%) were favorable to their client, and only 22% were thought to be favorable to the opponents.

The results of the cases seem to have certain relations with the original prospects of cases, that is statistically significant at the 5% level (variance analysis; p=0.038). As shown in Figure 8, when the prospects were clearly favorable for their clients, the cases were likely to be ended by judgment, while the prospects that were moderately, less favorable or un-favorable to their clients, were concluded by settlement. But the relations between prospects and results were not clear enough.

When asked how much the original prospects were achieved at the end of lawsuit, the majority of lawyers (85%) answered that more than 50% of the original prospects had been achieved, and 29% of them said 100% had achieved (see, Figure 9).

What is interesting in this context is that, while it was natural that in the materially lost cases (i.e., cases where the achievement ratio of the original prospect was less than 50%), the percentage of settlement was only 35%, and in the 100% won cases, the percentage of settlement was 30%, cases between the two

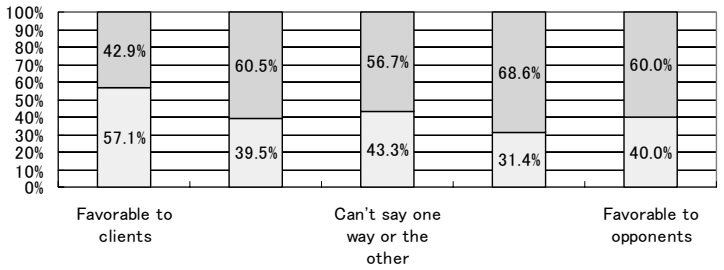


Figure 8: Prospects of Cases and the Result

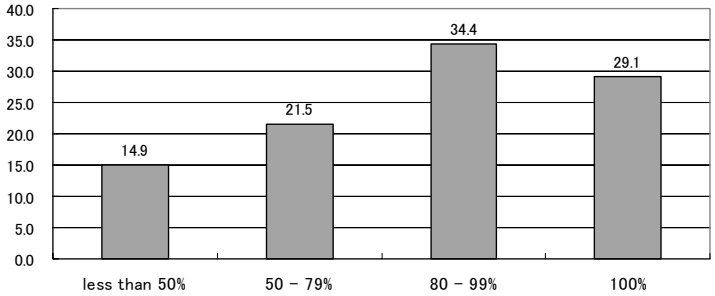


Figure 9: Levels of Achievement: Estimation by Lawyers

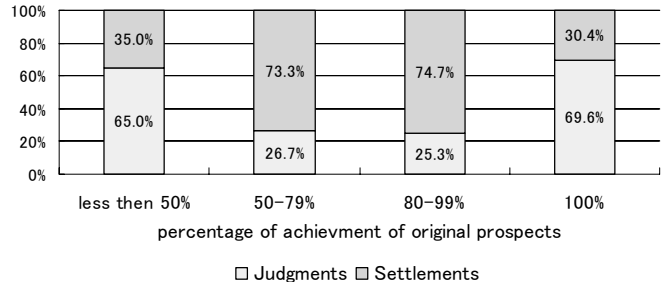


Figure 10: Levels of Achievement of Original Prospects and the Results of Cases

groups were ended overwhelmingly by settlement (more than 70%), which is shown in Figure 10. This suggests that lawyers seemed to prefer settlement to judgment unless they had strong confidence in winning by judgment. As the likelihood to achieve the original prospect lowered, they turned to settlement, but as the level of achievement lowered further to under the fifty percent level, negotiations with the opponents got harder and the lawsuits were ended more by judgments preferable to the opponents.

Inferring from the results above, the main concern of lawyers in the majority of cases where 100% achievement of original prospect by judgment is in doubt shifts to finding a way to settle the case with maximum gains to their clients. Contrary to litigants' expectations to have right and wrong decided clearly

through the lawsuit because their assertions are refused by the opponents, lawyers prefer to find ways to avoid win or lose situation and settle cases with more or less preferable results to their clients, just because there are substantial conflicts of opinions between their clients and opponents.

(4) Lawyers' concerns: winning the case or resolving the dispute

It is usually said that judgment is preferable when a clear-cut result is expected, while settlement is more suitable when a complicated dispute is to be resolved fundamentally. Asked which aspect they cared about more; wining the case or resolving the disputes, 50% of lawyers answered said that they attached more importance to resolving the disputes than winning the case as shown in Figure 11.

Comparing the answers of lawyers representing plaintiffs with those of defendants, we found that lawyers representing defendants were more likely to attach importance to resolving the dispute than winning the case, which is statistically significant at the 1% level (see, Figure 12). But as shown in Table 3, the settlement rate of cases where defendants were represented by lawyers was no higher than ones where plaintiffs were represented. In other words, it seems that lawyers' concern for resolving dispute did not necessarily lead to preferences to settlement.

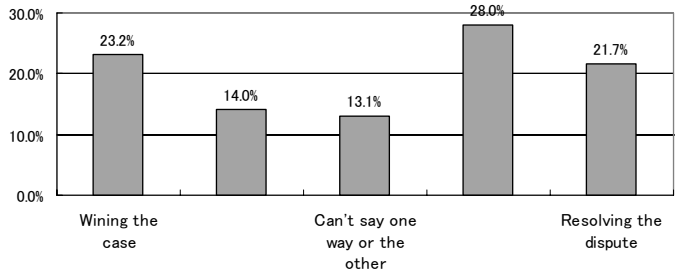


Figure 11: Lawyers' Concern: Winning the Case or Resolving the Dispute

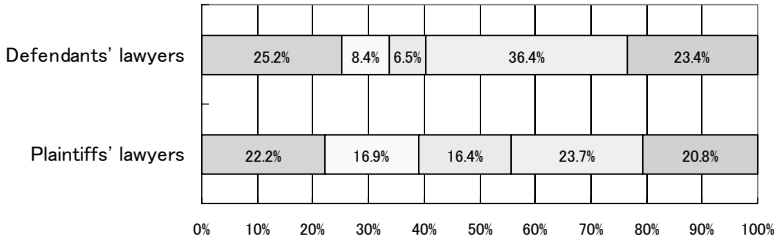


Figure 12: Comparison of Lawyers' Concerns

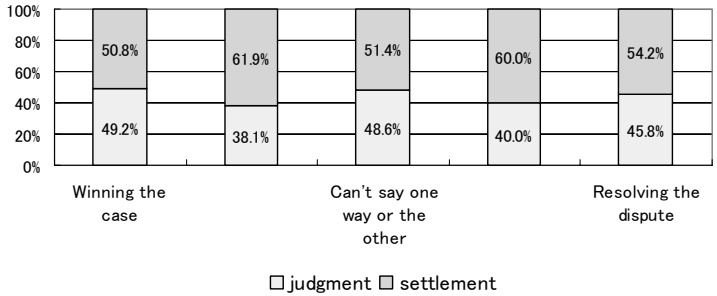


Figure 13: Levels of Lawyers' Concerns and Result of Cases

We can confirm the assumption by checking the settlement rate according to the levels of lawyers' concern for dispute resolution. As Figure 13 shows, lawyers' concern for "winning the case" or "resolving the dispute" did not bring about significant differences in judgment and settlement rates[5].

5. Conclusion

Generally speaking, litigants as a whole, with the exception of unrepresented defendants, did not seem to expect to settle their case in court at the outset. But many litigants, showing expectations for having their case decided clearly, turned to settlement after taking various factors into consideration. Three subjective factors can be discerned: one is the practical concern for getting

reasonable gains with forthcoming judgment in mind, and the other is the time-oriented concern which makes a compromise a real option because of the various costs including mental exhaustion. Although concerns for family, neighbors, and colleagues do not seem to occupy a major part in the list of settlement considerations, it is likely that some litigants are nevertheless forced to decide to settle their case unwillingly.

When litigants are represented by lawyers, their advice seems to have strong effects on litigants when they choose settlement in court. Recommendations by judges also seem to have a strong but indirect influence on litigants' decision, through the lawyers' advice. Then, the ways lawyers respond and treat litigants' expectations for the lawsuit, and at the same time, try to secure reasonable gains for their clients should be analyzed more fully, with the gap of orientation between litigants and lawyers in mind. Recognition of this gap is especially important to find ways for better interactions between lawyers and their clients, and increase litigants' satisfaction for the legal process and strengthening people's trust in the judicial system.

[Notes]

1 According to the annual report of the Supreme Court, 48.0% of cases of the first instance at district courts were ended by judgment, 34.5% by in-court settlement and 14.2% by withdrawal in the fiscal year 2004.

2 When the difference of the average of two groups is statistically significant, "**" or "*" is put on the items of Figure 1. The mark "**" is put when the difference is significant in 1% level, and "*" in 5% level.

3 In this analysis, each litigant's sub-scores of three factors of settlement were calculated using the factor analysis shown in Table 8, and litigants who ended their lawsuits by settlement were divided into 5 clusters using the ward method.

4 But each cluster of litigants does not have any significant relations with the four categories of litigants statistically.

5 The results of crosstabs analysis showed no correlations of statistically significant.

Settlement and Evaluation of Civil Litigation Experience

Shusuke KAKIUCHI

1. Introduction

(1) Overview

Based on the results of the "Litigation Behavior Survey", this paper discusses the effects of settlement on litigants' evaluations of procedure, in order to consider the function of judgment and settlement to resolve civil disputes. It focuses on the relation between factors such as (i) result of the case (judgment or settlement), (ii) whether settlement discussions were held during the course of the lawsuit and the litigants' evaluation of procedure regarding (a) whether they won or lost, (b) whether they regard the result as justified or unjustified, and (c) whether they would use a lawsuit if a similar matter occurred in future. This examination suggests that there is no consistent tendency in favor of settlement and that, rather, in certain cases a settlement or efforts toward it may have a negative effect on litigants' view of procedure.

(2) Preliminary remarks on the data of the "Litigation Behavior Survey"

(ⅰ) Results at district court level: rate of judgments and settlements

Among 466 respondents who gave valid answers about their results at district court level, 49% answered that their procedure ended by judgment and 43% by in-court settlement[1].

(ⅱ) Settlement discussions

44% of respondents answered that they engaged in discussions relating to settlement during the course of the lawsuit whereas 56% answered that they did not (Table 1). Of the cases in which settlement discussions took place, 65.4% terminated by in-court settlements whereas 65.8% of the cases without any settlement discussions ended by judgments (Figure 1).

It is to be noted that among respondents answering that there were no settlement discussions, 29% reported that their cases ended by settlements. Some lawyer-represented respondents might have answered that there were no settlement discussions without knowing that their counsels in fact engaged in such discussions. On the other hand, it is not clear why some of the unrepresented plaintiffs

Table 1: Did you engage in discussions relating to settlement during the course of the lawsuit?

		N	Percent	Valid %	Cum. %
Valid	Yes	193	36.2	44.0	44.0
	No	246	46.2	56.0	100.0
	Total	439	82.4	100.0	
Missing	Don't know	76	14.3		
	No answer	18	3.4		
	Total	94	17.6		
Total		533	100.0		

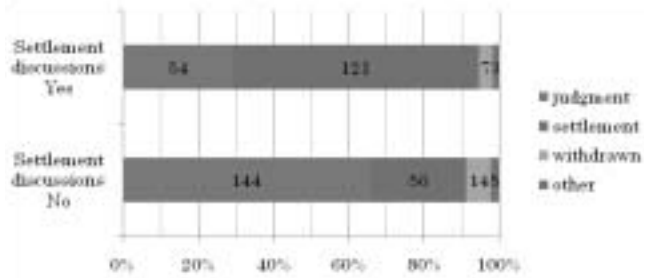


Figure 1: Settlement discussions and result of the case

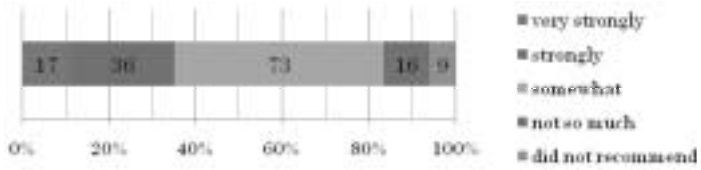


Figure 2: Extent to which judge (s) recommended settling the case

(20%) as well as unrepresented defendants (44.2%) could settle without any discussion.

(ⅲ) Extent to which judge (s) recommended settling the case

Figure 2 shows to what extend judge (s) recommended settling in cases where settlement discussions took place. 48.3% of respondents answered that judge (s) recommended "somewhat", 23.8% "strongly" and 11.3% "very strongly". This result means that more than 80% respondents found that judge (s) recommended settling more or less actively.

(ⅳ) Types of litigation

In our survey, the cases are classified into 21 groups according to the type of claim. This classification is primarily based on the classification by the court, which is marked on each case file. The numbers of the cases belonging to each group are shown in Table 2.

However, as the numbers of cases falling into each group are often too small for statistical analyses, it is necessary to regroup these classes. Table 3 shows the result of the regrouping, which will serve as the base for the following analyses concerning types of litigation.

Table 2: Types of litigation classified by types of litigants (Ⅰ)

	Plaintiffs represented by lawyers	Defendants represented by lawyers	Unrepresented plaintiffs	Unrepresented defendants	Total
1. Loan-related	19	13	5	15	52
2. Surety-related	0	4	0	11	15
3. Purchase money-related	3	0	0	6	9
4. Credit-related [incl. credit card-related claims]/Indemnification	5	5	0	27	37
5. Contract-related damages	9	6	0	3	18
6. Subcontract-related	0	4	1	0	5
7. Traffic accidents	38	19	1	3	61
8. Torts (excl. traffic accidents)	44	32	10	5	91
9. Rent-related	8	0	0	2	10
10. Ownership of land or building	4	3	0	0	7
11. Eviction from land or building	28	10	2	24	64
12. Real property title registration-related	8	8	3	6	25
13. Divorce-related	0	1	0	0	1
14. Inheritance-related	13	7	0	0	20
15. Other	22	13	4	7	46
16. Unjust enrichment (incl. overpayment of interest on consumer loans)	16	1	2	0	19
17. Deposit	6	0	3	0	9
18. Confirmation of non-existence of obligation	7	1	0	6	14
19. Labor	9	2	5	0	16
20. Promissory note	0	0	1	0	1
21. Determination of boundary	4	8	0	1	13
Total	243	137	37	116	533

2. Settlement and evaluations of procedure

(1) Settlement and evaluation of results

Regarding the evaluation of result (victory or loss), there is no significant difference between litigants whose cases are ended by judgment (hereafter "judgment-litigants") and those whose cases are ended by settlement (hereafter "settlement-litigants") (Figure 3)[2]. The result is similar for the evaluation whether the result of the case was just or unjust (Figure 4).

Table 3: Types of litigation (Ⅱ)

①Loan-related (104 cases)	1. Loan-related 2. Surety-related 4. Credit-related [incl credit card-related claims]/ Indemnification
②Non-existence of obligation/ Unjust enrichment (33 cases)	16. Unjust enrichment (incl. overpayment of interest on consumer loans) 18. Confirmation of non-existence of obligation
③Contract-related (32 cases)	3. Purchase money-related 5. Contract-related damages 6. Subcontract-related
④Traffic accidents-related(61 cases)	7. Traffic accidents
⑤Other torts (91 cases)	8. Torts (excl. traffic accidents)
⑥Real property-related (119 cases)	9. Rent-related 10. Ownership of land or building 11. Eviction from land or building 12. Real property title registration-related 21. Determination of boundary
⑦Inheritance-related (20 cases)	14. Inheritance-related
⑧Other (73 cases)	13. Divorce-related 15. Other 17. Deposit 19. Labor 20. Promissory note

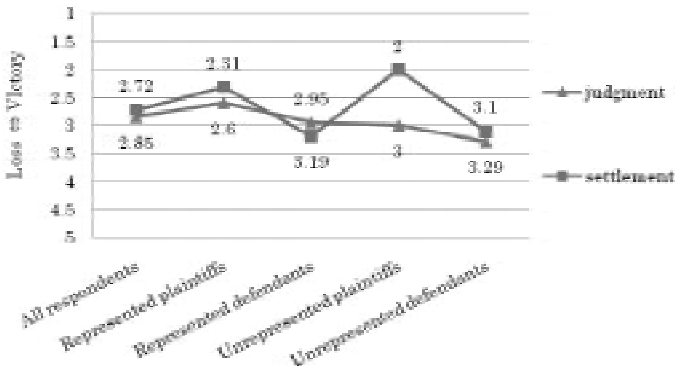


Figure 3: Evaluation of result at district court level: Victory or loss (mean scores)

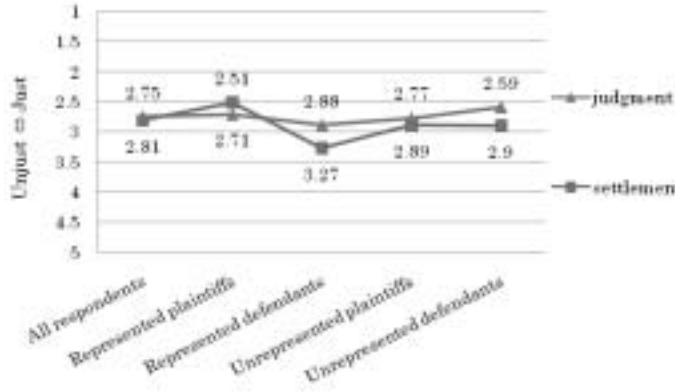


Figure 4: Evaluation of result at district court level: Just or unjust (mean scores)

However, Figures 5 and 6 show that in certain types of litigation, there is some difference between the evaluation of the result by judgment-litigants and settlement-litigants. Namely, in "Non-existence of obligation/Unjust enrichment" cases, settlements are considered "victory" more often than judgments, whereas the contrary is true in "Contract-related" cases (Figure 5). Regarding whether the result was just or unjust, settlements are more often considered "just" than judgments in "Non-existence of obligation etc." cases as well (Figure 6).

These analyses show that, in general, litigants' evaluation of the result does not depend on whether a case ends by judgment or settlement.

This result may suggest that for most of litigants, there is no significant difference with respect to the substance of the solution between a judgment and a settlement. In other words, there is no evidence that litigants are systematically compelled to accept an unfavorable or unjust solution in the form of judgment or settlement. In that sense, we may conclude that, in general, litigants are making reasonable choices between these two alternatives.

However, it is also to be noted that in certain types of litigation, there is some deviation from this general current.

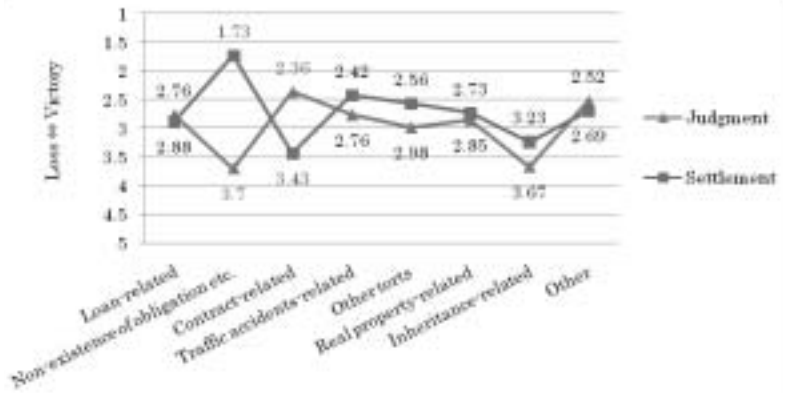


Figure 5: Evaluation of results at the district court level: Victory or loss (mean scores), classified according to type of litigation

* Variance analysis: p=0.012 (Non-existence of obligations etc.); p=0.068 (Contract-related)

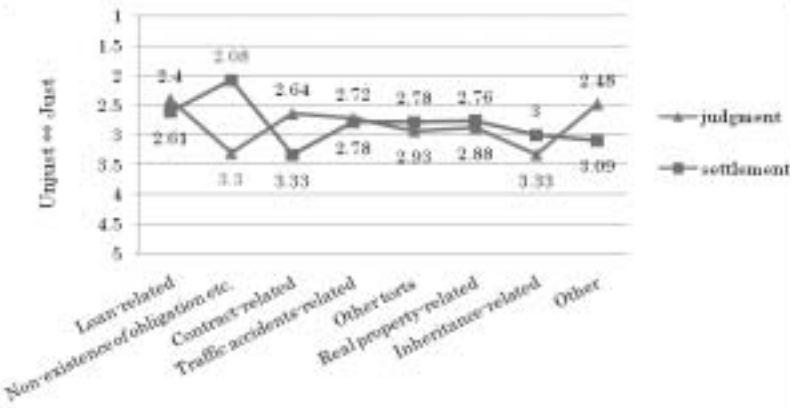


Figure 6: Evaluation of results at the district court level: Just or unjust (mean scores), classified according to type of litigation

* Variance analysis: p=0.055 (Non-existence of obligation etc.)

(2) Results at the district court level and willingness to re-use a lawsuit

Interestingly, although there is no significant difference between the evaluation of the result by judgment-litigants and settlement-litigants, there is a significant difference regarding the willingness of litigant to re-use a lawsuit.

Figure 7 shows that in every category of litigant, judgment-litigants answered more often than settlement-litigants that they would use a lawsuit if a similar matter occurred in future. The difference is statistically significant for all respondents and particularly for represented defendants. Analysis by type of litigation shows further that the difference is considerable in "Loan-related" and "Contract-related" cases, whereas there is no such difference in "Real property-related" and "Inheritance-related" cases (Figure 8).

The question then arises, why are judgment-litigants are more willing than settlement-litigants to re-use a lawsuit? Since judgments are not necessarily considered to be more favorable or more just than settlements (see (1) above), the substance of the solution itself cannot explain this result. In this regard, something that deserves our attention is that even in "Non-existence of obliga-

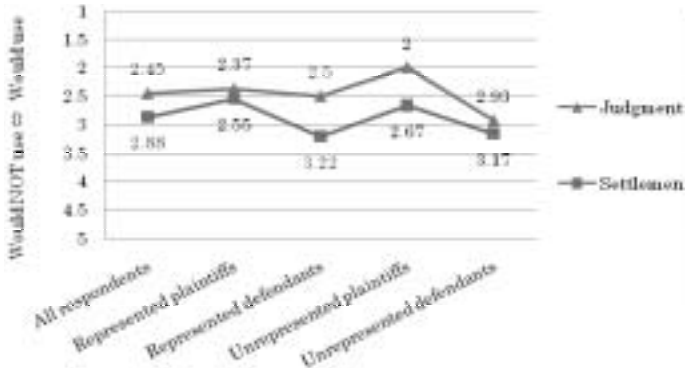


Figure 7: Willingness to re-use a lawsuit (mean scores)

* Variance analysis: p=0.001 (All respondents) ; p=0.003 (Represented defendants)

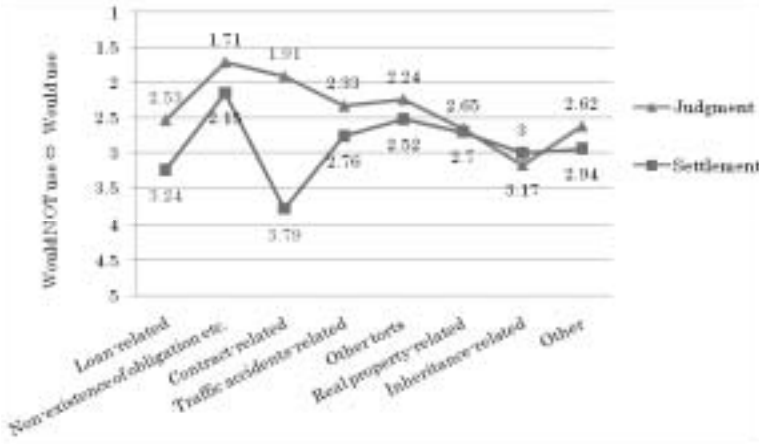


Figure 8: Willingness to re-use a lawsuit (mean scores), classified according to type of litigation

* Variance analysis: p=0.033 (Loan-related) ; p=0.001 (Contract-related)

tion etc." cases, where litigants consider settlements more favorable and more just than judgments, litigants are more willing to re-use a lawsuit when their cases ended by judgment, though this is statistically not significant.

One possible explanation is that judgment-litigants' expectations towards lawsuits are somewhat different from those of settlement-litigants. Namely, as Professor Moriya discusses in his paper, judgment-litigants are expecting more "to clearly decide right and wrong" and "to compel the other side to admit he/she was wrong", whereas settlement-litigants are expecting more "to restore relations with the other side". It is then possible that while expectations such as "to clearly decide right and wrong" and "to compel the other side to admit he/she was wrong" are satisfied relatively well by a judgment, it might be hard to satisfy expectations such as "to restore relations with the other side" even by a settlement, since the occurrence of a lawsuit is often equivalent to the definitive rupture between litigants, which makes such restoration impossible. If so, settlement-litigants who hope to keep good relations with the other side would

avoid using a lawsuit the next time.

In fact, certain expectations towards lawsuits correlate to the willingness to re-use a lawsuit. For example, expectations such as "to clearly decide right and wrong" and "to punish the other side" have positive correlations to the willingness to re-use a lawsuit, whereas "to get the opportunity to talk with the other side" and "to restore relations with the other side" have negative ones (Table 4). This seems to be consistent with the above-mentioned hypothesis.

Table 4: Correlation of goals of litigation and willingness to re-use a lawsuit (All respondents)

		Willingness to re-use a lawsuit
To achieve social justice	Pearson correlation Sig. (2-tailed) N	.133 (**) .005 436
To protect your rights	Pearson correlation Sig. (2-tailed) N	.089 .060 445
To resolve the dispute quickly	Pearson correlation Sig. (2-tailed) N	.011 .812 455
To get the opportunity to talk with the other side	Pearson correlation Sig. (2-tailed) N	-.163 (**) .001 445
To restore relations with the other side	Pearson correlation Sig. (2-tailed) N	-.157 (**) .001 440
To clearly decide right and wrong	Pearson correlation Sig. (2-tailed) N	.240 (**) .000 447
To protect your interests	Pearson correlation Sig. (2-tailed) N	.170 (**) .000 444
To punish the other side	Pearson correlation Sig. (2-tailed) N	.194 (**) .000 435
To compel the other side to admit he/she was wrong	Pearson correlation Sig. (2-tailed) N	.166 (**) .000 442
To have a judge hear what you have to say	Pearson correlation Sig. (2-tailed) N	.040 .412 429

** Correlation is significant at 1% level (2-tailed).

(3) Result at district court level and evaluation of judge

Regarding the evaluation of judges, settlement-litigants tend to be more favorable to judges than judgment-litigants (Figure 9). The difference is significant for "listened carefully" at 5% and for "spoke in an easy-to-understand fashion" and "seemed to be looking down on you" at 10%. Among four groups of litigants, this tendency is particularly clear for plaintiffs represented by lawyers (Figure 10).

However, analysis based on the type of litigation shows some deviations again. On the one hand, there are some types of litigation, such as "Non-existence of obligation/Unjust enrichment" cases, where settlement-litigants give clearly higher evaluations to judges (Figure 11). On the other hand, there are some types of litigation, such as "Contract-related" cases, where, by contrast, judgment-litigants give higher evaluations to judges (Figure 12). This may suggest that litigants of "Contract-related" cases are experiencing a certain

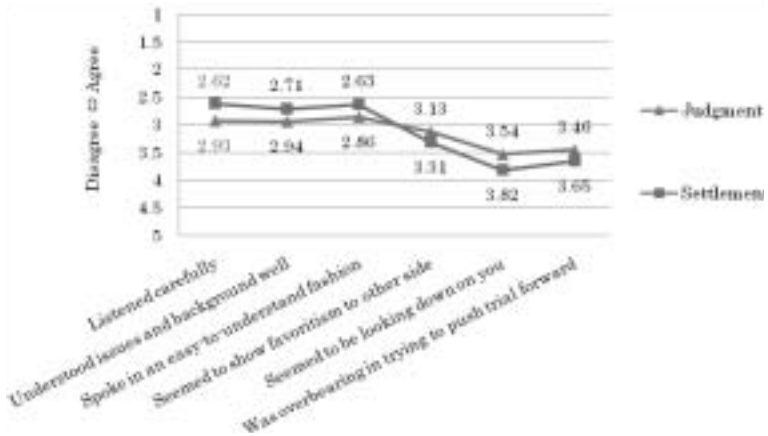


Figure 9: Overall evaluation of judge (mean scores)

* Variance analysis: p=0.033 (Listened carefully) ; p=0.091 (Spoke in an easy-to-understand fashion); p=0.066 (Seemed to be looking down on you)

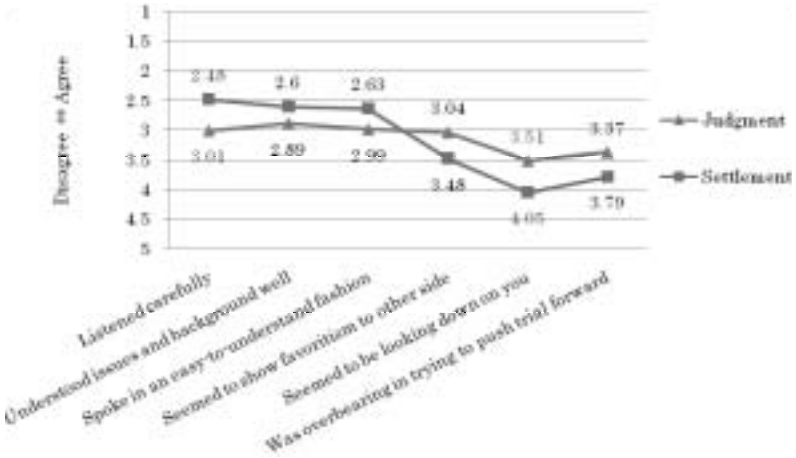


Figure 10: Overall evaluation of judge (mean scores) (Plaintiffs represented by lawyers)

* Variance analysis: p=0.019 (Listened carefully); p=0.089 (Spoke in an easy-to-understand fashion); p=0.068 (Seemed to show favoritism to other side); p=0.022 (Seemed to be looking down on you); p=0.072 (Was overbearing in trying to push trial forward)

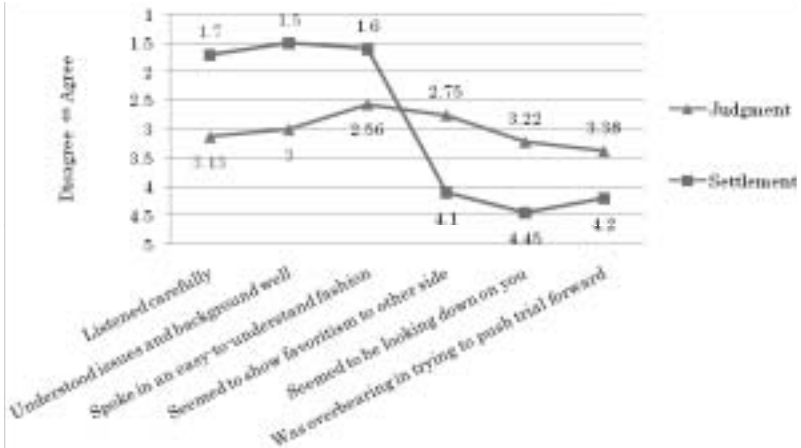


Figure 11: Overall evaluation of judge (mean scores) (Non-existence of obligation/ Unjust enrichment)

* Variance analysis: p=0.046 (Listened carefully) ; p=0.018 (Understood issues and background well) ; p=0.076 (Spoke in an easy-to-understand fashion) ; p=0.077 (Seemed to show favoritism to other side) ; p=0.076 (Seemed to be looking down on you)

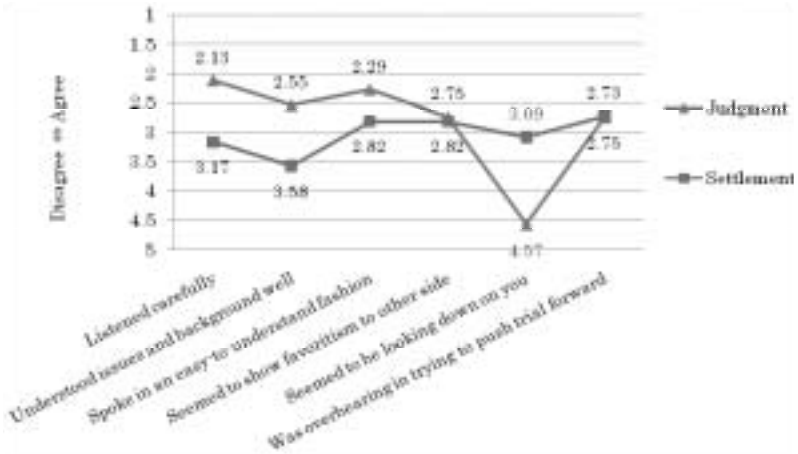


Figure 12: Overall evaluation of judge (mean scores) (Contract-related)

* Variance analysis: p=0.087 (Listened carefully) ; p=0.003 (Seemed to be looking down on you)

dissatisfaction with their settlements.

3. Settlement discussions and evaluations of procedure

(1) Settlement discussions and evaluation of judgment/settlement

So far, we have seen how judgment and settlement relate to evaluations of procedure. The next subject is how settlement discussions influence evaluations of procedure.

Figure 13 shows that experience of settlement discussions is unrelated to the litigants' view about whether the judgment is a victory or a loss. On the other hand, settlements are considered to be a victory less often when there were settlement discussions than when there were none, though this is statistically not significant. Similarly, settlement discussions have no influence on litigants' evaluation of whether the judgment is just or unjust, whereas they seem to have certain negative influence on evaluation of the settlement (Figure 14).

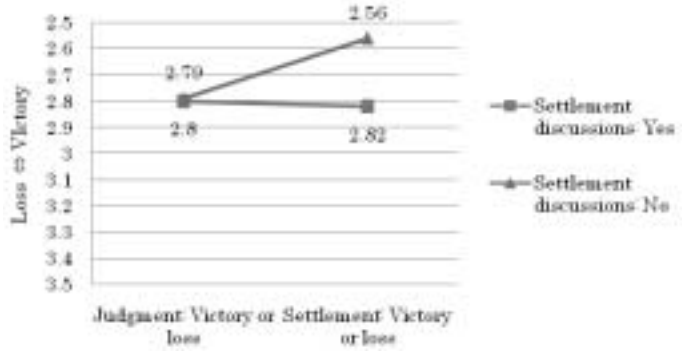


Figure 13: Settlement discussions and evaluation of results at district court level (Victory or loss) (mean scores)

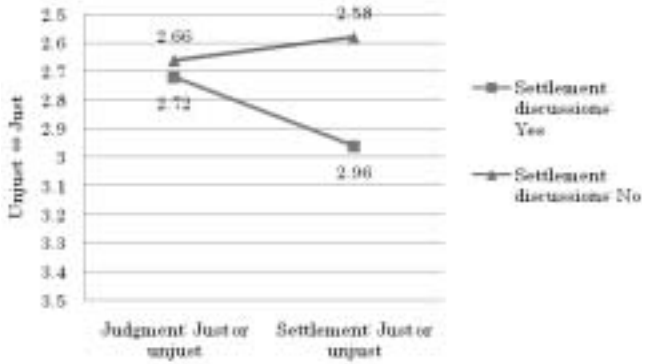


Figure 14: Settlement discussions and evaluation of results at district court level (Just or unjust) (mean scores)

* Variance analysis: p=0.060 (Settlement: Just or unjust)

Analysis based on type of litigants shows that this tendency is primarily found in plaintiffs represented by lawyers (Figure 15 and 16).

Here again, analysis based on type of litigation shows some deviations. Namely, there are types of litigation showing clearly the same tendency (e.g. "Non-existence of obligation etc." cases), while in "Other torts" cases, litigants

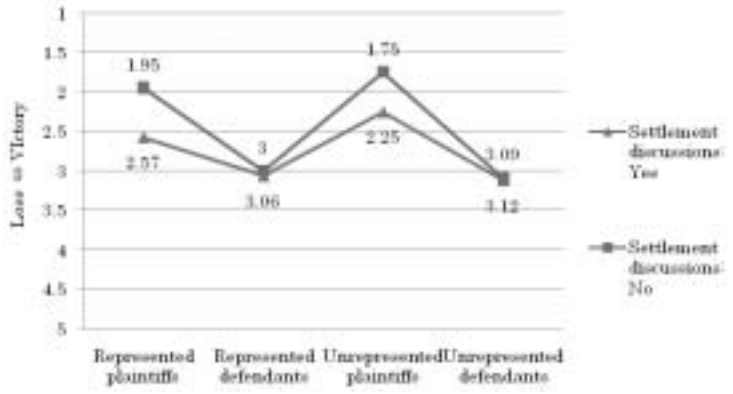


Figure 15: Settlement discussions and evaluation of settlements (Victory or loss) (mean scores)

* Variance analysis: p=0.070 (Represented plaintiffs)

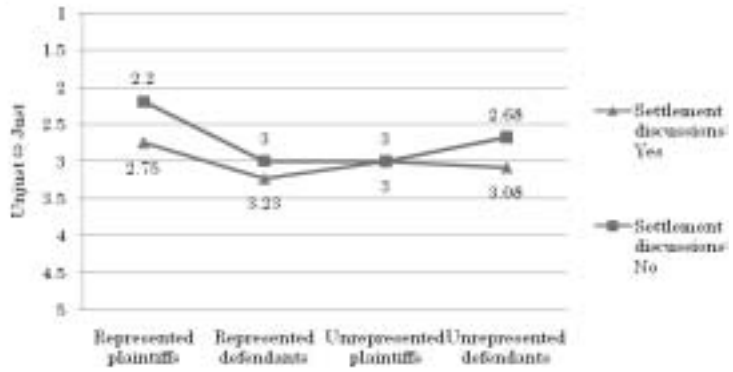


Figure 16: Settlement discussions and evaluation of Settlement (Just or unjust) (mean scores)

tend to consider their settlements more favorably when they have experienced settlement discussions (Figure 17).

As for the question of whether the settlement was just or unjust, "Loan-related" cases clearly show the same tendency as the respondents overall (Figure 18).

To answer the question of why settlements discussions have a negative effect

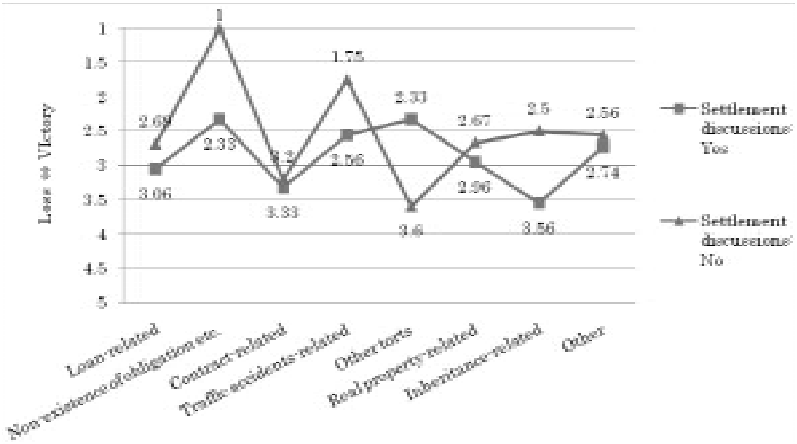


Figure 17: Settlement discussions and evaluation of settlement (Victory or loss) (mean scores), classified according to type of litigation

* Variance analysis: ＊ p=0.104 (Non-existence of obligation/ Unjust enrichment); p=0.066 (Other torts)

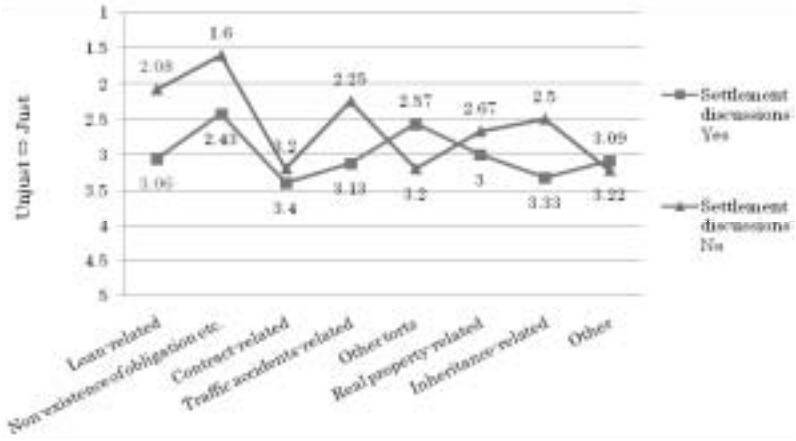


Figure 18: Settlement discussions and evaluation of settlement (Just or unjust) (mean scores), classified according to type of litigation

* Variance analysis: p=0.009 (Loan-related)

on evaluation of settlement, it is necessary to consider how litigants could settle if they had no settlement discussions. One explanation may be that in such cases there was no difficulty reaching an agreement so that litigants did not need to engage in discussion. If that is so, cases where litigants have experienced settlement discussions might be cases where there was a great deal of difficulty in arriving at an agreement. In such cases the gap between the claims of the litigants might be more significant so that the realized agreement corresponds less with the original intention of each litigant. However, the question of why this tendency is seen only in particular types of litigants or litigation needs further consideration.

(2) Settlement discussions and willingness to re-use a lawsuit

Similarly, litigants without any experience of settlement discussions are more willing than those with such experience to re-use a lawsuit if a similar matter occurred in future (Figure 19). This tendency is clearly seen among represented plaintiffs.

Analysis based on type of litigation shows that in most cases there is no such

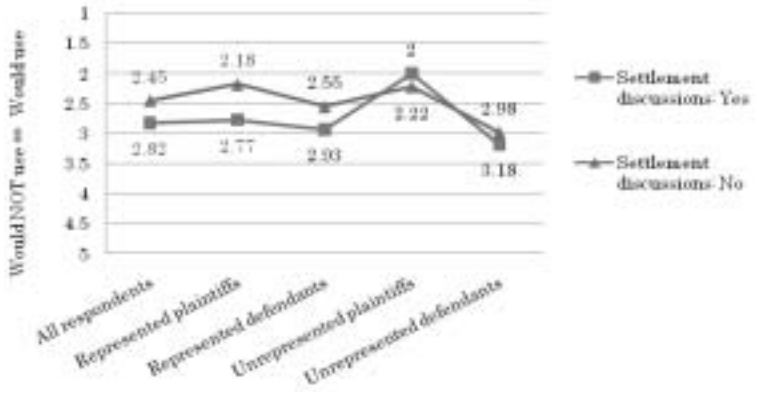


Figure 19: Settlement discussions and willingness to re-use a lawsuit (mean scores)

* Variance analysis: p=0.010 (All respondents) ; p=0.007 (Represented plaintiffs)

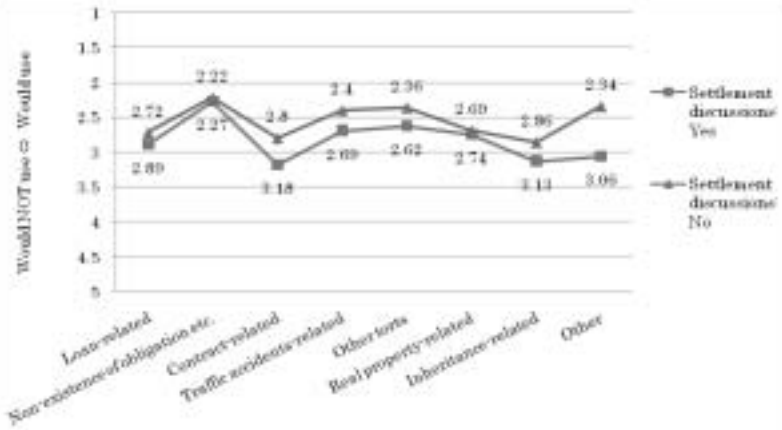


Figure 20: Settlement discussions and willingness to re-use a lawsuit (mean scores), classified according to type of litigation

* Variance analysis: p=0.058 (Other)

clear tendency. Only in the "other" cases, the difference is statistically significant at 10% (Figure 20).

The same hypothesis as (1) might be applicable to this case as well. Namely, cases in which settlement discussions were held are often cases where the opposition between the litigants is serious, so that the realized compromise cannot satisfy the original expectations of the litigants. This might result in less willingness to re-use a lawsuit. However, as Figure 21 shows, there is no such negative effect when the case ended by judgment. This suggests that there may be other factors peculiar to settlements.

(3) Settlement discussions and evaluation of judges

As for the evaluation of judges, settlement discussions have neither positive nor negative effect on it (Figure 22). However, it is worthwhile mentioning that in represented defendants, settlement discussions have negative effects on some items (Figure 23).

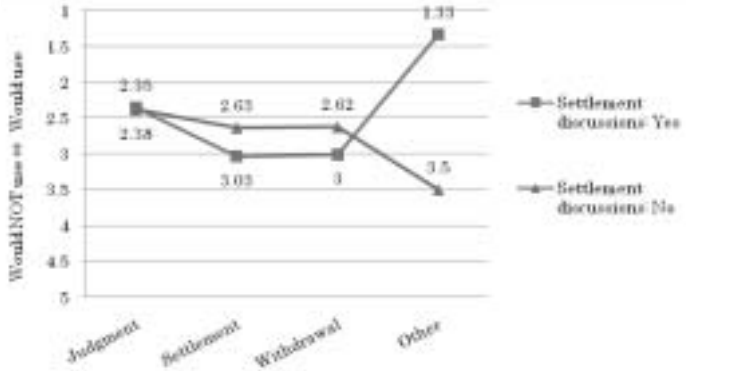


Figure 21: Settlement discussions and willingness to re-use a lawsuit (mean scores), classified according to result at district court level

* Variance analysis: p=0.076 (Settlement)

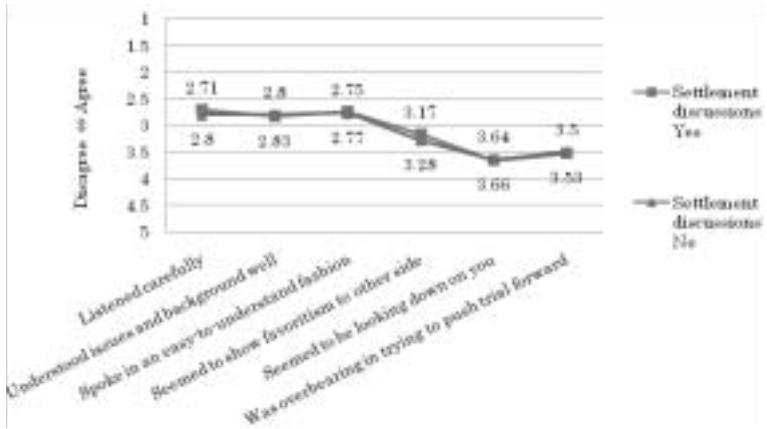


Figure 22: Overall evaluation of judge (mean scores)

On the other hand, analysis based on type of litigation shows that in "Non-existence of obligation etc." cases, settlement discussions have a negative effect on the evaluation of judges (Figure 24), while in "Traffic accidents-related" cases, they have positive effects on the contrary (Figure 25).

To conclude, although settlement discussions have in general no effects on

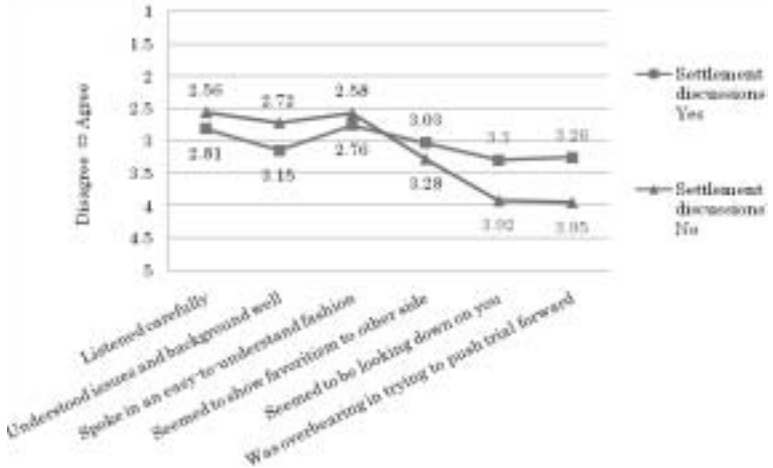


Figure 23: Overall evaluation of judges (mean scores) (Represented defendants)

* Variance analysis: p=0.028 (Seemed to be looking down on you); p=0.017 (Was overbearing in trying to push trial forward)

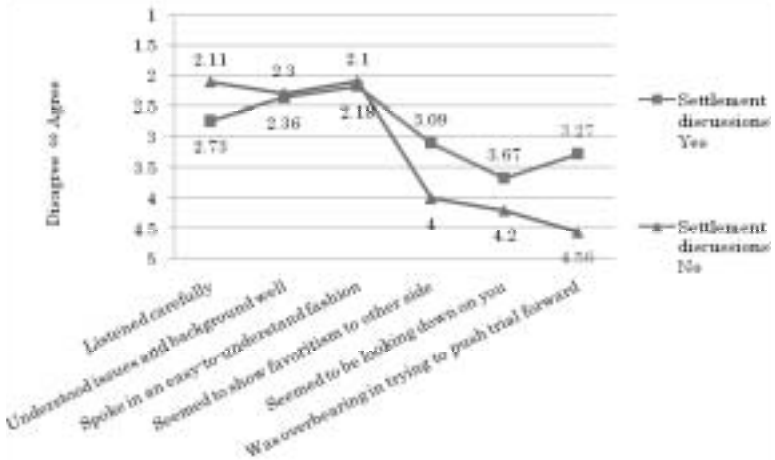


Figure 24: Overall evaluation of judge (mean scores) (Non-existence of obligation/ Unjust enrichment)

* Variance analysis: p=0.025 (Was overbearing in trying to push trial forward)

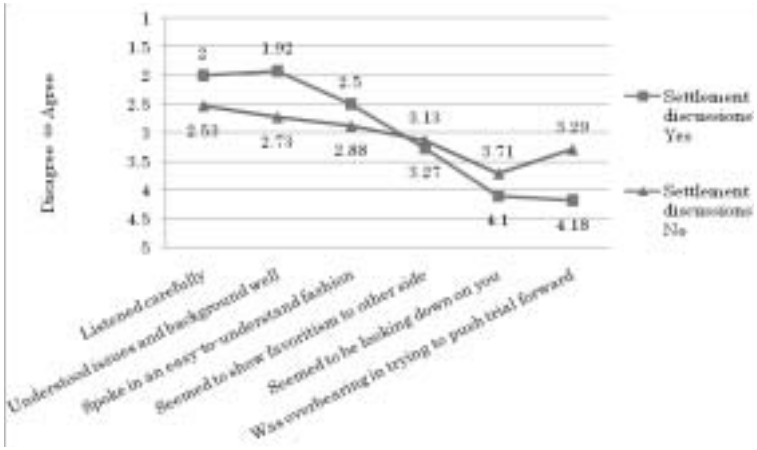


Figure 25: Overall evaluation of judge (mean scores) (Traffic accidents-related)

* Variance analysis: p=0.099 (Understood issues and background well); p=0.087 (Was overbearing in trying to push trial forward)

evaluation of judges, there are some categories of litigants or litigation where they have some effects. Namely, for defendants represented by lawyers and litigants of "Non-existence of obligation etc." cases, settlement discussions have negative effects on evaluation of judges, whereas in "Traffic accidents-related" cases, they have, on the contrary, some positive effects. This may suggest that the way in which judges involve in settlement discussions differs according to type of litigation.

4. Conclusion

The analyses so far give us the following findings regarding the function of settlement and settlement discussions.

First, generally speaking, litigants' evaluation of the result of the case does not depend much on whether the case ended by judgment or settlement. As for the willingness to re-use a lawsuit, however, judgments have a certain advantage over settlements. On the other hand, settlements have certain positive effects on litigants' evaluation of judges.

Secondly, settlement discussions have some negative effects on the evaluation of the realized settlements and on the litigants' willingness to re-use a lawsuit. On the other hand, they have generally no such effect on litigants' evaluation of judges, while there are some categories of litigants and litigation, where they have either positive or negative effects.

As explanation for such results, this paper proposed following hypotheses. (i) Judgment-litigants' expectations towards lawsuit are somewhat different from those of settlement-litigants. Expectations such as "to clearly decide right and wrong" and "to compel the other side to admit he/she was wrong" may be satisfied relatively well by a judgment, while it might be hard to suffice the expectation such as "to restore relations with the other side" by a settlement. (ii) Cases in which settlement discussions were held might be cases, where the opposition between the litigants is serious, so that the realized compromise can not suffice the original expectations of litigants.

Since the analyses of this paper are only primary ones, much more work remains to be done. In particular the question of how difference in types of litigants and cases results in differing evaluations of procedure, needs further consideration.

[notes]

1 For details of the results, see Professor Moriya's paper in this volume.

2 Apparently, there is a certain difference for unrepresented plaintiffs. However, it is statistically not significant (p=0.110 by variance analysis).