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Examining Corporate Litigation: Market Reactions, Resource Allocation, and Trial Outcomes

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Abstract

This dissertation aims to provide a preliminary examination of corporate litigation using a unique hand-collected sample of 262 corporate lawsuits involving 72 publicly-traded organizations listed on the Toronto Stock Exchange.

The first set of studies explores how the market reacts when organizations go to court to resolve a lawsuit. Unlike previous U.S.-focused studies, no significant relation between abnormal market returns, the trial, and the subsequent court decision was found. These results suggest that the Canadian stock market, on average, does not perceive litigation as a significant event.

The second set of studies explores how financial resources, in-house litigation ability and the chief legal officer interact to increase the organization's odds of winning the trial. Results did not support the hypotheses that trial outcomes are influenced by the financial size of the organization nor by the in-house litigation ability. However, there was evidence that the relationship between an organization's financial resources and the odds of winning were mediated by the internal litigation ability. Since the direct effects were non-significant, this result should be considered with caution. The hypothesis of a moderating relationship between the CLO and in-house litigation ability was not supported; instead, evidence of a (weak) interaction was found between these two variables.

The findings from both sets of studies challenge the economic model of litigation that is predominant in the management literature. Recommendations for future research include extending the sample to include decisions from administrative tribunals and during the process to develop a better understanding of how organizations mobilize the legal system to improve organizational performance.

Keywords: Litigation, Trials, Lawyers, Chief Legal Officers

Summary for Lay Audience

Litigation is a common reality for organizations of all sizes and types. More organizations are depending on the legal system to fairly and efficiently resolve legal disputes, which contributes to a complex and dynamic legal environment. However, very little attention has been paid to the potential of a litigation strategy that engages the court to reduce uncertainty and significantly improve organizational performance.

In the first part of my research, I examined how the market reacts when organizations resolve disputes at court instead of private settlement. I expected that shareholders would react negatively when a trial starts due to the uncertainty and costs involved, but positively when there's good news about a favourable outcome. Surprisingly, I did not find a significant connection between the trial events and subsequent court decisions. This suggests that, on average, the Canadian stock market doesn't consider litigation as a major event.

In the second part of my study, I examined how financial resources, in-house legal expertise, and the role of the Chief Legal Officer (CLO) affect a company's chances of winning a trial. I predicted that having internal litigation expertise would improve a company's ability to identify important lawsuits and increase their chances of winning. Additionally, I expected that having a CLO on the executive team would further enhance these outcomes. However, my results did not support these hypotheses, suggesting that more research is needed to better understand the impact of legal resources on court decisions.

Overall, these findings challenge the prevailing economic model of litigation in management literature. Going forward, future research should include more industry-level contextual factors to better understand how organizations leverage the system to improve their performance.

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Chapter 1

Introduction

Litigation is a common reality for organizations of all sizes and types. More organizations are depending on the legal system to fairly and efficiently resolve legal disputes, which contributes to a complex and dynamic legal environment due to political, economic, technological, and social developments, such as cybercrime and data privacy legislation, social movements related to discrimination, the demand for accountability for corporate social responsibility and climate change, developments in the global economy, and changes within the legal and political environment.

A review of the management literature on corporate litigation suggests that scholars are concerned that organizations are facing a more litigious environment with increasing costs and liabilities and, consequently, are frequently involved in legal disputes that are contentious and time consuming (Barney et al., 1992; Conlon & Sullivan, 1999). Lawsuits are considered disruptive, expensive, and often completely unexpected and unanticipated by organizations (Posthuma, 2012). The authors are concerned with the likelihood that organizations will be embroiled in longer, more contentious lawsuits that constrain time and resources and lose economic value for shareholders (Cohen et al., 2019; Uribe et al., 2020). Nonetheless, there is a relatively small body of research exploring the relationship between organizations and litigation.

However, Hinthorne (1996) suggested that a "corporate leader can use the adversary system to destroy or weaken an opposing stakeholder or to protect the corporation from the predatory actions of an opposing stakeholder" (p. 26). Thus, litigation may be a valuable resource for protecting organizational wealth, and resources that improve organizational performance throughout the litigation process should be examined.

1.1 The Current Litigation Environment

In a complex and dynamic business environment, organizations often face uncertainty that can impact their performance by making it difficult to predict the outcomes of their activities. Organizations of all types and sizes are more likely to use the courts to resolve legal disputes as they manage new and heightened operating risks in a dynamic and evolving macro environment because of the COVID-19 pandemic. This is evident in numerous reports in the popular press, where managers express concern about a possible wave of litigation resulting in more legal disputes resolved in the courtroom (e.g., Raymer, 2021a, 2021b).

Since the global COVID-19 pandemic, organizations have had to rapidly adjust their operations to accommodate government mandates, compensate for disrupted supply chains, and coordinate employees while ensuring their health and safety (Raymer, 2021a). For example, government regulations and guidelines related to COVID-19 have changed frequently, leading to confusion and uncertainty for organizations trying to comply with them. Many organizations have had to deal with unexpected closures, delays, and cancellations, leading to uncertainty about their contractual obligations and legal liabilities. Additionally, COVID-19 has caused an increase in remote work, and organizations have had to quickly adapt to new technologies and work arrangements, leading to concerns about the privacy and security risks of remote work and legal disputes related to data breaches and cyberattacks. Not surprisingly, companies anticipate that the number of legal disputes related to COVID-19 and other changes in the global economy will continue to trend upward (Dobby, 2020).

The litigation rate is also heightening due to changes in the legal system: Increasingly larger damage awards for high-profile lawsuits and class actions, more regulatory investigations and enforcement, and scrutiny in public discourse and social media are increasing the number of lawsuits facing organizations (Raymer, 2021b). In addition, organizational attitudes about litigation appear to have shifted. Organizations are still subject to being served with a lawsuit but are also now more likely to file lawsuits to enforce their legal rights or otherwise resolve uncertainty in their legal environment. Moreover, organizations appear less willing to settle and more willing to litigate disputes in the courtroom (Norton Rose Fulbright, 2022).

Furthermore, the legal system and the laws that govern it are subject to the same forces of change and uncertainty that affect organizations. Such developments are challenging for the legal systems role in resolving legal disputes in a fair and efficient manner. For example, many courts in Canada were forced to close or reduce their operations due to COVID-19, leading to significant backlogs and delays in the justice system (Action Committee on Court Operations, 2020). COVID-19 has also led to changes in legal processes, such as virtual hearings and electronic filings, which can increase uncertainty for organizations that are unfamiliar with these new procedures (Action Committee on Court Operations, 2020).

In conclusion, the dynamic nature of the macro environment due to COVID-19 has created conditions that have increased legal disputes between organizations and their suppliers, customers, and other stakeholders. This has increased uncertainty about the outcome of these lawsuits, as organizations compete over fewer legal resources in a legal system that is challenged by the same macro forces. As litigation rates are expected to increase, it is crucial for organizations to invest in litigation strategies that mobilize resources that improve decision making during the lawsuit and improve litigation outcomes.

1.2 The Legal Environment, Legal System, and Litigation

Organizational performance can be significantly impacted by the uncertainty caused by developments in the macro environment. Decision making during conditions of uncertainty is due to a lack of information or unpredictability about future states of the environment. (Lawrence & Lorsch, 1967) noted that imperfect knowledge about an environment creates uncertainty about causal relationships between actions and expected outcomes. Accordingly, high uncertainty obscures the relationship between effort and outcomes, introducing *noise* into outcomes.

Changes in customer preferences or technological innovations exemplify macro-environmental developments that can create uncertainty for organizations. Such changes may require firms to adapt their products, services, or operations to remain competitive. While uncertainty can create opportunities for firms to acquire valuable resources or develop new capabilities that

can lead to above-average performance, it can also increase the risk of investing in new resources or capabilities that may not generate the expected returns. Moreover, uncertainty can make it difficult for firms to plan and make decisions, leading to a lack of coordination and a loss of focus on core competencies.

The impact of uncertainty on organizational performance ultimately depends on the firms ability to adapt and respond to changes in the environment. Firms that can better identify and exploit new opportunities or respond to threats are likelier to perform well, whereas firms that cannot adapt may suffer from declining performance. Therefore, firms must develop strategies that enable them to manage uncertainty effectively and maintain their competitive advantage (Posthuma, 2012).

Two strategies that can help organizations mitigate uncertainty in their environments are monitoring and resource mobilization (Pfeffer & Salancik, 2003). By monitoring changes in the marketplace, organizations can better understand the potential impacts of these changes and adjust their strategies accordingly. By investing in the right resources, organizations can position themselves to respond quickly to changes in the marketplace, capitalize on new opportunities, and mitigate potential risks.

1.2.1 The Legal Environment and Uncertainty

The *legal environment* of an organization refers to the framework of laws, regulations, and judicial decisions that govern the conduct of organizational activities. This includes laws that regulate business formation and organization, contract formation and enforcement, intellectual property protection, consumer protection, employment practices, and environmental regulations, among others. The legal environment of a business also encompasses the *legal system* which includes the court system and methods for dispute resolution when the organization is involved in a legal dispute.

The legal environment plays a critical role in reducing uncertainty by providing a framework with which organizations can predict the legal outcomes (i.e., liabilities) of their conduct, thus improving decision making through effective costbenefit analyses. Laws and regulations pro-

vide guidelines for acceptable behaviour and the consequences of noncompliance.

However, the legal environment is not immune to the same dynamic forces that create uncertainty in the organizations environment. When the law fails to resolve uncertainty in situations where the law is ambiguous or not well established, organizations are less confident about which laws may apply to their activities and are less able to assign appropriate probabilities to the likelihood and value of outcomes in various contexts. Correspondingly, this leads to more conflicts between organizations and their employees, customers, and other stakeholders, as well as between competitors and governing bodies. Therefore, organizations are likely to depend on the legal system to resolve these legal disputes.

1.2.2 Increased Dependence on the Legal System

While the legal environment of organizations encompasses the laws, regulations, and court decisions that affect how businesses operate, the legal system encompasses the institutions and processes responsible for creating and enforcing those laws and regulations. The *legal system* refers to the institutions and processes that create and enforce laws, including the courts, judges, and lawyers involved in the legal process. One role of the legal system is to provide a mechanism for resolving disputes in a fair and timely manner (Action Committee on Court Operations, 2020).

However, the litigation process, itself, can be a source of uncertainty. Indeed, the litigation process can increase uncertainty and risk for an organization at every stage, as the outcome of a lawsuit is often unpredictable and can have significant implications for the organizations future strategy, reputation, and resources. Thus, organizations must make expensive investments in legal resources to identify and assign probabilities to outcomes to make effective decisions during lawsuits.

Furthermore, a dynamic, complicated legal system in which there are more legal disputes but insufficient resources to administer the court system contributes to greater uncertainty in the organizational environment. As legal resources become scarce in the environment, organizations are limited in their ability to mobilize the necessary resources to engage effectively in

litigation.

In conclusion, litigation can be a means of resolving uncertainty in an organizations environment, but the process, itself, is a source of uncertainty. While the legal environment and legal system work to reduce uncertainty by providing guidelines for acceptable behaviour and a mechanism for resolving disputes, the legal system can create uncertainty by being expensive, time consuming, and unpredictable.

1.3 Litigations Impact on Organizational Performance

Of course, lawsuits require a significant investment of resources to manage uncertainty during the litigation process, which could harm organizational performance and, in some cases, viability. A single, expensive lawsuit can result in costs that markedly exceed the legal award for the plaintiff and can be devastating to the defendant (Bhagat et al., 1998; Bhagat et al., 1994; Cutler & Summers, 1987; Engelmann & Cornell, 1988). Similarly, a large volume of ordinary small claims against an organization can be collectively disruptive and erode an organizations profitability.

An organizations concerns do not necessarily end with the resolution of a lawsuit. A single lawsuit may trigger the filing of numerous subsequent lawsuits, causing the continued disruption of the firms ordinary operations and the accumulation of legal and procedural expenses. Such outcomes render the organization more susceptible to a state of financial distress, potentially leading to bankruptcy (Cutler & Summers, 1987).

Litigation can help an organization deal with uncertainty in the environment in several ways. First, litigation may be the only mechanism available to resolve disputes with other parties, such as customers, suppliers, or competitors, which may cause uncertainty for the organization. By initiating legal proceedings, the organization can clarify the rights and obligations of each party and obtain a resolution to the dispute that can help reduce uncertainty by setting a favorable precedent or deterring future lawsuits (Galanter, 1974b).

Second, litigation can help an organization protect strategic resources, such as intellectual

property or important supply contracts. By enforcing its intellectual property or contractual rights through legal action, the organization can deter others from infringing on its intellectual property or breaching contract terms and create a more stable and predictable operating environment (Agarwal et al., 2009).

Overall, litigation can be an important tool for organizations to manage uncertainty in their environment by resolving disputes and protecting intellectual property, potentially resulting in changes in their market structure and industry standards that improve the competitive positioning of the organization.

1.4 Litigation Strategies

Lawsuits are strategic concerns that can materially impact organizations (James & Wooten, 2006). Indeed, litigation strategy has never been more critical to success (Pincus & Belohlav, 1996). Managers "must understand the legal environment to better prepare for litigation rather than live in perpetual fear" (Posthuma, 2012, p. 360). However, few organizations are prepared for this challenging environment. For example, according to a survey of 400 legal and compliance professionals conducted by global law firm Baker McKenzie, less than one-third of those leaders say that they are prepared to proactively identify and mitigate these latent risks (Semko et al., 2021).

A common strategy to reduce the risk of a lawsuit is to invest in resources that monitor the legal environment for developments that increase the likelihood of a lawsuit or mitigate the financial and operational risks caused by a lawsuit. For example, organizations may include terms in waivers, service-level agreements, and other contracts that allocate risk, limit damages, and direct conflict to be resolved by means other than in court. Other strategies include purchasing various forms of insurance, incorporating best practices and standards, and leveraging technology to improve legal issue monitoring and evidence preservation. When a lawsuit seems unavoidable, most companies turn to an outside law firm to negotiate an acceptable resolution as soon as possible (Brown, 2018).

Relatively few organizations invest in effective litigation strategies that regularly mobilize

the legal system and achieve court outcomes that create a legal environment that favours the organization over its competitors. However, organizations that can effectively leverage the litigation process might resolve uncertainty in their favour and have a unique capacity to protect and enhance their organizational performance (Hinthorne, 1996; Pincus & Belohlav, 1996).

1.4.1 Walmart's Litigation Strategy

Walmart is one such example of an organizational litigation strategy that includes leveraging trial outcomes to shape its legal environment. Walmarts litigation history belies its current reputation as an aggressive litigator willing to take every lawsuit to court. Initially, Walmart was a reluctant litigant, losing the few lawsuits it refused to settle in the 1960s and 1970s (Penrod & Crow, 2018). After decades of continued investment, Walmart now maintains one of the most comprehensive and holistic litigation strategies among large publicly listed companies, making it almost unbeatable in court since the 1980s (Penrod & Crow, 2018).

Walmarts strategy is to control the entire litigation value chain from the initial claim to its resolution in court. To do this, Walmart is self-insured or self-funded when legally and contractually permissible, instead of having liability insurance to mitigate its litigation risk (Walmart Corporate, 2023). It employs an in-house insurance adjuster responsible for processing and investigating claims and an extensive, diverse in-house legal department to defend its legal interests in domestic and international markets (General Counsel Magazine, 2017).

M any organizations typically pay claims through a third-party insurer that will pay the costs of a judgment or settlement. Thus, insured organizations relinquish much of their decision making to a lawyer from an insurance company; the insurance companys interests are incorporated into the decision making concerning litigation. However, since Walmart is both self-insured/self-funded and has its own company to handle all claims, Walmart can have complete control over any litigation decisions without needing to consider the interests of third parties.

Once a claim is passed to the legal department, the claims department receives it. In-house lawyers filter and distribute a substantial number of lawsuits to an extensive network of exter-

nal counsel. This network has been vetted and onboarded into the business, legal operations, and unique corporate culture at Walmart and is given direct access to in-house lawyers (General Counsel Magazine, 2017).

The effectiveness of these departmental programs is measured with data and analytics to promote the legal department as a value-creating business component (General Counsel Magazine, 2017). Walmart can better predict the outcomes of lawsuits, since data are collected as the lawsuit progresses from the initial claim to the final decision. This data resource improves its ability to select cases with the highest probability of prevailing at trial, identify litigation trends, and monitor potential risk areas.

Walmarts litigation policy is to settle when it knows it is wrong, but will vigorously defend its interests in front of a court otherwise, even when up against large class-action lawsuits (Penrod & Crow, 2018). Walmart will settle only when the odds of prevailing at trial are very low and only offer a meagre settlement amount. This strategy has allowed Walmart to embrace a "scorched earth" philosophy and has contributed to Walmarts reputation as a litigation "street fighter" (Penrod & Crow, 2018, p. 315) that is not afraid to use aggressive tactics to defeat its opponents in a lawsuit.

With this complex litigation strategy, it is notoriously difficult to litigate against Walmart compared to other organizations. Walmart is a frequent litigator with an above-average trial success rate (Penrod & Crow, 2018).

The value created by this strategy goes bey ond its track record in court; a reputation as an aggressive litigator willing to resolve matters in court rather than settle may deter many lawsuits, as plaintiff lawyers are reluctant to take on lawsuits against Walmart. This reputation translates into an implicit *limitation of liability* for those who enter Walmart stores, as they do so at their own risk, given the difficulty of winning a claim.[1]

Walmarts litigation strategy allows it to shape the legal environment to its advantage. By re-

[1]This is comparable to the notice of waivers posted on bright yellow signs and lift tickets at ski resorts, which advise participants to ski at their own risk, even when an injury results from the ski hills negligence. In this case, customers enter a Walmart store at their own risk but without an explicitly posted notice. It is not until much later that a potential plaintiff realizes that recovery for injuries will be difficult, if not impossible.

peatedly winning cases in court, Walmart creates legal precedents reflective of its internal policies, ultimately imposing these policies on competitors. For example, Walmart is sued more often than other retail companies in the U.S., which suggests that Walmarts legal team significantly influences labour laws for the entire U.S. retail industry. With every lawsuit Walmart defends and wins, the U.S. retail industry is subject to the ethics standards, human resource philosophy, and employment practices that Walmart is willing to fight for (Farfan, 2019).

Of course, there are risks associated with such an aggressive litigation policy. For example, Walmart has a reputation for challenging employee class-action lawsuits, even when Walmart is unlikely to succeed (Farfan, 2019). This strategy can discourage potential employees from applying and contribute to the poor morale and underperformance of existing employees. The court of public opinion often works against Walmart, and Walmart often finds itself the subject of negative social media campaigns claiming discrimination or abuse of the court system to protect profits. Historically, such accusations have not financially affected Walmart. However, recent diversity projects within Walmart and the legal community initiated by the recently appointed chief legal officer suggest that these social media campaigns may have had some impact and that Walmart is taking steps to counter its negative reputation as an aggressive litigator (General Counsel Magazine, 2017).

1.5 Problem Statement

Scholars are concerned that organizations are facing a more litigious environment and, consequently, are more at risk of legal disputes that are contentious and time consuming (Barney et al., 1992; Conlon & Sullivan, 1999). Lawsuits are disruptive, time consuming, expensive, and often unexpected and unanticipated by organizations (Posthuma, 2012). Much of the literature is concerned with the likelihood that organizations will be embroiled in longer, more contentious lawsuits, resulting in constraints on time and resources and lost economic value for shareholders (Cohen et al., 2019; Uribe et al., 2020). In the management and strategy literature, most authors suggest that organizations cannot achieve a competitive advantage by engaging in litigation and should instead develop resources that avoid the costly and risky

"disease of litigation" to develop a competitive advantage (Siedel & Haapio, 2010, p. 42). However, this relatively small body of research is narrow in its focus on the start of a lawsuit and the time required to resolve it, leaving open questions about other critical litigation events.

A review of the management literature on litigation in Chapter 2 suggests that there are important questions about trial and trial outcomes that need more research.

1.5.1 Critical Litigation Event: Trials

The trial phase is the most unpredictable in the litigation process, as the outcome is ultimately determined by a third party to the conflict (i.e., a judge or jury) (Posner, 1974). The evidence and arguments presented by both parties can be complex, and the outcome of the trial can be uncertain until the courts decision is delivered. The trial phase of litigation can create significant uncertainty and risk for an organization, as the outcome can have an impact on the organizations reputation, resources, and strategy.

Trials can expose an organization to financial risk, as organizations may need to spend significant resources on legal fees, expert witnesses, and other expenses, compared to resources already expended in the litigation process up to this point (Cutler & Summers, 1987; Engelmann & Cornell, 1988). The distraction and disruption caused by a trial can take the organizations focus away from its core operations, resulting in a decline in productivity and efficiency (Arena & Ferris, 2017; Arena & Julio, 2015).

The favourability of the trials outcome is important. If the organization loses the trial, it can have a significant negative impact on its financial performance (Cutler & Summers, 1987; Engelmann & Cornell, 1988). For example, an organization may be required to pay damages to the plaintiff or may fail to protect an important, valuable patent. This can impact an organizations ability to invest in its operations and grow its business. Additionally, the negative publicity surrounding the trial can damage the organizations reputation, making it more difficult to attract and retain customers, partners, and investors (Tan, 2016).

Conversely, if the organization wins the trial, it can have a positive impact on its performance

(Galanter, 1974b). The organization may recover significant damages from the defendant or may not be liable for paying the plaintiff damages, which can reduce financial risk and provide the organization with greater financial stability. Additionally, a positive trial outcome can enhance an organizations reputation, making it more attractive to customers, partners, and investors. This can lead to increased business opportunities and growth potential.

Furthermore, winning a trial can deter future legal challenges or disputes, particularly if the organizations opponents perceive it as a strong and determined litigant (Galanter, 1974b). Winning a trial can provide leverage in future negotiations with the opposing party or other stakeholders, particularly if the judgment establishes a favorable legal position or precedent. Finally, if the case involves an important legal issue or could set a precedent that would impact the organizations industry or operations, the organization may choose to go to trial to influence the outcome and establish a favorable precedent (Galanter, 1974b).

The purpose of this dissertation is to examine how organizations may be impacted by a trial and the subsequent outcome or court decision, and how organizations may invest in resources that improve the probability of a favourable trial outcome. Specifically, this dissertation proposes the following research questions:

- How do trials and subsequent court decisions impact organizational performance?
- Does investing in litigation resources improve the probability of winning at court?
- Does the chief legal officer improve the probability of winning a trial?

To be clear, the purpose of this dissertation is neither to examine litigation tactics that organizations may employ during the litigation process nor to embed legal doctrine into the management literature. The objective is a preliminary examination of the impact of trials and court decisions on organizational performance, and firm-level litigation strategies can impact the probability of favourable court decisions.

1.6 Dissertation Outline

The remainder of this dissertation is organized as follows.

In the following chapter, I review the management literature to establish a conceptual model of the litigation process that grounds the studies in this dissertation.

Chapter 3 builds on the economic concerns about litigation in the management literature and explores how the market may respond to trials and court decisions. Trials can increase uncertainty for organizations in several ways. This uncertainty can make it difficult for organizations to plan and budget effectively and can impact their relationships with stakeholders. In the next chapter, I examine how the start of the trial and the subsequent court decision impact organizational performance by examining how the market reacts to both events. I expect the market will react negatively to the beginning of the trial, as it escalates organizational uncertainty as a third-party adjudicator resolves the conflict. Moreover, the additional investment in litigation resources exposes the organization to financial, operational, and reputational risk. Once the trial is complete and a decision is released, I predict that the market will react according to how favourable the outcome is for the defendant or the plaintiff, reflecting the shareholders confidence in the organizations future cash flows and ability to access capital.

The second study in Chapter 4 extends the current literature, which suggests organizations may leverage their legal environment for potential sources of competitive advantage (Bagley, 2008). Lawyers are critical to managing the uncertainty associated with a lawsuit by using their expertise to select cases that have a high probability of winning in court (Galanter, 1974). I predict that organizations that have invested in developing in-house litigation expertise by employing litigation lawyers will be likelier to win at trial than organizations that rely exclusively on external law firms to represent the organizations interests during the lawsuit.

Since resources in the legal system cannot be fully absorbed by the organization, I propose in Chapter 5 that organization need to access and mobilize legal resources that are external to the organization and embedded in the legal system in order to successfully engage the litigation process. The third study in Chapter 5 examines how a chief legal officer (CLO) mod-

erates the relationship between in-house litigation ability and trial outcomes. I predict that the CLO improves the probability of a favourable trial outcome by acting as an *institutional interlock* providing critical resources within the legal system and the organizations internal environment to the litigation department.

1.7 Contributions

Organizational performance is a critical aspect of any business, and the outcome of a trial can have a significant impact on the performance of an organization. For more than 50 years, management scholars have lamented the increasingly litigious environment that threatens organizational performance and viability before exploring strategies that reduce a companys litigation risk (e.g., Barney et al., 1992). However, very little attention has been paid to the potential of a litigation strategy that engages the court to reduce uncertainty and significantly improve organizational performance.

Barney et al. (1992) described this ethical dilemma well in an anecdote involving one of the authors' assistants:

> Finally, the research reported here presents some significant ethical dilemmas for both organizational researchers and society. For organizational researchers, the ethical challenges of this kind of work are perhaps best summarized by a story. When the first author of this article gave a draft to his secretary to type, she refused to do so, arguing that the publication of this work would encourage both large and small firms to engage in the activities described here. Her view was that those activities were immoral and would expose numerous employees to hazardous materials. She wanted no part of this research and was appalled that we, as researchers, would be party to the death, disease, and inadequate compensation that could result from this work. (Barney et al., 1992, p. 340)

The authors were able to alleviate such concerns by reasoning that examining the litigation strategies of organizations may ultimately lead to solutions that limit the availability of strategies that may distort the administration of justice. Thus, studies that examine how organiza-

tions invest in litigation strategies that improve organizational performance can also inform public policy.

This dissertation focuses on the impact of trials and court decisions on organizational performance and firm-level litigation strategies that can impact the probability of favourable court decisions. From a theoretical perspective, the study examines two new resources, in-house litigation ability and the CLO, which may improve decision making during lawsuits to improve the outcome of trials. The study also highlights the importance of collaboration among lawyers, CLOs, and other key stakeholders in an organization. This may have implications for the regulation of corporate governance and the responsibilities of CLOs and other senior executives in an organization.

From a public policy perspective, this study has important implications for the regulation of litigation and the legal system. This study suggests that organizations must invest in legal expertise and resources to ensure the best possible outcome in a trial. This may have implications for the legal system if litigation strategies enable organizations to avoid liability and accountability or to dominate dockets in a way that tips the law consistently in their favour and raises concerns about access to justice.

In conclusion, this dissertation on trials impact on organizational performance and the strategies that lawyers and CLOs can use to increase the probability of winning at trial makes an important contribution to our understanding of the role of litigation in organizational performance. This study provides practical guidance for organizations and highlights the importance of legal expertise and resources in shaping the outcome of trials. The study also has important implications for theory and public policy, particularly in the areas of legal regulation and corporate governance.

Chapter 2

Literature Review

As introduced in the first chapter, litigation is both a means to resolve uncertainty in an organizations environment and a source of uncertainty, as legal outcomes are difficult to predict and the process demands significant investments of resources. Lawsuits can be costly and time consuming, and legal outcomes can significantly impact organizational performance. Thus, research on litigation in the management literature has centred on the occurrence of events in the litigation process (e.g., settlement) rather than on the legal outcome (e.g., the terms of the settlement). With very few exceptions, studies have mostly been concerned with exploring the causes, consequences, and strategic implications of the initial filing of a lawsuit over any other event within the litigation process (e.g., private settlement or trial).

2.1 Methodology

I first searched for abstracts containing the keywords litigation, lawsuit, or legal action available in online research databases, including ABI/INFORM and Web of Science. Subsequently, I refined the initial search set of 172 articles by verifying that each manuscript was published in a top-tier management journal and that the abstract and text ensured that each manuscript focused on litigation research. The above process resulted in a subset of 39 articles central to the discourse on litigation in the management literature (Appendix 8.5).

2.2 Themes in the Management Literature

A review of previous studies in the management literature revealed two contrasting perspectives of litigation, which I refer to as *litigation risk as outcome* and *litigation risk as strategy*. With a few exceptions, the critical legal event that is pivotal to these studies is the moment the

lawsuit is filed. Studies have focused on examining the relationships between the antecedents of litigation risk and its impact on organizational performance. However, there is no definition of *litigation risk* in the literature. For the purposes of this review, *litigation risk* is defined as the possibility that a lawsuit will be filed against an organization.

From the former perspective, the studies are much broader in terms of legal issues and industries. Litigation is an exogeneous threat to an organizations viability because it diverts resources and attention from core business activities, resulting in significant legal penalties and costs. Thus, litigation strategies should focus on investing in internal resources or practices that reduce the likelihood of a lawsuit or mitigate the costs and time invested in resolving the lawsuit.

In contrast, the second stream is much narrower in its focus on patent litigation in a limited number of industries, where litigation is a means of protecting valuable strategic assets from misappropriation from rivals or others. According to this perspective, litigation strategies should focus on investing in legal resources that mitigate the uncertainty associated with the process. By doing so, the organization signals its willingness to mobilize the litigation process to its potential rivals and increases litigation risk for others.

Table 2.1: Comparison of Two Dominant Perspectives in Management Literature

	Litigation Risk as Outcome	Litigation Risk as Strategy
Lawsuits	A source of environmental uncertainty	A means to manage environmental uncertainty
Usual Role	Defendant	Plaintiff or Defendant (or plaintiff in counterclaim)
Opposing Parties	• shareholders • employees • customers • activist groups	• rival • non-practising entity
Experience	Treated as exogeneous shock	Treated as endogenous probable event
Litigation Risk	Endogenous (attributed to internal actions)	Exogenous (attributed to market conditions)
Types of Lawsuits	• shareholder class actions • environmental violations • discrimination claims • employee/labour disputes • product liability • contract disputes	• patent litigation
Industry	• no specific industry	• semi-conductor • environmental violations • pharmaceutical • smartphones
Factors	• events (acquisition, market decline) • industry membership • firm-level factors (political culture, foreign) • governance structure	• changes in legal environment • diversification strategy of current and potential rivals • industry litigation rate (patent wars) • non-practising entities market entry (a.k.a. patent trolls) • focal organization's legal resources
Organization Performance	• market reaction • turnover in top management team	• constraints on innovation • diversification

Table 2.1: Comparison of Two Dominant Perspectives in Management Literature (Continued)

	Litigation Risk as Outcome	Litigation Risk as Strategy
Objectives for Litigation Strategy	• reduce dependence on the legal system to resolve disputes • reduce or eliminate litigation risk • mitigate uncertainty and expenses by settling privately • invest in internal resources	• mitigate dependence on the legal system by investing in legal resources • litigation as a key success factor • mitigate current and future strategic risk by filing lawsuits and resolving at court • invest in legal resources
Examples of Litigation Strategies	• governance • employee policies • corporate social responsibility • vertical integration	• litigation firms on retainer • litigation experience/reputation • institutional arbitrage • strategic partnerships • in-house patent lawyers
Factors Influencing Decisions and Outcomes	• lawyers (human capital) • technology	• lawyers (human capital or social capital) • ability to leverage media coverage • cooperation with non-parties

2.3 Litigation Risk as Outcome

In this stream, organizations are named defendants in a lawsuit filed by stakeholders within the organizations environment. While the lawsuits are not limited to a specific area of law or to any particular industry, the lawsuits examined in this stream could be characterized as endogenous to the organizations environment given the plaintiffs and the nature of the legal issues alleged in the lawsuit.

Recent studies have examined new types of litigants that have no formal authority or relationship with the organization in the traditional sense. For example, (Eesley et al., 2016) found that activist groups increasingly resort to institutional tactics, such as lawsuits, rather than protests and boycotts, to incentivize social change in organizations.

Conflicts that evolve into litigation are also not limited to an organizations external environment. Bies and Tyler (1993) cite a litigation mentality permeating the modern workplace as the reason for an increase in employee litigation and conclude that employee litigation must be a top priority for managers, as "an ever-wider variety of managerial decisions are the target of employee-initiated lawsuits" (Bies & Tyler, 1993, p. 120)).

The legal claims also relate to organizational behaviour or activities within the organizations. A large proportion of studies have examined shareholder class-action lawsuits, alleging misconduct. Others have investigated employee discrimination lawsuits (Andrus et al., 2019; James & Wooten, 2006), environmental violations alleged by activist groups (Kassinis & Vafeas, 2002), medical malpractice claims (Ransbotham et al., 2021), as well as labour and contract disputes(Shaver & Mezias, 2009).

The nature of the claims and legal issues raised in these lawsuits was usually negative, alleging misconduct, incompetence, and other corporate misbehaviour. For example, Bonini et al. (2022) and Hutton et al. (2015) used shareholder class-action lawsuits as proxies for misconduct by top management teams. Other studies have used employee discrimination lawsuits (e.g., James & Wooten, 2006) and environmental violations (e.g., Kassinis & Vafeas, 2002) as evidence of corporate behaviour that disregards the social good. Organizations may also

be sued due to corporate negligence or incompetence. Shaver and Mezias (2009) identified six types of lawsuits that most directly capture the possibility that a organization is not acting prudently and would be a manifestation of control loss. These categories were personal injury, product liability, other torts, labour disputes, environmental violations, and contract disputes (Shaver & Mezias, 2009).

2.3.1 Exogenous Shock

Litigation in this stream is a significant source of environmental uncertainty and is attributed to the lack of clarity or predictability regarding the outcomes of litigation as well as the frequency and variety of lawsuits facing the organization. Even though lawsuits and litigation risks are endogenous in origin, they are treated as exogenous shocks that can materially and negatively affect organizational performance. For example, Andrus et al. (2019) described lawsuits as reputational shocks that preceded an increase in turnover in the top management team the year following a lawsuit against the organization. Crane and Koch (2018) suggested that lawsuits are frivolous on average, amounting to a method in which plaintiffs extract wealth from the owners of an organization (e.g., Hellend, 2006 as cited in Crane & Koch, 2018). Thus, lawsuits may be completely unexpected, since they are initiated without warning by external parties, and how they are resolved is often beyond the control of the company.

2.3.2 Impact on Organizational Performance

Organizational performance is negatively impacted due to the unanticipated diversion of resources from value-creating activities to the resolution of legal conflict and unpredictable outcomes. The uncertain conditions brought on by litigation demand more information processing to convert environmental ambiguities into manageable risks (Bao et al., 2014). This is supported by empirical studies; lawsuits are disruptive and expensive not just because of legal costs and settlement amounts, but more so due to the indirect losses usually associated with the reactions of key stakeholders, such as shareholders and key management. For example, there is evidence that organizations will experience negative publicity and increased capital costs (e.g., Tan, 2016), more executive turnover (Andrus et al., 2019), and a loss of market

value (Hutton et al., 2015; Uribe et al., 2020). The perception of lawsuits among stakeholders was found to negatively impact organizational performance. Investors tend to view lawsuits as high risk (Eesley et al., 2016), and managers may become overly cautious and initiate strategies that constrain the organization and inhibit innovation even when there is very little litigation risk (Posthuma, 2012). In addition, organizations need also be concerned about protracted and contentious lawsuits, leading to lingering constraints on time and resources (Ransbotham et al., 2021) and lost economic value for shareholders (Cohen et al., 2019; Uribe et al., 2020).

A few studies have considered how litigation improves organizational performance by working as an incentive to discourage corporate malfeasance and misbehaviour through the fear of exposure(Crane & Koch, 2018). More broadly, litigation has been suggested as an effective mechanism for well-functioning markets. Bakos and Dellarocas (2011) demonstrated that lawsuits reduced the likelihood of organizations skirting their contractual obligations more efficiently than attacks on corporate reputations through social media, concluding that litigation can be an effective incentive for efficient economic outcomes. However, it has been suggested that litigation may be too much of a blunt instrument [1] that deters investments in innovation and constrains managerial discretion (Lin et al., 2021) or may induce excessive effort that reduces economic efficiency (Bakos & Dellarocas, 2011).

Bakos and Dellarocas (2011) examined whether an online reputation or litigation was more efficient in inducing buyers and sellers to fulfill their contractual obligations, both mechanisms for well-functioning markets. Using game theory, they found that being sued (or traditional litigation) served as a better and more efficient incentive for economic outcomes (i.e., more effort to fulfill their obligations), but that using litigation and an online or Internet-enabled reputation increases the litigation effect but may induce excessive effort that reduces economic efficiency (Bakos & Dellarocas, 2011).

[1] According to Websters dictionary, a *blunt instrument* is a method that uses too much force, so that in achieving a particular aim or objective, it also causes more harm or trouble.

2.3.3 Firm-level Strategies

The focus of this stream is to examine events and conditions that increase litigation risk by either exposing corporate misconduct and incompetence or increasing the perception of such activity among stakeholders.

Organizations are more likely to be served with lawsuits during critical moments in periods of uncertainty in the organizations environment. For example, Donelson and Hopkins (2016) found that companies were likely to be sued within five days of disclosure during significant market declines. Lumineau and Oxley (2012) found that exchange partners are likelier to resolve matters in court if cooperative norms do not work out during the tenure of the exchange relationship. Shaver and Mezias (2009) demonstrated that acquired organizations faced a significant increase in lawsuit judgment after being acquired, which they attributed to the existence of diseconomies of managing.

An increase in litigation risk has also been attributed to organization characteristics such as the political culture (Hutton et al., 2015) or amount of foreign ownership(Mezias, 2002), as well as the number of inside directors (Kassinis & Vafeas, 2002; Kesner & Johnson, 1990), tenure of board members (Bonini et al., 2022), and compensation gaps between the chief executive officer and the top management team (Shi et al., 2016). Hopkins et al. (2015) found that when the general counsel was one of the top five officers in terms of compensation, the organization tended to face a higher frequency of lawsuits. The authors reasoned that there was a relationship between the level of compensation and the independence or professional judgment of the general counsel; the higher the compensation, the less that general counsel acted as a *gatekeeper* (Nelson & Nielsen, 2000), leading to lower financial reporting quality and more aggressive accounting practices, including the management of the litigation reserve (Hopkins et al., 2015).

The objectives of the litigation strategies suggested in this literature stream focused on reducing litigation risk or limiting the time to resolve the lawsuit, thus reducing or even eliminating an organizations dependence on the legal system. Most studies have explored investing in internal resources or strategies that act to buffer uncertainty in the environment by improving

governance and organizational policies or creating risk management programs that diversify or transfer litigation risk. For example, large organizations have been found to reduce the liability arising from employees exposure to hazardous materials by using many small production firms downstream (thus transferring the risk to these smaller companies; (Barney et al., 1992). Corporate social responsibility, in which an organization goes above and beyond legal compliance as a good corporate citizen, acts as an insurance-like mechanism that increases organization value by reducing an organizations litigation risk but also mitigating costs typically associated with lawsuits by resolving them more quickly (Barnett et al., 2018; Koh et al., 2014). Barnett et al. (2018) also found that litigation risk or prolonged litigation was associated with involving lawyers from the organizations in-house legal department or from an outside law firm with which the organization has a long-term relationship.

Two studies examined factors that may affect the time it takes to resolve litigation, thus affecting exposure to uncertainty from the litigation process. For example, data generated by information systems were found to improve the time needed to resolve litigation. Ransbotham et al. (2021) found that electronic medical records dramatically reduced the time needed to resolve medical malpractice claims by an average of four months. Lawyers, however, were found to engage in activities that tended to prolong litigation. That is, lawyers will engage in uncooperative behaviours in court to distance themselves from opposing lawyers who are former collaborators, resulting in longer, more contentious litigation and lost economic value for clients (Lumineau & Oxley, 2012).

2.4 Litigation Risk as Strategy

In contrast to the previous stream, studies in this stream of literature focus specifically on patent litigation in the semi-conductor, pharmaceutical, and smartphone industries. Organizations in high-tech industries tend to face higher litigation rates because they derive more of their value from growth options than from tangible assets and are at risk of being targeted by lawsuits from rivals (Clarkson & Toh, 2010) or increasingly non-practising entities (NPEs) that exist only to troll for patents (Cohen et al., 2019). Hence, litigation is a means of managing uncertainty that is endogenous within the industry or market, although the dynamics that

set the conditions for the threat of misappropriation are exogeneous and not specific to the industry (Rudy & Black, 2018).

2.4.1 Endogenous Expectation

This literature examines the role of litigation in reducing uncertainty in an organizations environment. Organizations will initiate lawsuits (or counter-lawsuits) to enforce or protect valuable patents; for example, organizations will use litigation to establish barriers to market entry (Rivette & Kline, 2000), keep knowledge within a organization, and discourage rivals from hiring key employees (Agarwal et al., 2009). In this context, organizations depend on the legal system to resolve disputes, and the ability to mobilize the legal system to protect valuable assets is critical to organizational performance. Therefore, studies in this literature are less concerned with avoiding lawsuits, but rather emphasize access to critical legal resources to influence the strategic decisions of (potential) rivals.

Accordingly, an organizations ability to mobilize the legal system to protect its strategic assets is critical for organizational performance. Investments in legal resources are held to signal the organizations intention and ability to protect its strategic assets, which increases the risk of litigation for competitors. Any change in access to these legal resources can make the organization vulnerable to the misappropriation of intellectual property by rivals. For example, Ganco et al. (2020) found evidence that an organization became vulnerable to an attempt by a NPE to extract valuable assets when the organizations external legal firm was dissolved.

2.4.2 Impact on Organizational Performance

The resources needed to innovate are critical to the organizational performance of industries in this stream. The literature provides evidence that there is a relationship between litigation risk and innovation and that potential legal costs and outcomes play a role in investment decisions regarding innovation. For example, Jones et al. (2021) found that when new laws established additional criteria for shareholderderivative lawsuits, the reduced threat of shareholder litigation was demonstrated to have incentivized organizations to increase their innovation activities and increase the value of patents Mezzanotti (2021) found that innovation increased

after the court lowered the litigation risk by effectively reducing the potential cost awards for plaintiffs. Other studies concluded that the litigation risk for companies decreased when a new law increased judicial independence and reduced the ability of incumbent companies to use court connections to win lawsuits (Conti & Valentini, 2018). However, the threat of misappropriation usually results from market conditions. An organization will be likelier to initiate a lawsuit against a rival that shares the same markets due to the perceived or actual imitation of the organizations products (Theeke & Lee, 2017) or when a new rival enters the market with a product that threatens an organizations market share (Howard et al., 2017).

The literature also examines how the ability to mobilize the legal system can impact innovation. For example, (Ganco et al., 2020) conducted a study that revealed a strong association between a decline in an organizations ability to initiate or defend against IP litigation and a temporary reduction in technological diversification. This study defines *litigation ability* as an organizations ability to initiate IP litigation, which is measured by the availability of the organizations usual IP law firm. If the law firm is unavailable (in this case, due to the dissolution of the law firm), the organization is likely to slow its expansion into new technological domains for fear of legal retribution from rivals. The findings highlight the proactive role of litigation ability not only in protecting the organizations existing IP but also in reducing uncertainty in the organization's environment.

2.4.3 Firm-level Strategies

Few studies have examined the investments that organizations make in legal resources that facilitate the mobilization of the litigation process. Lawyers were critical resources in these studies. For example, Conti and Valentini (2018) suggested that organizations may develop a judicial advantage when their lawyers frequently engage the court. Sytch and Kim (2021) examined how lawyers social connections to the judiciary improved litigation outcomes, and Ganco et al. (2020) found that timely access to legal representation was critical for mobilizing the legal system.

According to Conti and Valentini (2018), incumbent organizations possess a judicial advantage owing to their prior experience in establishing connections with the judiciary. This ad-

vantage allows them to credibly threaten litigation against rivals or new entrants, thus increasing litigation risk in the market. However, a change in the institutional environment enhanced judicial independence, reduced litigation risk, and promoted entrepreneurship while increasing uncertainty for incumbent organizations (Conti & Valentini, 2018).

Sytch and Kim (2021) found that organizations increased their likelihood of winning legal cases by utilizing social connections between their lawyers and judges established through past educational and professional affiliations. These social connections enabled lawyers to tailor their communication style to match that of the judge, leading to favourable outcomes. Moreover, by strategically selecting legal jurisdictions, organizations can exert influence on the judges discretion, achieving distinct legal outcomes within the same legal environment.

According to Cohen et al. (2019), an organizations readiness (and ability) to stave off NPE litigation impacts the likelihood of being sued or targeted by NPEs in the intellectual property space (Cohen et al., 2019). The organizations ability to fend off NPEs was a function of the size of its legal team and the number of ongoing lawsuits in which it is involved. For example, the likelihood of becoming a target lessened when the organization retained a large number of lawyers and its time and resources were not constrained due to a large number of lawsuits. Conlon and Sullivan (1999) suggested that large legal teams may deter NPEs, as they can be perceived as a sign of strength and willingness to defend against litigation.

A few studies have examined how anticipating and preparing for litigation eventually reduces an organizations dependence on the legal system. For example, organizations that invested in internal resources, such as in-house patent attorneys to file patents rather than external law firms, reduced the likelihood that the organizations would need to initiate litigation to enforce the patent against competitors (Reitzig & Wagner, 2010). Another study found that litigation rates in an industry were influential in rivals strategic decisions to exit the market (Paik & Zhu, 2016).

Litigation experience and reputation deterred other organizations from misappropriating value from the organization and working to reduce the organizations dependence on the legal system. For example, in an earlier study, litigation experience signalled to other organizations

that they would incur litigation costs if they infringed on the organizations patents; *litigation experience* was defined as the organizations ability to proficiently manage legal disputes, which was a function of the ability to detect patent infringements, navigate different courts and the corresponding processes, and effectively handle settlements and trials(Ganco et al., 2015, citing Siegelman & Waldfogel, 1999). Somaya (2003) found that organizations that initiated lawsuits could develop and leverage litigious reputations that reduced the frequency of lawsuits. Agarwal et al. (2009) found that possessing a reputation for litigiousness, measured by the number of lawsuits initiated by the organization relative to its competitors, deterred rivals from hiring former employee inventors.

2.5 Remaining Issues in the Literature

A review of the management literature revealed two distinct streams that contrast in their approaches to examining the litigation process. The first stream examines lawsuits filed by non-corporate plaintiffs alleging misconduct or incompetence and measures the impact of such litigation on organizational performance through the reactions of key stakeholders. Conversely, the second stream concentrates on patent litigation between organizations and assesses the impact of such litigation on core activities in innovation.

The two streams also diverge in their strategies for dealing with litigation. The first stream considers litigation a source of uncertainty and recommends that organizations invest in resources to eliminate the litigation risk or resolve lawsuits as quickly as possible. The second stream, conversely, considers litigation an important tool for managing uncertainty, specifically, the threat of competitors misappropriating the value of valuable assets. Thus, organizations in this stream invest in resources necessary for mobilizing the legal system to increase the litigation risk for competitors and other potential rivals. Consequently, while a lawsuit is a source of organizational uncertainty, it is also a means to manage uncertainty in the environment, mostly by increasing the litigation risk for competitors and influencing their strategic decisions. But ultimately, the strategies of both perspectives have the same goal of reducing dependence on the litigation process.

2.5.1 Litigation as Uncertainty

These two streams differ in how litigation is perceived. In the first stream, litigation is considered a rare event that falls outside the realm of the organizations everyday experience, while in the second stream, litigation is perceived as a necessary means to protect against uncertainty and is, thus, considered a regular part of business operations (e.g., Agarwal et al., 2009). However, both streams generally view litigation as a negative, public, and costly event that threatens the stability of the targeted organization (e,g,, Barney et al., 1992; Somaya, 2003).

Correspondingly, a lawsuit is a source of environmental uncertainty that thrusts the defendant organization into an expensive, time-consuming, and distracting organizational crisis (James & Wooten, 2006). As such, it is a strategic concern since it can significantly affect organizational performance due to the exposure to operational and financial risk, presumably due to the uncertainty caused by the litigation process and the potential legal outcomes (Rudy & Black, 2018; Theeke & Lee, 2017).

2.5.2 Litigation Risk or Litigation Exposure

Organizations face significant strategic concerns due to their exposure to the operational and financial risks resulting from litigation. The uncertainty caused by litigation demands more information processing to convert environmental ambiguities into manageable risks that divert resources from value-creating activities (Bao et al., 2014). However, in reviewing the literature, the duration of the uncertainty resulting from the diversion of resources is seemingly more important than the form and substance of the resolution. For example, several studies have used the filing of a shareholder class-action lawsuit as a proxy of corporate misconduct despite the lack of a final determination at court or otherwise, implying that liability is presumed and that any uncertainty for the lawsuit is attributed to the time it takes to resolve the extent of the liability (e.g., Bonini et al., 2022). (Uribe et al., 2020) examined how the market reacted to how long it took to resolve the case at trial or appeal but did not examine whether the market was concerned about the favourability of the courts decision. Both streams in-

cluded studies that examined how specific resources influenced the time it took to resolve the lawsuit but not how these resources affected the favourability of the final resolution. For example, technology was found to shorten the time to resolution (Ransbotham et al., 2021), while lawyers were influential in how contentious and prolonged the lawsuit was (Cohen et al., 2019; Lumineau & Oxley, 2012). However, none of these studies investigated how these resources altered how the lawsuit was resolved or how they may have improved the probability of a favourable agreement.

2.5.3 Economic Outcomes

These two streams are mostly concerned with the financial impact of litigation on organizational performance.

The empirical studies reviewed have shown that lawsuits are disruptive and expensive not just because of legal costs and settlement amounts but more so due to the indirect losses such as negative publicity or increased capital costs (e.g., Tan, 2016), less innovation (Jones et al., 2021; Mezzanotti, 2021), executive turnover(Andrus et al., 2019) and loss of market value (Hutton et al., 2015; Uribe et al., 2020). As well, organizations need also be concerned about more protracted and contentious lawsuits, leading to lingering constraints on time and resources (Ransbotham et al., 2021) and lost economic value for shareholders (Cohen et al., 2019; Uribe et al., 2020).

These studies generally conclude that litigation brings conditions of uncertainty that demand more information processing to convert environmental ambiguities into manageable risks, diverting resources from economic value creating activities to the resolution of the legal conflict (Badawi & Webber, 2015). Thus, the rational decision according to the literature is to avoid these conditions by investing in strategies that reduce the litigation risk for the organization.

2.5.4 Conceptual Model of Litigation

Although these two themes in the literature seem at odds, they share the same assumptions about the litigation process; a review of these studies suggests that there is an implicit ground-

ing of assumptions in an economic model of the litigation process. In the economic model, the nature of the decision process is oriented toward economic goals, with the objective to maximize utility or expected outcome (Cooter & Rubinfeld, 1989; Posner, 1974). Decisions are constrained by uncertainty and are subject to the bounded rationality of the parties (Cooter et al., 1982; Posner, 1974). Thus, the objective of any legal system is to reduce uncertainty and promote efficiency in decision-making and does so by incentivizing behaviour that maximizes utility and determines the allocation of risk (Van Waarden, 2001). In the context of civil litigation, the laws governing the process aim to create an environment that encourages settlement while maintaining fairness and efficiency; these *rules of civil procedure* are the rules, principles, and practices by which civil (non-criminal) disputes are resolved according to the law (Semple, 2021). By setting timelines and requirements for the exchange of information and evidence, these laws help streamline the litigation process and prevent unnecessary delays, promote the efficient use of judicial resources, and reduce the burden on the court system.[2]

Civil litigation rules typically require parties to engage in pretrial procedures, such as pleadings, discovery, and motion practice (Semple, 2021). These procedures aim to facilitate the exchange of relevant information and evidence between the parties. By encouraging full disclosure of facts and evidence early in the process, these rules promote transparency and enable parties to assess the strength of their case. This, in turn, often leads to a better understanding of the risks and benefits associated with proceeding to trial, encouraging parties to consider settlement and avoid the costs and uncertainties associated with a trial. Thus, this model assumes that information asymmetries between the litigating parties, rather than resources, drive the decision to resolve the lawsuit at trial rather than in private settlement (Hylton, 1993). It then follows that the prevailing party can be said to have correctly predicted the outcome of the lawsuit with the information available.

In the management literature, the litigation process is implied to be a closed system, isolating decisions and outcomes within the process from extralegal factors that may influence the

[2]The rules of civil procedure refer only to form and procedure, and not to the substantive law which gives the right to sue or defend a lawsuit.

process. The rules or laws governing the litigation process are presumed to lead to fair and accurate outcomes decided on their merits, by ensuring a level playing field that supports an efficient exchange of information between the litigants to reduce the associated uncertainty about the outcomes from litigation. Since the rules are set to encourage settlement, the trial is characterized as exogeneous to the litigation process and the result of the failure of the parties to negotiate a settlement, due to information asymmetries, rather than due to differences between the litigants in terms of resources, expectations of trial outcomes, and the stakes involved in the litigation (i.e., the amount of money at risk) (Cooter & Rubinfeld, 1989; Priest & Klein, 1984).

2.6 Conclusion

The purpose of this review was to examine how litigation is represented in the management literature. It is clear from the research reviewed that litigation is considered an expensive, time-consuming process with unpredictable outcomes. The literature in both streams targeted the initial filing of a lawsuit, even though every lawsuit has the potential to be tried and decided by a judge or jury. A trial is a penultimate event in the litigation process, and decisions during the litigation process consider the risk of going to trial, resulting in parties agreeing to settle rather than leaving the resolution to a judge or jury (Cooter & Rubinfeld, 1989).

This focus on what increases the risk of litigation suggests a lack of appreciation in the management literature for the strategic value of trial outcomes and how organizational resources may influence outcomes in court. Since studies in this literature focus on the impact on the organization when the lawsuit is filed and how long the lawsuit takes to resolve, it is implied that the plaintiffs claims have some merit or that a trial is too expensive and unpredictable, despite evidence that organizations are often successful in getting these claims dismissed in court. For example, Crane and Koch (2018) suggested that lawsuits are frivolous on average, amounting to a method in which plaintiffs extract wealth from the owners of the organization (Hellend, 2006 cited in Crane & Koch, 2018).

However, trials are often necessary to resolve a lawsuit, and the outcome of a trial can signif-

icantly impact organizational performance for better or for worse, depending on the terms of the courts decision. As introduced in Chapter 1, there is anecdotal evidence that organizations are more willing to resolve lawsuits at trial and are investing in litigation strategies that enhance the favourability of trial outcomes. Hence, as stated, the purpose of this dissertation is to gain a better understanding of the impact of trial and trial outcomes on organizational performance and how organizations manage the uncertainty that accompanies these events. For the dissertation, I adopt the model of litigation discussed above. For the studies in Chapter 3, I hold the assumptions constant and examine how the market value of an organization may be impacted by the decision to resolve the lawsuit at trial and the courts decision. However, for the studies in Chapter 4 and 5, I examine how asymmetries between the litigants legal resources, and ability to mobilize these resources, improve the organizations ability to select the cases with the highest probability of winning the trial.

Chapter 3

Market Reactions to Decision Outcomes

As discussed in Chapter 1, the litigation process and its outcomes can have a significant impact on organizational performance. Much of the empirical research in the management and economics literature has examined how an organizations wealth is affected at the start of a lawsuit and at the announcement that a private settlement has been reached. Studies have shown that the start of a lawsuit has a negative impact on organizational value, which is not recovered even when the organization can avoid a court trial and resolve the matter privately. Scholars in these studies have attributed this change in wealth to the uncertainty associated with litigation outcomes (See Bhagat & Romano, 2002a, for a comprehensive review). In contrast, how organizational wealth or performance is influenced when a lawsuit is resolved in court has not been researched in the management literature. Therefore, the purpose of this chapter is to discern how an organizations performance may be altered at the start of a trial and then when the trials decision is announced.

3.1 Sources of Uncertainty Associated with Trial

Litigation can have a significant impact on organizational performance. Not only do firms incur substantial legal penalties, legal and court fees, and other procedural expenses throughout a lawsuit, but they also sacrifice valuable managerial time and effort as firm executives focus on resolving legal disputes. As litigation continues, these inputs mount, accumulating in an exponentially more expensive trial regarding both financial and public exposure with unpredictable outcomes (Hutton et al., 2015; Uribe et al., 2020).

In the management literature, the reactions of key stakeholders have been examined due to their potential impact on organizational performance. For example, studies have examined

how the start of a lawsuit impacts executive turnover (Andrus et al., 2019), negative publicity (Tan, 2016), and managers innovation investments (Posthuma, 2012). However, the reactions of an organizations shareholders have been the most frequently studied (e.g., Hutton et al., 2015; Uribe et al., 2020).

The stock price of a publicly traded company is often cited as a common and readily available proxy in the literature for evaluating the impact of organizational activities on future cash flow and earnings potential (Hutton et al., 2015; Uribe et al., 2020). Changes in the organizations value are attributed to shareholders' expectations about the organizations growth prospects and future performance that may reduce or increase dividend payouts or stock value (Bhagat & Romano, 2002a, 2002b, 2007). These abnormal changes to an organizations stock market price influence the companys financial performance, reputation, and ability to raise capital (Arena & Ferris, 2017, 2018; Kim & Skinner, 2012).

3.2 Stock Price Returns

Studies have measured the stock price reaction as a proxy of the present value of future cash flows or the associated costs based on information arising during the litigation process (Bhagat & Romano, 2002a, 2007) based on the following assumptions:

- The market is reasonably efficient with regards to information within the litigation context (Malkiel, 2003).
- The market considers all publicly available information and does not interpret these events in isolation but as sequential and conditional events (Malkiel, 2003).

Market-based measures for firm performance reflect a firms current and future financial performance, amounting to the present value of future streams of income. In the context of stock prices, this refers to the discounted value of future dividends or other cash flows that the company is expected to generate. The market efficiency hypothesis holds that current stock prices reflect all available information in past prices and that market prices should only react to new information or changes in discount rates (Malkiel, 2003).

Thus, any change in stock prices when the trial decisions are released is evidence of the market adjusting to new information about the future streams of income based on information associated with the litigation outcome and reflects the markets expectation regarding potential subsequent outcomes or events that may impact the organization's wealth (Narayanamoorthy & Zhou, 2016). Furthermore, the market interprets trial events and outcomes as sequential and conditional events; in other words, the markets also consider these current litigation events in the context of past litigation events (Malkiel, 2003).

3.3 Prior Studies of Market Reactions to Litigation Events

Empirical studies in management, economics, finance, and accounting have extensively assessed the potential impact of the filing and settlement of a lawsuit on organizational value (Bhagat & Romano, 2002). Announcements of lawsuits and settlements have been the two most studied events, perhaps due to the heightened uncertainty that accompanies a lawsuit and the presumed desirability of settlements avoiding public proceedings in trials (Tan, 2016).

3.3.1 Market Reaction to Lawsuit Announcements

The announcement of a lawsuit has a negative effect on the defendant firms market value. For example, a study of 355 lawsuits reported in the *Wall Street Journal* over a three-year period found that defendant firms lost an average of 0.92 percent of their equity and an average decline in shareholder wealth of 1.5 million USD (a median of 2.51 million USD) in the market when the lawsuit was filed. The plaintiff firm did not experience any changes in equity (Bhagat et al., 1994), These findings have been replicated in several studies in different contexts: antitrust lawsuits (Bizjak & Coles, 1995), securities lawsuits (Gande & Lewis, 2009), class-action lawsuits (Narayanamoorthy & Zhou, 2016), and international contexts (Arena & Ferris, 2018).

Scholars have theorized that declines in the market value for a defendant firm are associated with the markets anticipation of the direct and indirect costs incurred during and after the lawsuit. Abnormal stock returns are attributed to future organizational uncertainty due to

the likelihood of additional lawsuits, court-imposed constraints, higher transaction costs with suppliers, and greater difficulty in obtaining financing. Shareholders of the defendant firm anticipate potential losses created by direct costs, possible penalties, and pecuniary damage awards, as well as indirect costs, such as the loss of managerial focus or damage to a firms reputation, affecting its future ability to negotiate with suppliers and buyers, as well as secure adequate financing (Arena & Ferris, 2017; Arena & Julio, 2015). Narayamoorthy and Zhou (2016) also suggested that the resources forfeited to settle or adjudicate a lawsuit are important indirect costs.

As for plaintiff firms, there does not appear to be a change in market value upon making a claim against a defendant. In general, the plaintiff firm does not experience a statistically significant increase in market value (Bhagat et al., 1994), with one exception. In a study of antitrust lawsuits, Bizjak and Coles (1995) found that plaintiff firms experienced a statistically significant positive, albeit small, stock market reaction at the time of the filing of the lawsuit, suggesting that shareholders approved of the intention to deal with an exogeneous source of uncertainty.

3.3.2 Market Reactions to Private Settlement

Studies have mostly found that defendants will experience an increase in market value upon the announcement of a settlement (Bhagat et al., 1998; Koh et al., 2014; Koku, 2006; Narayanamoorthy & Zhou, 2016). A few studies that have compared the defendants wealth at the time of filing to the time of settlement, controlling for confounding events that may account for changes in value between the two events, have demonstrated that a defendant firm will experience a larger increase in abnormal market returns relative to the returns for the plaintiff that offset the initial losses when the suit was filed (Koh et al., 2014; Koku, 2006; Narayanamoorthy & Zhou, 2016).

Two studies provided contrary results. For example, Bhagat et al. (1998) found that defendant firms benefit from a significant positive market reaction only when a settlement is reached with another business but not when the settlement is with government or individual plaintiffs. (Haslem, 2005) also discovered that the market reacted negatively to defendant firms upon

the announcement of a settlement, theorizing that, in some cases, the market anticipated or preferred the matter to be decided in court due to potential agency costs. Consequently, the market may have been monitoring a public trial to monitor the CEOs performance and correct the moral hazard. Thus, the market reacts negatively when a firms agents settle the lawsuit, possibly to protect their interests and keep information about their private performance from shareholders (Haslem, 2005).

This is also the case for plaintiff firms when the market learns that a settlement has been reached. For example, plaintiff firms do not experience a significant increase or decrease in market value (Bhagat et al., 1998; Koku & Qureshi, 2006). Some scholars have suggested that settlement amounts and awards to plaintiff firms have failed to provide any direct benefit to shareholders, often only covering the fees and costs of pursuing the claim, resulting in little or no notable impact on shareholder wealth for the plaintiff firm (Bhagat et al., 1994; Cutler & Summers, 1987; Engelmann & Cornell, 1988; Romano, 1991). However, Narayamoorthy and Zhou (2016) found that plaintiffs experienced a positive market reaction of 5.75 percent when the lawsuit was settled when accounting for the relative litigation stakes and the financial distress of the plaintiff. This supports the theory that the primary benefit of settling a lawsuit is the unexpected relief from financial distress costs or the greater probability of bankruptcy, a theory that usually explains positive stock reactions for defendants at the settlements announcement (Bhagat et al., 1994).

3.3.3 Market Reactions to Trial and Trial Outcomes

Cutler and Summers (1987) were among the first to investigate the financial impact of litigation during the infamous lawsuit between Texaco and Pennzoil and concluded that there was no marked economic return for the plaintiff, given the investments made by litigating parties, since the slight increase in Pennzoils market value did not offset the decline in Texacos. Englemann and Cornell (1988) confirmed these results in a case study of five high-stakes litigations.

Since then, very few papers have checked how firm equity changes when the courts have decided on matters. Karpoff and Lott (1999) found a -0.36 percent and -0.62 percent price drop

in responses to a judgment for the defendant and plaintiff, respectively. Haslem (2005) revealed a small positive reaction, on average, for the defendant when the judgment has been announced, noting that this positive result applies even if the defendant loses. Halsem (2005) does not examine whether these results apply to plaintiff firms.

Based on previous research on market reactions around the time of settlement, it is possible that the market reacts positively because the matter is resolved and the firm is relieved of any further investment in litigation (Bhagat et al., 1998). Unfortunately, Haslem (2005) was the only such study that hinted that the market would account for a trials outcome, despite an extensive search of the literature. This means that researchers currently know relatively little about how trial events impact organizational value.

3.4 Hypothesis Development

The implied assumptions in the management and other literature concerning litigation and organizational impact are arguably grounded in the law and economics literature, clearly adapting to a standard economic model of litigation and settlement (e.g., Posner, 1974), in which there are basically two critical decisions. The first moment is when the plaintiff files a lawsuit, and the second is when the defendant decides to settle or go to court. Each represents notable information events for the market, prompting a reaction from the organization and its stakeholders, which signals information about the merits or potential impact of the lawsuit. Here, these moments are sequential. The plaintiff files a lawsuit, and if the parties fail to settle, the matter continues to be resolved by the court. The formal litigation process is distinct from any informal settlement discussion. While settlement discussions are conducted in the shadow of the law, so the potential trial outcome or judgment is always part of the settlement equation, settlement discussions are not recorded in the court record (Cooter & Rubinfeld, 1989). The model of litigation is posited more as a bargaining problem with only two outcomes: a private settlement or a public trial. Thus, a trial results from bargaining problems in settlements that represent a bargaining breakdown (Cooter et al., 1982).

Although a court trial is an important event in a legal dispute, it consists of several discrete

moments that release all information to the public for shareholders and other stakeholders to consider. Trials involve several critical moments at which information is released to the public: the trials start date, at which point a settlement is assumed to no longer be an option, the conclusion of the trial after final arguments have been made, and the date the courts decision is released.

When parties go to court, the uncertainty escalates as the decision is left in the hands of a third-party adjudicator. There is also a sharp incline in costs, as parties are required to extend additional expenses to present the facts and law that favour their case to a third party (i.e., the courts), along with the additional social costs of administering the trial process. Therefore, going to trial is a failure in terms of economic efficiency, as litigants fail to maximize their utility due to the additional expense of litigating at court.

When a trial starts, the likelihood of a settlement is minimal (i.e., a point of no return), and it is likely that both parties have sunk significant costs into the trial. The start of the trial further signals that both parties are committed to their position and seeing the matter through to judgment. However, under economic assumptions, the odds are 5050 for either side, and as such, the uncertainty surrounding the outcome presumably increases for both parties. Much like the initial filing of the lawsuit, uncertainty about the associated costs and outcomes increases, prolonging litigation. The market reacts negatively to a contentious, prolonged lawsuit regardless of the outcomes favourability and how the lawsuit was resolved (Uribe et al., 2020).

Furthermore, a trial is a very public, adversarial, zero-sum contest decided by an independent judge or jury who relies on the information and evidence presented by the disputants, themselves. In contrast, a settlement negotiation may be much more cooperative, private, and flexible, allowing a mutually beneficial outcome for both sides. Thus, going to trial is a big moment in litigation, the moment when the lawsuit moves into an adversarial, public space from a private, cooperative one where the outcome is decided by an objective, neutral third party focused solely on the merits of either side.

Arguably, the decision to proceed to trial is value laden, as suggested by the conflicting results from studies that have examined the markets reaction to settlements and judgments (e.g.,

Haslem, 2005). There is evidence that the market will react positively when an organization settles a lawsuit, attributing this reaction to relief from financial uncertainty, but it may also be because the organization has conformed to the norm that a settlement is always the optimal resolution to a lawsuit. Other results have suggested that, at least in some cases, the market would prefer the matter to be resolved at trial, suggesting that the market has some sort of opinion on the merits of the case or perhaps has some sort of expectations of the organization. For example, it may be expected that the organization will defend its reputation in a slander suit against a social media campaign. The market may also react positively when a normally litigious organization takes a matter to court as its usual policy; any change to the contrary may elicit a negative market reaction, as it responds to a surprising change of strategy.

However, according to law and economics, a matter proceeds to trial if the parties cannot establish a bargaining surplus and/or agree on how the surplus is divided(Priest & Klein, 1984). This is attributed to some sort of failure for either party, as it is assumed that only the rarest cases should proceed to trial. Thus, the market will react negatively when the matter is not settled.

For the defendant, the market will react negatively, as the defendant has more expenses in addition to any damages awarded at trial. For the plaintiff, the market will react negatively as any damages awarded to the plaintiff will be offset by the expenses needed for the trial.

Hypothesis 1a: A defendant firms stock price declines at the start of a trial.

Hypothesis 1b: A plaintiff firms stock price declines at the start of a trial.

The literature examining market reactions to filing and settling announcements does not distinguish between a successful or unsuccessful litigant, where one party may be viewed as the winner and the other as the loser. Instead, this prior research has treated plaintiffs and defendants as homogeneous, not accounting for the relative success of the parties upon the resolution of the lawsuit.

Corporate litigation at a trial may benefit shareholders due to the information often revealed at trials. Trials may allow shareholders to better evaluate the conduct, abilities, and judg-

ment of the management and to create a more accurate assessment of the liabilities faced by the firm due to managerial decisions (Haslem, 2005). Of course, this assumes that the market views the decisions of the courts as accurate and unbiased, such that final decisions are viewed as less likely to be manipulated by management or other extralegal influences.

Haslem (2005) compared the markets reaction to defendant firms that settled privately to defendant firms that proceeded to trial and found that the market reacted more positively to the judgment, even when the defendant firm lost, than to the announcement of a settlement. Haslem (2005) concluded that settling a lawsuit privately relates to the potential for managerial opportunism. Accordingly, when there are potential agency issues, the market may view the judgment or decision by a third party (i.e., the judge or judge and jury) as honest or objective and, thus, less likely to be manipulated by management. Alternatively, the information produced publicly during the trial might affirm that the merits of the case, the abilities of the manager, or the quality of the organizations current projects confirm the markets estimated value of the organizations decision to fight the lawsuit.

At the time of the announcement of a judgment after a trial, the market will consider the outcome for the firms in litigation. The firm that is successful at trial will see an increase in its market value (as the *winner*), and the firm that is unsuccessful at trial will experience a decline in market value (as the *loser*).

> *Hypothesis 2a: The stock price of the prevailing organization will increase at the announcement of the court decision.*
>
> *Hypothesis 2b: The stock price of the unsuccessful organization will decrease at the announcement of the court decision.*

The market will also account for unexpected outcomes for the firms based on the position or role of the firm in the litigation (i.e., whether the firm was a plaintiff or a defendant).

At the time the lawsuit is filed and announced, defendant firms experience a much larger decline in shareholder wealth than plaintiff firms (Bhagat et al., 1994; Bhagat et al., 1998; Bizjak & Cole, 1995), perhaps due to the nature of the information included in the claim filed

against the defendant.

Since the market appears to account for the position or role of the firm in litigation, it is possible that the market will reward a defendant firm differently from a plaintiff firm based on the final trial outcome. Thus, a defendant firm that successfully defends against the claims of the plaintiff at trial will see a larger increase in market value compared to a plaintiff firm that is successful, and a plaintiff firm that is unsuccessful in asserting its claim will experience a larger decline in market value than a defendant firm that was unsuccessful.

> *Hypothesis 3: The partys position in the lawsuit mediates the relationship between the abnormal market returns and the court decision.*

In this chapter, I examine how trial and trial outcomes impact organizational performance by examining how shareholders react to the start of a trial and the favourability of the trials outcome. I predict that shareholders will react negatively to the start of a trial due to the escalated uncertainty about the final outcome and the extraordinary expenses but react positively to the news of a favourable outcome. In the next chapter, I examine how the ability of in-house litigations ability may improve the probability of winning at court by selecting the best cases to resolve at trial and, hence, augment the organizations performance.

Chapter 4

In-house Litigation Ability and Trial Outcomes

While most organizations continue to turn over litigation matters to external law firms, more and more are developing in-house litigation teams and departments to better control excessive litigation costs (Brown, 2018). To varying degrees, these firms include more litigators in their in-house legal department and lawyers with solid file experience who are also keen to robe up and go to court (Brown, 2018). The extent to which organizations develop litigation expertise varies widely. Some companies have employed one or two lawyers with a litigation background in private practice on smaller teams devoted to high-stakes cases. A few organizations have invested in large litigation teams resembling full-scale traditional law firms focused on high-volume caseloads and serving the organization and its customers.

The leaders of these departments cite the initial rationale for taking a more active role in litigation case management as obtaining better control over a growing litigation budget as lawsuits increase in volume, complexity, and severity (Brown, 2018; Saddleton, 2020, 2021). At the very least, using in-house litigators provides room for better decision making during the lawsuit, since the threat of escalating legal fees that accompanies external counsel is removed. Often, it is an escalating legal bill that may force an early settlement, even when it would be in the corporations best interests to resolve the lawsuit at trial.

However, these leaders suggest that the real value of bringing and developing litigation expertise and knowledge in-house extends beyond reducing the legal departments budget. Department leaders describe additional benefits, such as efficient and cost-effective case management with external counsel (when necessary), timely access to strategic information leading to better decisions during litigation, and subsequent improvements to policies, procedures, and systems that prevent litigation or position the company to win more cases (Brown, 2018;

Saddleton, 2020, 2021).

In the strategy literature, legal scholars often consider law the last untapped source of competitive advantage (Downes, 2004, p. 19 as cited in Bagley, 2008)) Such scholars have applied the resource-based view of the firm as a theoretical lens to identify higher-order constructs such as legal astuteness (Bagley, 2008), strategic astuteness (Bagley et al., 2015), and legal knowledge (Orozco, 2010), which may manifest into competitive advantages for the organization, such as buffering the organization from the disease of litigation (Siedel & Haapio, 2010, p. 644) or creating value with novel differentiation strategies that leverage the organizations legal environment. Previous studies in the management literature have examined how engaging in litigation can result in intangible legal resources, such as litigation experience or a litigious reputation (Agarwal et al., 2009) that influences the strategic decisions of rivals. However, as discussed in Chapter 2, research has not yet considered how an organization, such as Walmart, uses the court to shape the legal environment to improve organizational performance. Few organizations can appreciate the strategic value of mobilizing the civil litigation process to manage uncertainty in their environment, as the most common organizational strategy is to retain external law firms in the event of a lawsuit. Thus, an organization that invests in acquiring and developing litigation expertise or knowledge in-house may have a competitive advantage since very few organizations can recognize and mobilize the potential strategic value of litigation and other opportunities in the legal environment (Bagley, 2008, 2015).

4.1 Lawyers as Critical Resources for Galanters (1974) *Haves*

Galanter's (1974) study on trial outcomes posited that asymmetries in resources between the litigating parties can influence trial outcomes. These resource-rich parties tend to be organizations with financial resources that allow the organization to invest in legal resources that can leverage critical information in selecting cases with a high potential for a favourable outcome at court (Galanter, 1974b, 2013).

Galanters (1974) study and studies that have followed (e.g., Songer & Sheehan, 1992; Songer et al., 1999; Wheeler et al., 1987) have empirically shown that organizations have an advan-

tage in court. Galanter (1974) theorized that this is because organizations have both the experience and the financial means to invest in resources to identify lawsuits with high odds of a favourable outcome in court. This theory has also been suggested in the management literature. Polidoro Jr and Toh (2011) reasoned that strategically selecting litigation cases and then exerting the appropriate effort may result in better outcomes at trial, which can be a competitive advantage. With repeated favourable outcomes at court, organizations may be able to shape their legal environment to their advantage over current and potential rivals (Galanter, 1974).

In these studies, organizations with an above-average win rate in court tended to have two common legal resources at their disposal because of financial resources: prior litigation experience and better legal representation (Galanter, 1974).

Other studies have shown that legal counsel is a critical resource during litigation (Conlon & Sullivan, 1999), though the evidence has been mixed about what individual factors make the lawyer more successful in litigation and at trial (e.g., Marvell, 1978; McGuire, 1995; Seron et al., 2001; Szmer et al., 2007). Studies have suggested that any variance in performance may not be attributable to the individual lawyer but to the lawyers work environment (Wheeler et al., 1987). For example, Wheeler et al. (1987) found that lawyers from a law firm have a relatively small advantage over solo practitioners at trial. In a more recent study by Szmer et al. (2007), litigants with relatively more *lawyer capability* (measured as a function of the total number of litigants and the size of the entire legal team representing the client) than the opposing party resulted in more successful appeals at the Supreme Court of Canada. These studies imply that litigation lawyers ability to influence favourable court decisions is not only a function of the individual lawyers knowledge and skill but also the opportunity to develop expertise through repeated interactions with other professionals (Hitt et al., 2001).

This litigation expertise may also be made more valuable when combined with firm-specific tacit knowledge. For example, this professional firm-specific expertise may explain why the success rates on appeal for all three levels of government in the United States are considerably higher than for even the wealthiest organizations (Galanter, 1974; Songer et al., 1999).

Government and corporate litigants are arguably on par with access to the sufficient resources needed to invest in the time, expertise, and effort it takes to successfully navigate a case from complaint to trial. However, as mentioned, government actors have a higher success rate than even the largest organizations (Galanter, 1974, p. 99). Governments usually employ in-house lawyers to represent them during litigation, including at trial. For example, the Department of Justice Canada may be considered one of the largest law firms in Canada, with over 5,000 lawyers and support staff involved in almost every area of law and responsible for all litigation by or against the government (Government of Canada, 2023). Government litigants may have an advantage in litigation because of their ability to mobilize litigation resources that combine legal and firm-specific tacit knowledge, which may improve decision making during the litigation process. Such tacit knowledge is difficult to develop without repeated interactions between professionals within the firm, and such frequent interaction is less likely when the organization is represented by an external counsel who likely has competing interests. Thus, it is difficult, if not impossible, for the external counsel to develop the same level of firm-specific knowledge as an in-house lawyer, even when the external counsel has represented the organization for many years.

Organizations depend not only on lawyers specialized knowledge and capability during trial but also on the availability of their legal team to take charge of the lawsuit without delay (Cohen et al., 2019; Ganco et al., 2020). For example, Ganco et al. (2020) found that organizations were vulnerable to rivals attempts to misappropriate valuable patents and other intellectual property when the organizations long-retained law firm exited the market or dissolved. The loss of tacit firm-specific knowledge that had accumulated in the exiting law firm increased the likelihood of the organizations rivals attempting to misappropriate value, since the organization could not quickly mobilize the necessary legal resources to initiate a lawsuit against the rivals (Ganco et al., 2020).

4.2 Conceptual Framework

According to the Resource-Based View (RBV) of the firm, variance in performance between companies can be attributed to the differences in the resources of the companies. Valuable,

unique, and difficult-to-imitate resources can provide the basis for a firm's competitive advantage (Amit & Schoemaker, 1993; Barney, 1991). These competitive advantages lead to above-average returns (Peteraf, 1993).

Organizations use tangible resources (such as buildings and financial resources) and intangible resources (such as human capital and reputation) to develop and implement strategies. Outside of natural resource monopolies, however, intangible resources are more likely to generate a competitive advantage as they are often scarce and socially complex and, therefore, difficult to imitate (see Barney, 1991; Peteraf, 1993). Furthermore, intangible resources are difficult to change except over the long term (Teece et al., 1997). Knowledge has long been identified as a critical intangible resource in most organizations (Pfeffer, 1994).

Knowledge is a combination of tacit knowledge and articulated knowledge. Tacit knowledge is developed by applying articulated knowledge and becomes embedded in uncodified routines, individual skills, and collaborative working relationships within the firm (Nelson & Winter, 1982 as cited in Hitt et al., 2001).

Such firm-specific, tacit, and explicit knowledge is usually embedded in human capital. The skills of these experts who can adapt and create better solutions will be especially valuable when critical resources are embedded in an exceptionally dynamic and complex environment (Miller & Shamsie, 1996).

4.3 In-house Litigation Lawyers

A recent stream of literature based on the scholarship of law professors teaching law in a business school posits the potential of legal resources to strategic resources, suggesting that the legal environment is relatively unexplored for sources of competitive advantage (Bagley, 2008; Bird, 2008; Orozco, 2010). However, according to these scholars, most companies view the law as a constraint to be ignored, challenged, or complied with, and a dramatic shift in the perspective or collective mindset of the organization is needed (LoPucki & Weyrauch, 2009; Masson & Shariff, 2011) . Merely having the right mindset toward the law is a competitive advantage unto itself (Bird, 2008, 2011; LoPucki & Weyrauch, 2009; Masson & Shariff,

2011; Orozco, 2016).

Subsequent studies have suggested several legal resources for a sustained competitive advantage. Bagley (2008) applied RBV to ground the legal construct of *legal astuteness*, a function of a managers legal knowledge and capability of integrating this knowledge into legal strategies that create or capture value for the organization. Orozco (2010) developed the firm-level construct of *legal knowledge*, a function of organizational attitudes toward the law and the firms ability to embed legal expertise into routines and processes. Other studies have examined how organizations use strategic contracts to support relationships with suppliers, buyers, and other stakeholders and reduce transaction costs, leading to organizational learning (Argyres & Mayer, 2007; DiMatteo, 2010). Lawyers can be a source of competitive advantage by demonstrating legal entrepreneurship (Evans & Gabel, 2013) and strategic astuteness (Bagley et al., 2015).

There have been several empirical studies that have examined the relationship between in-house lawyers and business processes. For example, Somaya et al. (2007) studied the interactions between internal resources related to the patenting process, by examining the number of patents filed by the organization as the dependent variable, and found that in-house patent law expertise (measured by the number of in-house patent attorneys) was a predictor of organization patenting performance. A supporting study in the same paper found that the direct effect of the in-house patent law expertise on the patenting process was moderated by the top management teams collective patent law background and the level of pressure in the industry to protect IP through patents (Somaya et al., 2007).

Hitt et al. (2001) found that partners in a law firm can be a competitive advantage through developing tacit knowledge that is then transferred to junior partners. Tacit knowledge is integral to the professional skills of a lawyer, and it is quite often unique, difficult to imitate, and uncertain. Tacit knowledge also creates a higher probability of creating strategic value. Professionals attain knowledge first through formal education and then by learning on the job (Hitt et al., 2001). They gain tacit knowledge and learn to apply articulated expertise and tacit knowledge through practice (Hitt et al., 2001).

Bagley and Roellig (2013) suggest that lawyers can constitute a competitive advantage if they have strategic astuteness. Strategic astuteness for a lawyer requires a set of value-laden attitudes, a proactive approach to business opportunities and threats, informed judgement, and context-specific knowledge of management, business, the law, and the appropriate use of both managerial and legal tools (Bagley, 2016, p. 142).

Strategically astute lawyers will exercise *informed judgement* which combines knowledge, wisdom, and technical skills to deal effectively with the uncertainties in the legal environment (Bagley, 2016, p. 452). Exercising informed judgement involves making effective, productive decisions and acting in multidimensional settings aligned with the task at hand and the organizations strategic objectives based on appropriate information. The lawyer will also consider the implications and consequences of the action or decision, including the expectations of all stakeholders.

Thus, exercising informed judgement during a trial involves considering the available information needed to assess the cases value. The lawyer also needs firm-specific information to consider the risk profile of the organization, the expectations of the managers and shareholders, as well as the past actions that may support the organizations case or defence. Moreover, the lawyer must weigh the cost and benefits of requiring more information or proceeding to trial (Polidoro & Toh, 2011).

4.4 Hypothesis Development

As discussed earlier in this chapter, Galanter (1974) suggested that asymmetries in resources between litigating parties influence trial outcomes. The party with the most financial resources, usually organizations, has the experience and the means to invest in critical legal resources that improve decision making during the litigation process.

According to the traditional economic model, parties make decisions during the litigation process using a purely economic calculus (Priest & Klein, 1984). This economic calculus posits that parties to disputes make decisions about a settlement or continued litigation based on the expected costs to parties of favorable or adverse decisions, the information that parties pos-

sess about the likelihood of success at trial, and the direct costs of litigation and settlement (Priest & Klein, 1984, p. 4). Information about the organization includes facts about liability or damages and the potential strategic importance of the claim to other current or future claims (Somaya, 2003).

Some organizations have made investments to acquire or develop litigation knowledge in-house. As such, knowledge is embedded in human capital (Hitt et al., 2001), which suggests that organizations will have at least one in-house counsel with a formal title that suggests they have responsibility for litigation matters involving the organization (with or without a formal legal department or litigation department).

This in-house counsel is responsible for vetting cases and developing and implementing the lawsuit strategy. The strategy may involve retaining an external law firm, but the in-house litigation lawyer will be called on to make decisions at critical moments during the lawsuit, including the decision between a private settlement and a court hearing. This in-house counsel leverages firm-specific knowledge with their legal knowledge to improve decision making throughout the litigation process. Hence, an organization with in-house litigation expertise has higher odds of a favourable court decision compared to an organization without such internal expertise. This is the case even when an external law firm is primarily responsible for managing the lawsuit.

Since such in-house counsel is embedded in the organization, it will have access to privileged information, which would provide a better understanding and appreciation of the potential strategic value of the lawsuit (Somaya, 2012). In addition, the knowledge acquired from the litigation process and its outcomes becomes embedded in the organization, creating further specialized knowledge. In the future, these in-house lawyers will also be likelier to anticipate potential legal issues earlier than external counsel, thus moving into a proactive role that would reduce the likelihood of a lawsuit (Siedel & Haapio, 2010). By being involved with preparing witnesses that are internal to the organization, in-house counsel can also develop the witnesses litigation skills, which can be leveraged in future cases or used to develop better risk management policies, as well as educate other departments within the organization about

legal issues and concepts (Bagley et al., 2015; Castanias & Helfat, 1992).

Hence, in-house counsel will have strategic knowledge about the organization at its disposal, allowing a more informed litigation strategy and better coordination with the external trial counsel when required. They will have tacit information about the organization and specialized knowledge about the best practices of the organizations industry, which can not only help identify the information that is necessary, but also put the information received into context. As they are embedded in the organization, they will be able to better monitor the organization for potential issues related to the case at the bar or potential cases and will have easier access to information. In-house counsel also can better assess the credibility of managers, better prepare employee witnesses, and better assist expert witnesses in incorporating firm-specific information.

Alternatively, an organization may invest in a lawyer employed by an external firm; such counsel will most likely specialize in litigation and have a portfolio of clients (Nelson & Nielsen, 2000). An external counsel will have a breadth of knowledge and experience, which may allow for spillover from other cases that can benefit the organization for the case at bar but will not have efficient access to firm-specific knowledge. Without efficient access to privileged firm-specific information, external counsel may not be able to appreciate the legal and strategic significance of the case if they are not able to leverage firm-specific knowledge of an internal counsel. As well, any knowledge that is gained from the litigation process is not fully embedded into the organization but is mostly acquired by the lawyer; the lawyer can leverage this knowledge to increase the value of other claims in their portfolio.

Decisions made by external counsel may be biased; external counsel may be more motivated to go to trial for other reasons that do not directly benefit the client organization, such as increasing the reputation of the external counsels law firm or the personal reputation of the external counsel. Perhaps expertise is leveraged for future lawsuits involving different organizations. In addition, the risk profile of the external counsel may be much higher than the risk profile of the organization. External counsel will likely have diversified their personal and law firm litigation risk among a larger and more diverse set of lawsuits and thus may be more

ready to take unique and novel legal issues to court, which may cultivate their reputation but put the organization at risk.

> *Hypothesis 4: The financial size of the organization is positively associated with the odds of a favourable court decision.*

> *Hypothesis 5: In-house litigation ability, represented by the presence of at least one in-house litigation counsel, increases the odds of a favourable court decision.*

> *Hypothesis 6: In-house litigation ability, represented by the presence of at least one in-house litigation counsel, mediates the relationship between an organizations financial resources and the odds of a favourable court decision.*

Information asymmetry drives the decision to resolve the lawsuit at trial or in private settlement; litigants that are better able to predict the outcomes of the trial based on the information available are more likely to win at trial (Galanter, 1974). In this chapter, I hypothesize that internal litigation ability, operationalized by the presence of a litigation department, improves the ability of the organization to select the cases that have the highest probability of winning at court. However, lawyers are not the only critical legal resource for the litigation process; the litigation process, especially trials, require a variety of legal resources, such as expert witnesses, physical courtrooms, judges and juries, that cannot be fully absorbed into the organization. In the next chapter, I examine how asymmetries in the ability to access and mobilize these external resources influence the favourability of the trial outcome.

Chapter 5

The Chief Legal Officer as Facilitating Advantage

As discussed in Chapter 2, access to legal resources is essential for organizations to engage effectively in the litigation process and improve their chances of success at trial. However, while some of these resources may be under the direct control of organizations, the inherently complex nature of litigation means that organizations must also depend on a wide range of external resources that are not entirely within their control. Such external resources may include laws, experts, witnesses, judges, and other resources that are controlled by the legal system or by external actors in an organizations environment.

The ability to mobilize these external resources directly impacts the capacity of in-house litigators to execute litigation strategies effectively. An in-house litigator is dependent on external resources for the necessary information and evidence to calculate the expected value of a court decision. The decision to proceed with a trial imposes demands not only on internal resources but also on the legal system, including judges, court administrators, physical locations, expert witnesses, and other relevant factors. The nature of litigation requires an organization to be dependent on the other party, the court, the laws, and the rules for the resources it requires to successfully defend its position at trial. Both the organization and the other parties in the litigation are dependent on the courts to administer the process, including enforcing the rules of procedure and resolving the conflict through a well-reasoned verdict or judgment.

Resource Dependence Theory (RDT) emphasizes external dependencies and the importance of relationships with external entities for organizational success. In this chapter, I propose that appointing a chief legal officer is a form of institutional interlock in which an organization means managing its dependence on the legal system to effectively mobilize resources that further improve the probability of winning at trial.

5.1 Conceptual Framework

In the preceding chapter, I employed RBV to hypothesize that organizations investing in in-house litigation departments and developing firm-specific litigation expertise would increase their likelihood of success in court trials. However, the application of the RBV in the context of litigation is limited, as it ignores the necessary external context of a lawsuit. As discussed in the previous chapter, many organizations have established in-house litigation departments to handle legal disputes and minimize legal costs. In the context of litigation, organizations rely on a publicly funded social system for resources, such as courts, judges, juries, and expert witnesses, which are external to organizations. While a firm may invest in developing an in-house litigation team, these teams still require external resources to effectively resolve legal disputes.

The RBV focuses on the internal development of resources for economic gain, but most organizations depend on the external environment for these resources. While a firm may in-source its litigation team, the team is still reliant on resources that are in the control of others in the environment. The in-house litigation team cannot operate in a vacuum; it still needs critical resources only available in the external environment, as well as the time and support of its own organization to prepare and present legal arguments.

The RBV implicitly assumes that organizations are able to attain or develop internal resources, which may manifest into an advantage that cannot be competed away by its rivals; it ignores that no organization will have control over the critical resources upon which it is dependent. Thus, the strategies available to organizations depend on their abilities to mobilize the necessary resources that are mediated by the environment (Casciaro & Piskorski, 2005). If the predictions of the RBV hold, organizations that can successfully leverage the litigation process to shape their legal environment to their advantage may prompt significant reactions from other stakeholders, including sanctions from governing bodies and reputational damage from being labelled a strategic bully (Orozco, 2016).

In summary, the RBV ignores the external context in which organizations operate and how

organizational resources achieve their objectives. In the context of litigation, the RBV overlooks dependence on external resources and the importance of the ethical use of the litigation process.

5.1.1 Resource Dependence Theory

According to RDT, organizations rely on external resources to achieve their goals, and the acquisition and management of these resources are critical for an organizations success (Pfeffer & Salancik, 2003). RDT proposes that organizations must secure resources from external sources to survive and grow. To do so, they must manage their interdependence with external actors, including suppliers, customers, and regulators, to maintain a steady flow of resources (Drees & Heugens, 2013; Hillman et al., 2009; Pfeffer, 1972). An organization with strategies that fit its environment will perform better due to its ability to manage dependence and get the resources it needs from the environment (Pfeffer & Salancik, 2003).

However, legitimacy mediates access to these resources; those who control the necessary resources must see an organizations objectives of litigation and how the organization achieves these objectives as legitimate (Pfeffer & Salancik, 2003). To access critical resources mediated by the environment, organizations strive for legitimacy, which is the perception that they are desirable, appropriate, and conform to societal norms and expectations. Otherwise, internal and external stakeholders may withdraw their support; thus, access to resources becomes tenuous, and attacks will occur (Pfeffer & Salancik, 2003). In this sense, RDT is grounded in both sociological and economic theory (Drees & Heugens, 2013).

5.1.2 RDT in the Litigation Context

According to RDT, organizations engage in strategies that reduce uncertainty around critical resources by either reducing their dependence on the resource or increasing their access to the resource. These strategies have been used to explain why organizations engage in strategic alliances, joint ventures, and board appointments; such interorganizational arrangements are thus primarily seen as instruments for reducing power imbalances and for managing mutual dependencies (Casciaro & Piskorski, 2005) between the focal organization and those parties

in its environment on whom it depends for critical resources (Pfeffer & Salancik, 2003).

Thus, a lawsuit may arise as a means to increase its control over resources or to maintain access to critical resources. For example, an organization may start litigation to protect against exploitation or misappropriation by a more powerful party in the resource exchange, such as when an insurance policyholder sues its insurance company to enforce the insurance company to fulfill its obligations as per the policys terms.

On the other hand, a large organization may be perceived as exploiting its power differential by refusing to settle the lawsuit to gain a favourable legal precedent. Such tactics could be viewed by the judge and the public as abuse of process and result in financial sanctions and a loss of credibility. Internal and external stakeholders may withdraw their support, and organizations may experience different forms of backlash (Pfeffer & Salancik, 2003). An effective litigation strategy should balance an organizations interests without compromising the objectives of the litigation process or risk losing legitimacy among its stakeholders.

5.2 Hypothesis Development

RDT suggests that organizations seek strategies that can help them improve their autonomy (Oliver, 1991) and legitimacy (Hillman et al., 2009; Pfeffer & Salancik, 2003).

Numerous research studies have explored different approaches to addressing organizational interdependencies. These strategies include board appointments, joint ventures, mergers, acquisitions, and in-sourcing, among others. (For a comprehensive overview, see Hillman et al. [2009] and Drees and Heugens [2013]).

These strategies are employed to manage dependence by either granting them greater strategic flexibility (Santos & Eisenhardt, 2005), leading to enhanced autonomy, or by enhancing their perceived legitimacy (Suchman, 1995), which ensures access to critical external resources (Drees & Heugens, 2013). Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions (Suchman, 1995, p. 547).

By employing these strategies, organizations aim to reduce their reliance on external entities and gain more control over their operations. For instance, board appointments provide opportunities for resource sharing and collaboration, enabling organizations to access vital resources and reduce dependence on external parties. In-sourcing, on the other hand, provides organizations with greater control over important activities and reduces dependence on external service providers.

5.2.1 Litigation Department as In-sourcing Arrangement

Bringing counsel in-house may be explained by RDT. Such arrangements can help stabilize the supply of critical resources and address power imbalances between organizations (Hillman et al., 2009).

As discussed in Chapter 4, one of the main motivations for an organization to develop litigation capability internally is to increase its autonomy. Autonomy is defined as its freedom to make its own decisions about the use and allocation of its internal resources without reference or regard to the demands or expectations of potential linkage partners (Oliver, 1991, p. 944-945).

Developing litigation capability internally is considered to enhance an organizations autonomy according to RDT. This is achieved by reducing an organizations reliance on external legal resources and granting it more control over legal matters. As a result, the organization gains the ability to make decisions and take actions that align with its own interests and objectives without being excessively influenced or constrained by external parties.

By developing internal litigation capability, an organization can handle legal disputes and engage in legal actions without depending heavily on external entities, such as law firms or consultants. This reduces the organizations vulnerability to the power and influence exerted by external legal resources, which can have significant control over its operations and decision-making processes.

When an organization possesses strong internal litigation capability, it can initiate legal actions, defend itself against lawsuits, and negotiate more favorable outcomes on its own terms.

This self-sufficiency in legal matters empowers an organization to act in ways that prioritize its own interests, rather than being overly influenced by external parties agendas or constraints.

The increased autonomy resulting from developing internal litigation capabilities allows an organization to exercise greater control over its legal affairs. It can strategically navigate legal challenges, protect its rights, and pursue legal strategies that align with its own objectives. This autonomy enables an organization to shape its own destiny, make decisions that best serve its interests, and act in accordance with its strategic priorities.

However, the in-house litigation team will still need to mobilize external resources that are not within its control. Such external resources may include laws, experts, witnesses, judges, and other resources that are controlled by the legal system or external actors in an organizations environment. The ability to mobilize these external resources directly impacts the capacity of in-house litigators to execute litigation strategies effectively.

Pfeffer and Salancik (2003) asserted that "Legitimacy is known more readily when it is absent than when it is present. When activities of an organization are illegitimate, comments and attacks will occur" (p. 194); legitimacy mediates access to external resources; those who control "the necessary resources must see an organizations objectives of litigation and how that organization achieves these objectives as legitimate. Otherwise, the support for the activity will diminish, access to resources will become tenuous, and attacks will occur (p.195)."

Engaging the legal system to protect organizational interests increases organizations dependence on social systems for support and legitimacy for their goals (Pfeffer & Salancik, 2003). An organization may encounter legitimacy problems, as stakeholders judge the lawsuit or the conduct during the lawsuit as contrary to economic or social norms. In addition, trials may invite opposition from groups or organizations that may not be directly involved but may have an interest in an organizations behaviour (James & Wooten, 2006). Legitimacy is conditional not just on the reasons for the lawsuit and how it is resolved but also on the conduct of an organization and its representatives during the litigation, including the decision to proceed to trial.

As mentioned, RDT is rooted in both organizational sociology and economics. On one hand, RDT suggests that organizations are primarily interest-driven and profit-seeking (Pfeffer & Salancik, 2003) and thus manage interdependencies by enhancing their autonomy (Oliver, 1991). On the other hand, Suchman (1995) argued that organizations manage their legitimacy or the presumption of propriety that arises from adhering to social norms and guidelines to secure access to critical resources controlled by external parties. Thus, organizations select interorganizational formations that establish highly visible linkages with reputable external parties if they are primarily interested in improving their legitimacy and, thus, continued access to critical resources (Drees & Heugens, 2013).

5.2.2 Chief Legal Officer as Institutional Interlock

A common RDT strategy for managing resource dependencies is to establish an interlock between an organization and those that control critical resources in the environment. Board interlocks occur when a person affiliated with one organization sits on the board of directors of another organization. Interlocks refer to the connections or relationships that exist between individuals who serve as directors or executives in multiple organizations. These interlocks can take various forms, such as serving on the boards of directors of multiple companies or holding executive positions in different organizations simultaneously.

Board interlocks can help reduce uncertainty by creating a network of connections and relationships that facilitate access to information and resources. Directors with interlocks can bring insights from the external environment, regulatory changes, and emerging opportunities or threats. This knowledge and information can help organizations better anticipate and respond to uncertainties, mitigate risks, and make informed strategic decisions, which positively impact organizational performance (Pfeffer & Salancik, 2003).

Board interlocks with actors that have legitimacy conferred due to reputation or profession have been argued to help organizations gain access to critical resources by conveying signals of legitimacy to stakeholders (Pfeffer & Salancik, 2003).

A CLO typically reports directly to the chief executive officer and serves as a legal advisor

as well as an overseer of all the firms internal and external legal functions, such as regulatory compliance, acquisitions, contract negotiations, and internal monitoring of corporate governance (Bird et al., 2015, p. 1). A CLO is charged with the legal strategy of an organization, including the way litigation is approached. Bagley (2016) suggested that including a lawyer on the executive is evidence of legal astuteness within an organization: legal astuteness in top management teams provides a set of value laden attitudes, a proactive approach, the ability to exercise informed judgment and context specific knowledge of relevant law and the appropriate application of legal tools (p. 140).

Organizations may be more inclined to use the title CLO instead of General Counsel (GC) for several reasons, but the title CLO underscores the significance of leadership and the strategic role of the legal function within an organization. The title of the CLO suggests a widening of functions and responsibilities but also represents the need for legal strategy at the executive table (Bird, 2016). A CLO on the executive team may provide the same guidance and advice as GC but is also expected to participate in strategic decisions (Bird, 2016). Conversely, GC may be viewed as narrowly focused on legal advice, lacking the broader strategic responsibilities that come with the CLO title.

A CLO can be considered a type of interlock within an organization. A CLO, as a type of interlock, represents a specific form of interorganizational connection. A CLO typically holds a senior executive position within a company and is responsible for overseeing legal affairs and providing legal guidance. In the context of litigation, a CLO on the top management team is part of key strategic decisions regarding an organizations litigation portfolio and shapes the litigation strategy.

The professional background of a CLO can contribute to an organizations legitimacy in the eyes of external stakeholders. A CLO with a proven track record, relevant industry experience, and a reputable professional background can inspire confidence among investors, lenders, customers, and other key stakeholders. This enhanced legitimacy and credibility can lead to increased access to resources, support from external partners, and improved organizational performance.

CLOs are responsible for managing the legal resources of their organizations, including legal staff and outside counsel. They can strategically allocate resources to ensure that their organizations have the necessary support and expertise to win at trial. This includes identifying and retaining the best outside counsel and expert witnesses, as well as ensuring that internal legal staff are trained and equipped to provide effective support.

In addition to internal resources, CLOs can leverage external resources to improve their organizations chances of winning at trial. This includes building relationships with key stakeholders in the legal system, such as judges and opposing counsel, and using these relationships to gain access to critical information or favourable treatment in court.

A CLO, as a legal professional within an organization, acts as a bridge between that organization and the legal system. They possess knowledge of legal frameworks, regulations, and practices, and they understand how to navigate the legal landscape. This legal expertise allows the CLO to access and mobilize legal resources, such as legal advice, representation, and compliance frameworks, which are necessary for the organizations operations and success.

A CLO often maintains a network of legal professionals, including law firms, industry associations, and other legal experts. This network acts as an interorganizational connection between an organization and the legal system. A CLOs connections and relationships can provide access to specialized legal knowledge, resources, and potential collaborations. Leveraging this network strengthens an organizations legal capabilities, enhances its understanding of legal issues, and improves its ability to navigate the legal system effectively.

The presence of a CLO on the top management team will have moderating effects on the relationship between the in-house litigation team and their organizations performance at trial by providing strategic information with the in-house litigation department and information about litigation matters to the top management team and other departments. The most critical responsibility is securing the valuable resources necessary for litigators, including time, effort, and support, to best represent organizations during lawsuits (Hitt et al., 2001). To do so requires convincing stakeholders within and external to the firm that the actions taken by the litigation team are both economically and normatively rational (Oliver, 1991).

Hypothesis 7: The chief legal officer moderates the relationship between the in-house litigation ability and the trial outcomes.

5.3 Conclusion

A CLO serves as a liaison between the in-house litigation department and external actors, communicating the companys legal strategy and objectives in a way that emphasizes the companys commitment to ethical behaviour and compliance with societal norms. This can enhance the in-house litigation departments legitimacy in the eyes of external actors, potentially leading to more favourable trial outcomes.

Furthermore, a CLO can provide valuable resources to the in-house litigation department. As a high-ranking executive with significant legal expertise and experience, a CLO can provide guidance and support to the in-house litigation department, helping it navigate complex legal disputes and achieve favourable outcomes. This can help ensure that the in-house litigation department has access to the resources it needs to succeed.

In conclusion, the presence of a CLO may moderate the relationship between the in-house litigation department and trial outcomes by providing a legitimizing function and access to valuable resources. As such, companies that wish to improve their trial outcomes and maintain their access to external resources may benefit from establishing a CLO position within their organizations.

Chapter 6

Data and Methods

To test the above hypotheses, I aggregated a set of court decisions reported in LexisNexis Canada and Westlaw Canada involving publicly listed operating companies on the Toronto Stock Exchange (TSX). The sample includes lawsuits in which the defendant or plaintiff is a publicly traded organization. The sample consists of court decisions for trials that were started and decided between 2009 and 2018.

To control for the risk of bankruptcy which has been shown to increase a organizations litigation risk (Bhagat et al., 1998), I limited my search for court decisions to companies that were continuously listed on the TSX from January 1, 2007, until March 31, 2019. This resulted in 469 organizations that were potential litigants. Using this list, I searched for Canadian court decisions for trials involving these organizations between 2008 and 2018. I limited the search to LexisNexis Canada and Westlaw Canada, two of the largest legal resources in North America. Westlaw and LexisNexis have extensive, and somewhat overlapping, collections of cases (reported and unreported), commentary, digests and articles covering the areas of general, family, and criminal law; these resources report the largest number of initiated, ongoing, dismissed, and settled legal cases and are considered the most comprehensive legal databases available for U.S. organizations and Canadian organizations (Atanasov et al., 2012). Each database was searched using the current name of the company as listed on the TSX; in some cases, the name of the company was abbreviated to accommodate character limitations in the search engines. The search was also limited to cases in which the action was ended by the decision of a judge after a trial. The initial sample as a result consisted of 322 cases from Westlaw and 310 cases from LexisNexis, for a total of 632 cases.

This initial sample was then reviewed for duplicates and cases that did not meet the criteria

for the study. After an initial review, 364 cases were removed from the initial sample of 632 cases; cases that were duplicates, did not involve a TSX company, had been dismissed prior to the commencement of trial, included a TSX company for indemnity purposes only, and where there was no representative for the TSX company present at the hearing were eliminated from the sample. Unlike empirical studies that were reviewed in the management literature, I have not limited my sample to specific types of lawsuits except to exclude class action lawsuits from my sample. A class action may be commenced in any province and brought on behalf of class members in that province or in multiple regions of Canada. It is therefore common for separate class action lawsuits to be filed in multiple jurisdictions against the same defendant for the same claims. Unlike the United States, Canada does not have a multi-district litigation system to consolidate these cases. Since class actions may be conducted in multiple jurisdictions at the same time and cases are not necessarily consolidated, the market is more likely to react to these class action lawsuits and the organizations involved will likely be exposed to prolonged and volatile uncertainty, especially as they multiply. Thus, I have excluded these lawsuits to avoid skewing any analysis.

After this data filtering, I had a list of 249 cases, involving 78 TSX companies, across eleven jurisdictions in Canada. In 13 cases, there were multiple TSX companies named and involved in the litigation; thus, after coding, my sample included 262 events. Descriptive statistics are discussed in a subsequent section.

6.1 Variable Measurement

My empirical analysis is based on a set of organization-specific and lawsuit-specific variables. The main empirical studies in this dissertation consist of a binary regression analysis for the estimation of outcomes of court trials based on organization-level legal resources, and a set of event studies designed to identify the different effects of organization and lawsuit characteristics on the equity response to the start of trial and to the release of the courts decision.

The variables of interest are a set of indicator variables equal to one when the organization has some level of internal litigation ability, the organization has appointed a Chief Legal Of-

ficer or General Counsel at the time of the trial, and the trial is decided in the organizations favour. Other variables of interest are the cumulative average abnormal returns (CAARs) and average abnormal returns (AARs) surrounding the start date of the trial and the date the decision is released.

Trial Outcome. The cases were reviewed to identify the favourability of the court's decision for each lawsuit. Trial outcomes were coded as binomial, with the plaintiff scoring a win if the judge ruled completely or partially in their favour, or the defendant scoring a win if the action was dismissed completely.

In-house Litigation Ability. The In-house Litigation Ability was coded as one if the organization employed at least one lawyer whose title included litigation at the time of trial. I identified and confirmed titles by examining LinkedIn, organization websites, legal digests, and the Canadian Law List directories.

Chief Legal Officer. I examined annual reports and websites of the TSX companies for the mention of a Chief Legal Officer or an equivalent at the time of the trial. In almost all of the TSX companies, there was either a General Counsel or Corporate Secretary, so I restricted the search to organizations that specifically used the title "Chief Legal Counsel". These positions were coded as a binary variables where 1 was assigned if there was a CLO in the year before trial.

Trial Start and Decision Dates. For the event studies, the two events examined were the date the trial started, and the date the judges decision was released. Identifying the start of the trial was relatively without controversy, but in the few circumstances where the decision was delivered orally and then published, the earlier of the two dates was recorded as the decision event date. There was a large number of one or two day trials in the data, so often the start date of the trial and the date the decision was released was the same date, or the following day.

Market Reaction. The market reaction to the start of trial and the subsequent outcome is the difference between the expected market price and the actual market price averaged over the five days before the trial and the five days following the court decision. To assess the mar-

ket reaction, an event history analysis was conducted using software provided by Wolf et al., 2014 with daily closing prices for the S&P TSX Composite Index downloaded from the Canadian Financial Markets Research Centre summary information database maintained by the University of Toronto. Missing data due to infrequent trading was excluded from the analysis. The stock price reaction at the time of the start of trial was measured as the Cumulative Average Abnormal Return (CAAR) for an event window five days before the start of trial and the first day of trial (i.e., day 5 to day 0). The stock price reaction when the court decision was released was measured as the CAAR for five day window following the court release date (i.e., day 0 to day +5). I calculated abnormal returns around these two litigation events by estimating the market model for each stock over the day 200 to day 40 window relative to the first day of trial.

The remaining variables are listed in Table 6.1. Continuous variables were scaled and mean-centred to reduce multicollinearity. The market capitalization for the organization was downloaded from CompuStat; this was a time lagged variable, where the market capitalization for the year prior to the judgment was used. Dummy variables were coded for the organization's sector as listed on the TSX website, the jurisdiction (at the provincial or federal level) where the trial was held, and the year the court released the decision.

6.2 Descriptive statistics

The sample used for the studies in this dissertation included 262 events covering 249 lawsuits involving 78 companies listed on the Toronto Stock Exchange between 2008 in 2018. Table 6.2 summarizes the continuous variables examined in the subsequent studies and Table 6.3 presents the values and frequencies of the categorical variables.

A review of the Market Capitalization (in millions) of the organizations in the sample indicates that there were relatively fewer companies with very high market capitalization values and a larger number of companies with lower to moderate market capitalization.

Specifically, the average market capitalization of the companies involved in the lawsuits was $38,694.18 million, with a minimum market capitalization value of $26.33 million suggests

Table 6.1: Variable Definitions and Scores

Variable	Definition	Source
Party	Indicator equal to one if the organization was listed as a plaintiff in the lawsuit.	LexisNexis Canada Westlaw Canada
Opposing Party	Category variable indicating the type of opposing party (coded as dummy variables).	LexisNexis Canada Westlaw Canada
Number of Opponents	The number of parties named in the lawsuit as opponents	LexisNexis Canada Westlaw Canada
Trial Length	Number of days in trial.	LexisNexis Canada Westlaw Canada
Litigator Experience	Difference between the year of the trial and the earliest year the litigator completed their licensing requirements and became members of one of the provincial bar associations.	Canadian Law List LinkedIn Provincial Law Society
Trial Outcome	Indicator equal to one if the trial judge ruled in favour for the firm (i.e., if the action was dismissed and the firm was a named defendant, or if the decision was in favour for the firm as a named plaintiff)	LexisNexis Canada Westlaw Canada
Market Capitalization	Market capitalization at the end of the year prior to the trial expressed in millions of dollars.	CompuStat
Litigation Frequency	The number of lawsuits in the previous two calendar years included in the sample.	
In-house Litigation Ability	Indicator equal to one if the firm employed one or more litigation lawyers.	LinkedIn Firm websites Legal digests
CLO	Indicator equal to one if a chief legal officer was appointed at the time of the trial.	Annual Reports LinkedIn Firm websites Legal digests
Jurisdiction	The trial court by province or Federal court (coded as dummy variables)	\LexisNexis Canada Westlaw Canada
TSX Sector	Category variable indicating the sector listed for the firm on the TSX at the time of the lawsuit (coded as dummy variables).	Toronto Stock Exchange
Year	The trial year (coded as dummy variables)	LexisNexis Canada Westlaw Canada

Table 6.2: Descriptive Statistics for Continuous Variables

Statistic	Mean	St. Dev.	Min	Max
Market Capitalization(in millions)	38,694.18	41,953.66	26.33	155,530.50
Number of Opposing Parties	1.355	1.486	1	20
Trial Length(in days)	5.065	6.991	1	68
Litigator Experience(in years)	17.416	12.297	0	45

that there were some companies with relatively low market values, while the maximum market capitalization of $155,530.54 indicates that there were a few companies with very high market values. The standard deviation of 41,953.66 further supports the idea of a wide range of market capitalization values among the companies. However, the distribution had a positive skewness of 1.09, indicating that there were more companies with lower market capitalization values compared to those with higher values. The tail of the distribution extends towards the right, indicating that there were a few companies with very high market capitalization. The near-normal kurtosis of 0.17 suggests that the distribution had a relatively normal shape, with a moderately peaked central region and tails that were not too heavy. This means that the distribution of market capitalization values was not significantly different from a normal distribution in terms of producing outliers or extreme values.

The distribution of Litigator Experience (in years) showed a positively skewed distribution suggesting that there were relatively fewer litigators with very high levels of experience and a larger number of litigators with lower to moderate levels of experience. The average experience of litigators involved in the lawsuits was 17.38 years. However, the distribution had a slight positive skewness of 0.30, suggesting that there were more litigators with lower levels of experience compared to those with higher levels. The tail of the distribution extends towards the right, indicating that there were a few litigators with very high levels of experience. The minimum experience of 0 years suggests that there were some litigators with less than one year of experience, while the maximum experience of 45 years indicates that there were a few litigators with extensive experience. The standard deviation of 12.37 further supports the idea of a relatively large variation in experience levels among the litigators.

On average, there were 1.35 opposing parties in each lawsuit, with a maximum of one party

on the opposing side of the lawsuit, to a maximum of 20 parties. The standard deviation (SD) was 1.49, indicating some variability in the number of opposing parties. However, a highly skewed distribution with a heavy tail on the right, as indicated by a significant positive skewness (8.90) and a high positive kurtosis (98.48), means that the majority of lawsuits involved a relatively small number of opposing parties, while a few lawsuits had an unusually large number of opposing parties.

The Litigation Frequency measured the number of trials the organization had participated in the two calendar years prior to the focal trial. The average number of previous trials for the organization within the past two years for each event was 1.71, suggesting that, on average, the organization had been in the courtroom less than two times in the two years prior to the focal trial. The range of Litigation Frequency was from zero to eight with a standard deviation of 2.11 indicating that the number of previous lawsuits varied across the events. However, the distribution had a positive skewness (1.18) and a near-normal kurtosis (0.25) indicating that there were relatively fewer trials where the organization had frequently gone to trial in the two years prior to the focal event compared to the majority of events with where the organization had not gone to trial in the previous two years.

The average trial duration of 5.06 days indicates the typical length of trials with a large standard deviation (SD) of 6.99. This suggests that trial lengths vary widely across the events. The minimum trial duration was 1 day, and the maximum was 68 days. The distribution of trial length (in days) had a positive skewness (4.75) and a high positive kurtosis (33.76), suggesting a highly skewed distribution with a heavy tail on the right. This means that there was a few substantially long trial trials and the majority of trials were much shorter in duration; most trials lasted one or two days (98 and 29 events respectively).

As mentioned, the frequencies and percentages for the categorical variables of interest are presented in Table 6.3.

Organizations were more frequently named the defendant in the trial (n = 198, 75.29%) than the plaintiff (n = 64, 24.71%). The large majority of the lawsuits involved one or two opposing parties, with 84.4 percent (n = 221) of the sample referring to lawsuits involving a single

Table 6.3: Frequencies of Categorical Variables

Variable	Values		Frequency	(%)
Trial Outcome	0	Lose	113	43.1
	1	Win	149	56.9
Party	0	Defendant	198	75.6
	1	Plaintiff	64	24.4
Opposing Party	0	Government	4	1.5
	1	Individual	178	67.4
	2	Private Business	75	28.6
	3	TSX Company	5	1.9
In-house Litigation Ability	0	No	96	36.6
	1	Yes	166	63.4
CLO	0	No	205	78.2
	1	Yes	57	21.8

plaintiff and a single defendant.

Out of the total sample, organizations won in 149 (56.87%) cases and lost in 113 (43.13%) cases. The majority of these lawsuits involved an individual (n = 178, 67.68%), mostly as the plaintiff (n = 133); overall the organization won 69.13% (n = 103) of the trials involving individuals as the opposing party.

The majority of trials in the sample involved organizations that had invested in developing litigation skills internally (n = 166, 63.12%); these organizations won 61.44 percent of their trials (n = 102), or 38.83 percent of all trials in the sample. In comparison, in the 96 trials that did not involve an organizations with no such in-house litigation ability lost 51.04 percent, or 18 percent of all trials in the sample.

Organizations with a designated CLO accounted for 22.05 percent (n = 57) of the sample, winning 49.12% of these trials (n = 29), accounting for 10.68 percent of the total sample. Among organizations with no CLO, they won 121 trials or 59.05 percent of 205 trials they were involved in, or 46.18 percent of the total sample of trials.

The distribution of the trials according to the organization's sector, and the jurisdiction and year of the trial is presented in Figure 6.1, Figure 6.2, and Figure 6.3, respectfully.

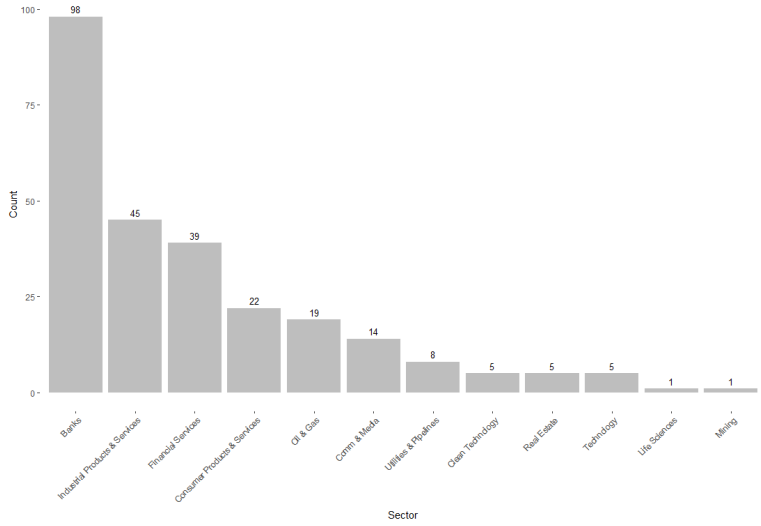

Figure 6.1: Distribution of Trials by Sector

Figure 6.1 provides a breakdown of the events in the sample by sector. Banks accounted for 39.7 percent (n = 104) of the sample, followed by Industrial Products and Services with 17.2 percent (45 events), and Financial Services Other with 12.6 percent (n = 37). Among the top organizations, four banks had the highest number of trials: Royal Bank of Canada (n = 31), TD Bank (23 events), Scotiabank (n = 15), and Bank of Montreal (n = 13). Together, these four banks represented 78.8 percent (82 out of 104) of the events in the Banking sector.

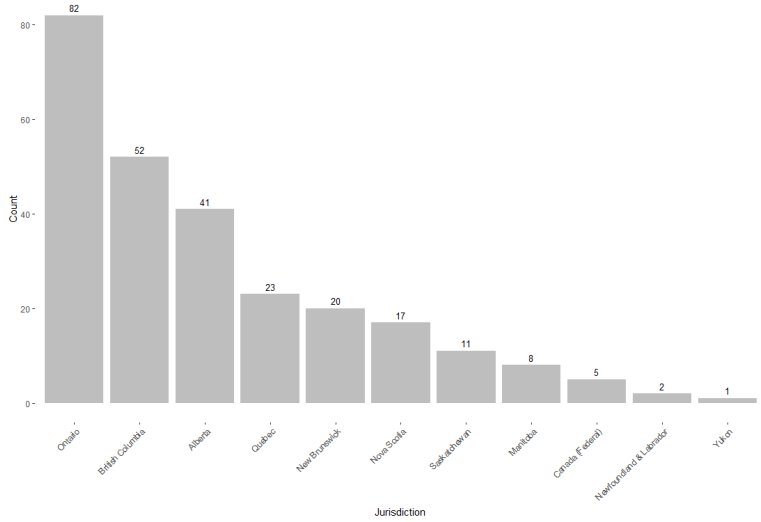

Figure 6.2: Distribution of Trials by Jurisdiction

Figure 6.2 shows the distribution of the sample by court jurisdiction. The sample included

events from various provinces in Canada, with Ontario having the highest number of events (31.2%, 82 events), followed by Quebec with 19.5% (51 events), and British Columbia with 10.7% (28 events); Yukon had the lowest number of cases with one case included in the sample.

The number of lawsuits per year were consistent across the sample, the highest number of events occurred in 2016 (14.1%, 37 events), followed by 2010 (11.5%, 30 events) and 2017 (10.7%, 28 events). The lowest number of events occurred in 2011 and 2012 (2.3%, 6 events each). A trend analysis suggests that the number of lawsuits are trending up in Canada analogous to the number of corporate lawsuits in the U.S. as suggested by the management literature review. Figure 6.3 shows the number of trial events according to year.

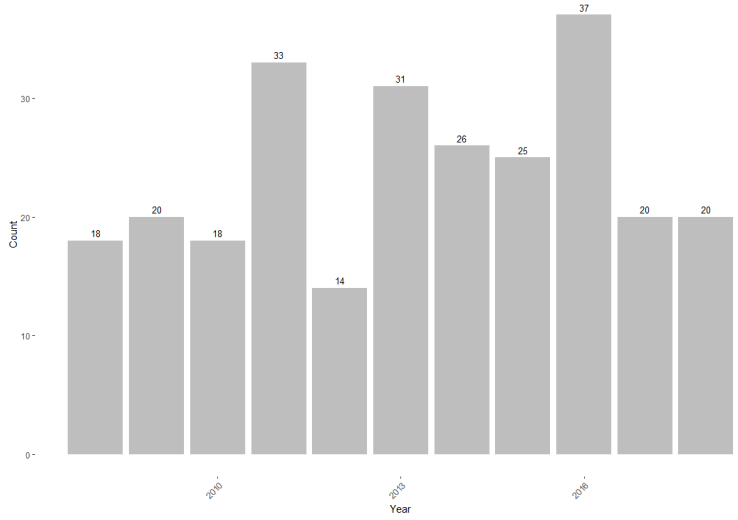

Figure 6.3: Distribution of Trials by Year

6.3 Measures of Association

One of the main concerns when building a regression model is multicollinearity, which occurs when there is a high degree of correlation among the predictor variables. Multicollinearity can lead to several issues, such as unstable coefficient estimates, difficulty in interpreting individual predictor effects, and inflated standard errors. In order to examine the sample data for potential issues, I first tested for correlation or independence between the variables I was expected to include in the models for the proposed studies. Since the variables were both con-

tinuous and discrete, I had to use three different tests of association (e.g., Pearson's correlation, ANOVA, and chi-square test of independence). Since these tests are not directly comparable, I then calculated the effect size for significant pair-wise relationships; calculating the effect size is a means to standardize the test statistics from the various association tests in order to facilitate direct comparison and to recognize any patterns among the variables. I finished my analysis by running a regression model with the proposed independent variables to further assess the data for strong associations around the independent variables. This process served a dual purpose, as it not only helped identify multicollinearity but also facilitated the reduction of the number of dummy variables used in the model.

A Pearon's correlation analysis was conducted among the variables representing the market capitalization (Market Capitalization), the number of opposing parties (Number of Opposing Parties), the number of trials in the previous two years (Litigation Frequency), the length of the trial Trial Length) and the experience of the trial lawyer (Litigator Experience). Cohen's standard was used to evaluate the strength of the relationships, where the coefficients between .10 and .29 represent a small effect size, coefficients between .30 and .49 represent a moderate effect size, and coefficients above .50 indicate a large effect size (Cohen, 1988).

There is a significant and strong relationship between the market value of the organization and the number of trials in the past two years ($r = .78$, $p < .001$). As well, there was also a small association between the organization's market capitalization and the number of opposing parties ($r=.18$ $p = .003$). This was also the case with the size of the opposition and the frequency the organization had been in court in recent years ($r=.19$, $p=.002$). The number of days at trial and the litigator's experience were moderately associated ($r = 0.23$, $p < .001$). This is not surprising, as longer trials are more likely to involve complicated legal disputes that demand for an experienced counsel (Conlon & Sullivan, 1999). No other significant correlations were found. Table 6.4 presents the results of the correlations.

A Chi-square Test of Independence was conducted between each pair of the categorical variables representing the organization's role in the lawsuit (Party), the type of opponent (Opponent Type), the trial outcome (Trial Outcome), the presence of in-house litigation ability (In-

Table 6.4: Pearson Correlation for Continuous Variables

		1.	2.	3.	4.
1. Market Capitalization	r				
	p				
2. Litigation Frequency	r	0.78			
	p	**(0.000)**			
3. Number of Opposing Parties	r	0.18	0.19		
	p	**(0.003)**	**(0.002)**		
4. Trial Length	r	-0.06	-0.07	0.11	
	p	(0.299)	(0.29)	(0.085)	
5. Litigation Experience	r	-0.04	-0.09	0.10	0.23
	p	(0.486)	(0.143)	(0.098)	**(0.000)**

house Litigation Ability), the appointment of a chief legal officer (CLO), as well control variables for the organization's sector(Sector) and when (Year) and where (Jurisdiction) the trial took place. Cohen's standard was used to evaluate the strength of the relationships, where coefficients (Cramer's V) between .10 and .29 represent a small effect size, coefficients between .30 and .49 represent a moderate effect size, and coefficients above .50 indicate a large effect size; as the degrees of freedom increase, these threshold values decrease(Cohen, 1988). Table 6.5 presents the results of the analysis.

In-house Litigation Ability was moderately related with the type of opposing litigant ($\chi^2(3) = 16.23$, p = .001, $V = .249$). There was a moderate association between the role of the organization and the trial outcome ($\chi^2(1) = 12.35$, p < .001, $V = .226$) and with the corresponding year ($\chi^2(1) = 20.23$, p = .027, $V = .278$).

The variables controlling for the organization's sector (Sector), the jurisdiction of the trial (Jurisdiction) and the year were shown to be related to several variables. The organization's sector was found to have significant strong associations with several variables: the organization's status in the lawsuit ($\chi^2(11) = 31.04$, p = .001, $V = .344$), the opposing party ($\chi^2(33) = 62.62$, p = .001, $V = .282$), in-house litigation ability ($\chi^2(11) = 100.41$, p < .001, $V = .619$), the CLO ($\chi^2(11) = 98.30$, p < .001, $V = .613$), and the trial jurisdiction ($\chi^2(121) = 46.74$, p <

Table 6.5: Chi-Square and Effect Sizes for Pairwise Comparisons Of Categorical *V*ariables

		1.	2.	3.	4.	5.	6.	7.
1. Trial Outcome	χ^2							
	p							
	V							
2. Party	χ^2	2.35						
		df=(1)						
	p	**(0.000)**						
	V	0.226						
3. Opposing Party	χ^2	0.75	6.26					
		df=(3)	df=(3)					
	p	(0.861)	(0.099)					
	V	0.054	0.155					
4. In-house Litigation	χ^2	3.37	0.78	16.23				
		df=(1)	df=(1)	df=(3)				
	p	(0.066)	(0.379)	**(0.001)**				
	V	0.121	0.064	0.249				
5. CLO	χ^2	1.4	3.57	2.1	0.19			
		df=(1)	df=(1)	df=(3)	df=(1)			
	p	(0.236)	(0.059)	(0.553)	(0.667)			
	V	0.082	0.128	0.089	0.036			
6. Year	χ^2	20.23	4.98	28.4	7.96	17.93		
		df=(10)	df=(10)	df=(30)	df=(10)	df=(10)		
	p	**(0.027)**	(0.893)	(0.549)	(0.633)	(0.056)		
	V	0.278	0.138	0.190	0.174	0.262		
7. Jurisdiction	χ^2	10.79	40.48	47.29	26.97	21.67	117.42	
		df=(11)	df=(11)	df=(33)	df=(11)	df=(11)	df=(110)	
	p	(0.461)	**(0.000)**	**(0.051)**	**(0.005)**	**(0.027)**	(0.297)	
	V	0.203	0.393	0.245	0.321	0.288	0.212	
8. Sector	χ^2	14.91	31.04	62.62	100.41	98.3	108.47	46.74
		df=(11)	df=(11)	df=(33)	df=(11)	df=(11)	df=(110)	df=(121)
	p	(0.187)	**(0.001)**	**(0.001)**	**(0.000)**	**(0.000)**	(0.523)	**(0.000)**
	V	0.239	0.344	0.282	0.619	0.613	0.203	0.293

.001, V = .293).

The jurisdiction of the trial had a significant moderate relationship with several variables as well: the organization's role ($\chi^2(11) = 40.48$, p < .001, V = .393), the opposing party ($\chi^2(33) = 26.97$, p = .051, V = .245), internal litigation ability ($\chi^2(11) = 26.97$, p = .005, V = .321), and the appointment of a CLO ($\chi^2(11) = 21.67$, p = .027, V = .288).

ANOVA was employed to test the association between the continuous variables and the categorical variables. Cohen's standard was used to evaluate the strength of the relationships, where coefficients (η^2) of .01, .06, and .14 represent a small effect size, a moderate effect size, and a large effect size respectively (Cohen, 1988). Table 6.6 presents the test statistic, significant levels and direct effect (η^2) for each pairwise comparison between the continuous and categorical variable. Table 6.6 presents the results of the analysis.

The one-way ANOVA correlation analysis revealed strong associations between the organization's internal litigation ability and its market value (F(1, 260) = 117.7, p<.001, η^2 = .312) and between the number of trials in the past two years (F(1, 260) = 107.76, p<.001, η^2 = .293).

Again, there were strong relationships between the sector of the organization and the market capitalization of the organization (F(11, 250) = 25.34, p<.001, η^2 = .527) and the frequency of trials in the previous years (F(11, 250) = 12.62, p<.001, η^2 = .357). The jurisdiction was also strongly associated with the experience of the trial lawyer (F(11, 250) = 3.62, p<.001, η^2 = .137) and the length of trial (F(11, 250) = 3.57, p<.001, η^2 = .136).

The analysis of the effect size of the significant correlations and associations between the variables suggests that there is a potential multicollinearity issue with the variables representing the organization's sector, the year of the trial, as well among the market capitalization, in-house litigation ability, and the frequency the organization is in court.

Variance Inflation Factors (VIFs) were calculated to detect the presence of multicollinearity between predictors. VIF measures the extent to which the variance of the estimated regression coefficient is increased due to multicollinearity. A VIF value above a certain threshold

Table 6.6: ANOVA and Effect Sizes for Pairwise Comparisons Of Variables

Variable		Market Capitalization	Litigation Frequency	Number of Parties	Trial Length	Litigation Experience
Trial Outcome	F	6.6	2.79	4.15	0.82	1.41
		df=(1, 260)	df=(1, 260)	df=(1, 260)	df=(1, 260)	df=(1, 260)
	p	**(0.011)**	(0.096)	**(0.043)**	(0.367)	(0.236)
	η^2	0.025	0.011	0.016	0.003	0.005
Party	F	19.82	7.42	3.16	3.47	4
		df=(1, 260)	df=(1, 260)	df=(1, 260)	df=(1, 260)	df=(1, 260)
	p	**(0.000)**	**(0.007)**	(0.077)	(0.064)	**(0.046)**
	η^2	0.071	0.028	0.012	0.013	0.015
Opposing Party	F	2.52	2.52	2.1	1.43	1.82
		df=(3, 258)	df=(3, 258)	df=(3, 258)	df=(3, 258)	df=(3, 258)
	p	(0.058)	(0.058)	(0.1)	(0.235)	(0.144)
	η^2	0.029	0.029	0.024	0.016	0.021
In-house Litigation	F	117.7	107.76	2.45	0.28	0.25
		df=(1, 260)	df=(1, 260)	df=(1, 260)	df=(1, 260)	df=(1, 260)
	p	**(0.000)**	**(0.000)**	(0.119)	(0.599)	(0.615)
	η^2	0.312	0.293	0.009	0.001	0.001
CLO	F	18.07	15.73	0.01	0.01	2.24
		df=(1, 260)	df=(1, 260)	df=(1, 260)	df=(1, 260)	df=(1, 260)
	p	**(0.000)**	**(0.000)**	(0.939)	(0.91)	(0.135)
	η^2	0.065	0.057	0	0	0.009
Year	F	1.18	2.72	1.21	1.26	1.41
		df=(10, 251)	df=(10, 251)	df=(10, 251)	df=(10, 251)	df=(10, 251)
	p	(0.306)	**(0.003)**	(0.284)	(0.253)	(0.176)
	η^2	0.045	0.098	0.046	0.048	0.053
Jurisdiction	F	2.53	2.04	0.77	3.57	3.62
		df=(11, 250)	df=(11, 250)	df=(11, 250)	df=(11, 250)	df=(11, 250)
	p	**(0.005)**	**(0.025)**	(0.666)	**(0.000)**	**(0.000)**
	η^2	0.1	0.082	0.033	0.136	0.137
Sector	F	25.34	12.62	0.48	0.73	0.7
		df=(11, 250)	df=(11, 250)	df=(11, 250)	df=(11, 250)	df=(11, 250)
	p	**(0.000)**	**(0.000)**	(0.914)	(0.714)	(0.735)
	η^2	0.527	0.357	0.021	0.031	0.03

(often 5 or 10) is considered indicative of multicollinearity. The absence of multicollinearity assumption implies that the independent variables are not too highly correlated with one another and will be assessed using variance inflation factors (VIF). VIF values over 10 will suggest the presence of multicollinearity.

A multiple linear regression was conducted on the CAARs associated with the first day of trial to assess the presence of multicollinearity among the proposed independent variables, The following predictors had VIFs greater than 10: Sector and Province. These variables were removed and the regression was conducted on the remaining variables. Table 6.7 presents the before and after VIF for each predictor in the model.

Table 6.7: Variance Inflation Factors for Proposed Independent Variables

Variable	VIF	
	Before	After
Party	1.60	1.24
Type of Opposing Party	2.08	1.34
Number of Opposing Parties	1.23	1.17
Trial Outcome	1.34	1.23
Trial Days	1.34	1.14
Litigator Experience	1.36	1.17
Market Capitalization	4.47	2.98
Litigation Frequency	3.32	3.03
In-house Litigation Ability	2.6	1.80
CLO	2.36	1.30
Sector	31.86	n.a
Jurisdiction	10.13	n.a.
Year	5.50	1.95

In summary, the examination of measures of association and VIF served a dual purpose in my analysis. It enabled me to identify and address multicollinearity concerns, while also facilitating the reduction of the number of dummy variables that could lead to over-fitting in regression models. The results of the studies utilizing this data is discussed in the next chapter.

Chapter 7

Results

In this chapter, I present the results and findings of two sets of studies that examine and test the hypotheses presented in the previous chapter: the market reaction to trial initiation and court decisions, and the influence of in-house litigation capability and the CLO on trial outcomes.

The first set of studies examined the market's response to the commencement of trials and subsequent court decision. These studies provide a better understanding of how legal developments can shape investor perceptions, affect stock valuations, and influence broader market trends.

In the second set of studies, the focus was the role played by in-house litigation capability and the CLO in improving the probability of trial success. The strategic value of building robust internal legal teams. and the influence of the CLO on trial success are examined through these studies, highlighting the potentially important role they play in shaping litigation strategies and achieving desired outcomes.

7.1 Market Reaction to the Trial and the Trial Outcome

To test the first three hypotheses discussed in Chapter 3, a series of event history studies were conducted to examine the market reactions to specific trial events.

Following McWilliams and Siegel (1997) and Bhagat and Romano (2002a), I performed several event studies followed by econometric validation using least-squares regression models. This method has been widely used to examine the impact of litigation events on market value since event studies enable measuring the effects of events on stock prices (Bhagat &

Romano, 2002a; Campbell et al., 1998). Event study methods are commonly used for examining the relationship between organizations social and financial performance; they constitute quasi experiments by estimating the difference between actual and expected performance had the events not occurred and these differences are less easily manipulated by managers than strictly accounting based measures of profit (McWilliams & Siegel, 1997).

The estimation window was 200 days before the start of the trial and ending 40 days before the trial, for an estimation period of 160 days (Haslem, 2005). The event windows were the 5 days before and including the first day of trial for the first study and the 5 days that followed the trial for the second study. The event history analysis was conducted using software provided by Wolf et al. (2014) using the daily log returns for the S&P TSX Composite Index downloaded from (McWilliams & Siegel, 1997).

The abnormal returns were then calculated for each day in the event window; the abnormal return was the difference between the actual return and the expected return as estimated with the regression parameters. The AARs were calculated by averaging these abnormal returns for each event over each day in the event window. The cumulative average abnormal returns were the sum of the AARs over the event window. The average of the abnormal returns (AARs) and cumulative average abnormal returns (CAARs) were then tested for significance. Statistical significance was assessed using the Patell z-test (Patell & Wolfson, 1979). Table 7.3 and Table 7.4 contain the results of these studies.

7.1.1 Market Reaction to the Trial

As discussed in Chapter 3, trials are expected to be public, costly affairs that negatively affect organizational performance in the immediate and long term according to economic theory. Prior studies have provided evidence that organizations will lose value when the lawsuit starts as shareholders and other investors become concerned about the future profitability or viability of the organization (e.g., Karpoff et al., 2008). Thus, I expected a negative market response for both plaintiff and defendant organizations during the event window leading up to the trial as the likelihood of a settlement diminished as the trial day approached.

Table 7.1 presents the univariate analysis for the CAARs over the five days before the start of the trial as well as the first day of trial for the sample. The table reports the CAARs, and AARs for each day in the six day event window, and test statistics for the full sample, followed by defendant and plaintiff samples over a six-day event window before the trial starts. Six events were not included due to a significant number of days that the associated organizations stock was not traded.

Table 7.1: Univariate Analysis for Hypothesis 1: Market Reaction to the Trial

	CAAR/AAR	N	% Neg	Z	
Panel A: Full Sample					
(-5, 0)	-0.0013	256	48.83%	-0.5132	(0.6078)
Day	AAR				
-5	-0.0004	256	43.75%	0.9395	(0.3475)
-4	-0.0003	257	49.42%	-1.5869	(0.1125)
-3	0.0002	260	45.38%	0.3956	(0.6924)
-2	0.0005	260	43.85%	0.5288	(0.5969)
-1	-0.0007	261	51.72%	-0.3178	(0.7506)
0	-0.0007	256	48.44%	-1.2199	(0.2225)
Panel B: Defendant Firms					
(-5, 0)	-0.0035	189	50.79%	-0.6735	(0.5006)
Day	AAR				
-5	-0.0005	189	46.03%	1.0917	(0.275)
-4	-0.0008	189	48.15%	-1.4805	(0.1387)
-3	-0.0007	192	46.88%	-0.6431	(0.5202)
-2	0.001	192	45.83%	0.9293	(0.3527)
-1	-0.0017	193	53.37%	-0.6935	(0.488)
0	-0.0006	189	48.68%	-0.8563	(0.3918)
Panel C: Plaintiff Firms					
(-5, 0)	0.0038	67	41.79%	0.182	(0.8556)
Day	AAR				
-5	-0.0001	67	41.79%	0.0188	(0.985)
-4	0.0008	68	52.94%	-0.6332	(0.5266)
-3	0.0026	68	44.12%	1.8684	(0.0617)
-2	-0.001	68	39.71%	-0.6192	(0.5358)
-1	0.0023	68	48.53%	0.7827	(0.4338)
0	-0.0012	67	49.25%	-0.967	(0.3335)

*p<0.1; **p<0.05; ***p<0.01

The results of the analysis of CAARs in the six day event window were not significant. The results indicated a negative CAAR of -.35 percent for defendant organizations (n = 189) and a positive CAAR of -.38 percent for plaintiff organizations (n = 67) on average. However,

neither of these results demonstrated that there was a significant deviation from the expected market return.

To better understand the nature of the market reaction to trial, I conducted a linear regression analysis using CAARs during the five-day event window leading up to the trial start as the dependent variable, The independent variables included the organization's status in the litigation (e.g., plaintiff or defendant) and several control variables that have been associated with market reactions to the start of the lawsuit (Bhagat & Romano, 2002a): the market capitalization of the organization at the beginning of same year as the trial, the type of opposing litigant (e.g.,individual, private business, government, or TSX company), the number of opposing parties, the number of trials the organization was involved in for the previous two years, and the expected trial duration (in days). Dummy variables were used to account for events occurring during the trial year. Table 7.2 presents the results.

The model was significant (F(18, 237) = 1.890, p = .018, R2 = .126).

Based on the analysis, there appears to be no meaningful reaction from the stock market as the trial starts for the plaintiff organization (β = .0109, t(237) = 1.40, 95%CI[-.004, .03], p = .162). Contrary to the expected negative reaction, the results indicate that the market tends to react positively when a plaintiff organization elects to resolve the lawsuit at court. However, the effect size is very small (Cohen's d = 0.21), suggesting that the market reaction would not have a practical impact on the market valuation of the organization.

The analysis does not provide significant support for a negative abnormal market reaction for defendant organizations at the start of the court trial (β = .0277, t(237) = .959, 95%CI[-.02923, .0847], p = .339). The intercept of the model, which also represents the reaction of the market to the trial in general, did not show a significant negative market reaction, suggesting that the market does not perceive the trial as a significant event. Hypothesis 1a and Hypothesis 1b were not supported.

Table 7.2: Cross Sectional Regressions of CAARs (Hypothesis 1, 2, and 3)

	Dependent variable:			
	Start Date (CARs)	Decision Date (CARs)	Party	Decision Date (CARs)
	OLS	*OLS*	*logistic*	*OLS*
	(1)	(2)	(3)	(4)
Party (Plaintiff = 1)	0.011			0.015
	(0.008)			(0.011)
Trial Outcome (Win = 1)		0.003	1.220***	0.005
		(0.005)	(0.381)	(0.006)
Opposing Party (Government = 0)				
Individual	−0.004	0.009	−1.528	0.016
	(0.026)	(0.018)	(1.125)	(0.019)
Private Business	−0.001	0.010	−1.567	0.017
	(0.027)	(0.019)	(1.147)	(0.020)
TSX Company	0.002	0.019	0.393	0.017
	(0.035)	(0.025)	(1.474)	(0.025)
Number of Opposing Parties	−0.001	0.0005	0.132	0.0004
	(0.003)	(0.002)	(0.160)	(0.002)
Trial Length	−0.002	0.001	−0.737**	0.002
	(0.003)	(0.002)	(0.333)	(0.002)
Market Capitalization	0.0001	0.001	0.730***	0.001
	(0.005)	(0.004)	(0.277)	(0.004)
Litigation Frequency	−0.001	−0.001	−0.089	−0.001
	(0.002)	(0.002)	(0.139)	(0.002)
Year (2008 = 0)				
2009	−0.075***	0.022*	−0.458	0.023**
	(0.017)	(0.012)	(0.804)	(0.012)
2010	−0.036**	−0.002	−1.933	0.001
	(0.017)	(0.012)	(1.212)	(0.012)
2011	−0.024	0.017	−0.188	0.018*
	(0.015)	(0.011)	(0.704)	(0.011)
2012	−0.043**	0.005	−1.819*	0.008
	(0.018)	(0.013)	(1.050)	(0.013)
2013	−0.019	0.007	−0.712	0.007
	(0.015)	(0.011)	(0.751)	(0.011)
2014	−0.011	0.007	−0.038	0.008
	(0.016)	(0.011)	(0.755)	(0.011)
2015	−0.015	0.009	−1.017	0.011
	(0.016)	(0.011)	(0.801)	(0.012)
2016	−0.024	0.0003	−1.111	0.002
	(0.015)	(0.011)	(0.751)	(0.011)
2017	−0.018	0.0001	−0.795	0.002
	(0.017)	(0.012)	(0.862)	(0.012)
2018	−0.031*	0.007	−1.178	0.010
	(0.017)	(0.012)	(0.887)	(0.012)
Trial Outcome:Party				−0.014
				(0.013)
Constant	0.028	−0.015	0.202	−0.024
	(0.029)	(0.020)	(1.264)	(0.022)
Observations	256	255	255	255
R^2	0.126	0.044		0.051
Adjusted R^2	0.059	−0.029		−0.030
Log Likelihood			−116.716	
Akaike Inf. Crit.			271.433	
Residual Std. Error	0.050 (df = 237)	0.036 (df = 236)		0.036 (df = 234)
F Statistic	1.890** (df = 18; 237)	0.604 (df = 18; 236)		0.625 (df = 20; 234)

Note: *p<0.1; **p<0.05; ***p<0.01

7.1.2 Market Reaction to the Court Decision

The findings from earlier studies examining the market reaction to critical moments in a lawsuit have generally supported that investors react positively when defendant organizations resolve the lawsuit privately; these studies have not been conclusive on how the market reacts to the announcement that a plaintiff organization has settled out of court (e.g., Bhagat et al., 1998). However, (Haslem, 2005) found that the market reacted positively to defendant companies when the case was heard by the court, even if the decision was not favourable; the study did not examine plaintiff organizations. The studies that follow aim to investigate the market's reaction to the trial outcome in order to understand how the market perceives and incorporates information about trial outcomes into stock valuations.

7.1.2.1 Market Reaction to Trial Outcome

Prior studies have suggested that the market reacts according to information that is released throughout the litigation process, such as the claims made in the lawsuit and the terms under which the lawsuit is resolved (e.g., Haslem, 2005). Trial outcomes provide important information about the financial prospects and future performance of the organization involved. Winning at trial may signal a favourable resolution of legal issues, potential cost savings, or improved reputation, leading to a positive market reaction. Conversely, losing at trial may indicate increased liabilities, financial burdens, or reputational damage, resulting in a negative market reaction. Thus, I anticipated a direct relationship between the trial outcome and the market's response, such that if an organization won the trial, there would be a positive market reaction, while if the organization lost, there would be a negative market reaction.

Table 7.3 presents the univariate analysis for the CAARs and AARs and test statistics for each day over the selected event window starting on the day the court decision is announced (day 0) for the full sample, and then grouped accorded to the favourability of the outcome (e.g., win or loss) and the organization's status in the litigation (e.g., plaintiff or defendant). Seven events were not included due to a significant number of days that the associated organizations stock was not traded.

Table 7.3: Univariate Analysis for Hypothesis 2: Market Reaction to the Trial Outcome

	CAAR/AAR		N	% Neg	Z	
Panel A: Full Sample						
(0, 5)	0.0018		255	50.20%	-0.6685	(0.5038)
Day	AAR					
0	-0.0012		262	50.38%	-0.7701	(0.4413)
1	0.0001		261	53.64%	-0.6782	(0.4976)
2	-0.0031		260	53.08%	-1.2722	(0.2033)
3	0.0035		259	46.72%	0.2365	(0.8131)
4	0		259	52.51%	-0.6145	(0.5389)
5	0.0025		256	46.09%	1.4986	(0.134)
Panel B: Firms with Favourable Outcome						
(0, 5)	0.0021		144	48.61%	0.06	(0.9522)
Day	AAR					
0	0.0005		148	46.62%	0.6631	(0.5073)
1	0.0008		147	51.70%	-0.3195	(0.7494)
2	-0.0023		147	54.42%	-0.985	(0.3246)
3	0.0019		147	46.26%	1.0622	(0.2882)
4	-0.0006		147	53.74%	-1.0619	(0.2883)
5	0.0015		144	47.92%	0.8087	(0.4187)
Panel C: Firms with Unfavourable Outcome						
(0, 5)	0.0008		111	52.25%	-1.0817	(0.2794)
Day	AAR					
0	**-0.0033**	**	**114**	**55.26%**	**-1.9228**	**(0.0545)**
1	-0.0008		114	56.14%	-0.6634	(0.5071)
2	-0.0042		113	51.33%	-0.8063	(0.4201)
3	0.0056		112	47.32%	-0.8571	(0.3914)
4	0.0007		112	50.89%	0.282	(0.7779)
5	0.0038		112	43.75%	1.3486	(0.1775)
Panel D: Defendant Firms						
(0, 5)	0.0004		188	52.66%	-1.3029	(0.1926)
Day	AAR					
0	-0.0017		194	50.52%	-1.3737	(0.1695)
1	-0.0003		193	52.33%	-0.8549	(0.3926)
2	-0.004		192	54.17%	-1.3989	(0.1618)
3	0.004		191	42.93%	0.0035	(0.9972)
4	0.0004		191	53.40%	-0.0794	(0.9367)
5	0.0023		189	49.21%	0.5502	(0.5822)
Panel E: Plaintiff Firms						
Day	AAR					
0	0.0005		68	50.00%	0.809	(0.4185)
1	0.0011		68	57.35%	0.1115	(0.9112)
2	-0.0006		68	50.00%	-0.137	(0.891)
3	0.002		68	57.35%	0.4556	(0.6487)
4	-0.0011		68	50.00%	-1.0663	(0.2863)
5	**0.0032**	**	**67**	**37.31%**	**2.0053**	**(0.0449)**

*p<0.1; **p<0.05; ***p<0.01

The results of the analysis of CAARs in the six day event window were not significant. However, organizations that lost the lawsuit experienced a negative market reaction (AAR = -.033, p = .05) the day that the court decision is released to the market. Successful organizations saw an abnormal increase in value on the fifth day following (AAR = .003, p = .05). These findings suggest that the market may react differently depending on whether the organization wins or losses the trial.

To better understand the nature of the market reaction to the court's decision on the lawsuit, I conducted a linear regression analysis using the CAARs during the six-day event window including and following the release of the court decision as the dependent variable. The model included the same control variables that were included in the model described in the previous section. Table 7.2 presents the results.

The model was not significant (F(18, 236) = .604, p = .895, R2 = .044).

The market reaction when the organization was successful at the trial was not significant (β = .003, t(236) = .707, 95%CI[-.006, .012], p = .48, Cohen's d = 0.08). This was also the case when the organization lost the trial (β = -.015, t(236) = -.721, 95%CI[-.055, .026], p = .47). Therefore, the null hypotheses for Hypothesis 2a and 2b cannot be rejected, indicating that, on average, the data did not demonstrate a significant market response surrounding the start of the trial. Hypotheses 2a and 2b are not supported.

7.1.2.2 Market Reaction to the Trial Outcome as Plaintiff or Defendant

Studies have suggested that the market's perception of the events during a lawsuit is influenced by the context and the specific position of the organization involved, (Bhagat & Romano, 2007). For example, the magnitude of the negative market reaction has been suggested to be caused by the nature of the claims against the defendant organization (Karpoff et al., 2005). Since the market appears to account for the position or role of the organization in the litigation, I expected the market react to the court decision differently based on the roles of the organizations involved.

Table 7.4 presents the univariate analysis for the CAARs and AARs and test statistics for

each day over the selected event window starting on the day the court decision is announced (day 0) grouped according to the favourably of the outcome (e.g., win or loss) based on the organization's status in the litigation (e.g., plaintiff or defendant).

Table 7.4: Univariate Analysis for Hypothesis 3: Market Reaction to the Trial Outcome through Organization's Litigation Role

	CAAR/AAR		N	% Neg	Z	
Panel A: Full Sample						
(0, 5)	0.0015		95	50.53%	-0.3916	(0.6954)
Day	AAR					
0	0.0003		98	45.92%	0.1195	(0.9049)
1	0.0007		97	52.58%	-0.7489	(0.4539)
2	-0.0024		97	54.64%	-0.603	(0.5465)
3	0.0017		97	41.24%	0.9221	(0.3565)
4	-0.0002		97	55.67%	-0.5269	(0.5983)
5	0.0008		95	52.63%	-0.1001	(0.9203)
Panel B: Defendant Firms with Unfavourable Outcome						
(0, 5)	-0.0008		93	54.84%	-1.4565	(0.1453)
Day	AAR					
0	**-0.0038**	**	**96**	**55.21%**	**-2.0734**	**(0.0381)**
1	-0.0013		96	52.08%	-0.4593	(0.646)
2	-0.0057		95	53.68%	-1.3794	(0.1678)
3	0.0064		94	44.68%	-0.9315	(0.3516)
4	0.001		94	51.06%	0.4219	(0.6731)
5	0.0038		94	45.74%	0.8807	(0.3785)
Panel C: Plaintiff Firms with Favourable Outcome						
(0, 5)	0.0033		49	44.90%	0.6514	(0.5148)
Day	AAR					
0	0.0009		50	48.00%	0.9736	(0.3302)
1	0.0009		50	50.00%	0.4954	(0.6203)
2	-0.002		50	54.00%	-0.8492	(0.3958)
3	0.0022		50	56.00%	0.5369	(0.5914)
4	-0.0013		50	50.00%	-1.087	(0.277)
5	0.0028		49	38.78%	1.5258	(0.1071)
Panel D: Plaintiff Firms with Unfavourable Outcome						
(0, 5)	0.0094		18	38.89%	0.6413	(0.5213)
Day	AAR					
0	-0.0005		18	55.56%	-0.0504	(0.9598)
1	0.0016		18	77.78%	-0.609	(0.5425)
2	0.0035		18	38.89%	1.149	(0.2506)
3	0.0012		18	61.11%	-0.0093	(0.9926)
4	-0.0006		18	50.00%	-0.2608	(0.7942)
5	0.0041		18	33.33%	1.3514	(0.1766)

*p<0.1; **p<0.05; ***p<0.01

The results of the analysis of CAARs in the six day event window were not significant. The

results indicated a positive CAAR of .15 percent for successful defendant organizations (n = 95) and a negative CAAR of -.01 percent for unsuccessful defendants (n = 93) on average. For the plaintiff organizations, those that won the trial experienced a positive CAAR of .33 percent (n = 49) and those that lost, a positive CAAR of .94 percent (n = 18). However, these results did not show that there was a significant deviation from the expected market return.

Two models were tested to investigate whether the association between the court decision and the market reaction is mediated by the organization's role in the lawsuit. Both models included the same control variables that were included in the model described in the first event study. A mediation analysis was then conducted following the procedure proposed by Tingley et al. (2014). I performed the mediation analysis using the 'mediation' package (version 4.5.0. Tingley, Yamamoto, Hirose, Keele, and Imai, 2019). Results are presented in Table 7.2 and Table 7.5.

The first logistic regression model was significant, indicating that the independent variables had a meaningful association with the market reaction ($\chi^2(8) = 38.12$, $p < .001$). The McFadden R-squared value of .13 suggested a moderate association between the market reaction and the variables considered. The results indicated that there was a significant moderate association between the role of the organization and the trial outcome ($\beta = 1.08$, OR = 2.94, CI%[.495, 1.995], p = .002).

However, in the second ordinary least squares regression model, which explored the impact of trial outcome and the organization's litigation role on abnormal market reaction, the results were different.

The overall model in the second ordinary least squares regression did not yield significant results (F(20, 234) = .625, p = .89, R2 = .051). Neither the trial outcome ($\beta = .005$, t(234) = .967, 95%CI[-.006, .016], p = .34], Cohen's f = 0.001) nor the organization's litigant status ($\beta = .015$, t(234) = .203, 95%CI[-.008, .037], p = .20], Cohen's f = 0.003) were significantly associated with the change in stock price. The effect sizes (Cohen's f) for both variables were very small, suggesting minimal practical significance.

The bootstrap confidence interval derived from 1000 samples indicated that the indirect effect

coefficient was not significant (β = 0.000692, 95%CI[-0.00084, 0.00], p = .33) which did not support the hypothesis that the relation between the trial outcome and market reaction is mediated by the role the organization took part in the litigation. Hypothesis 3 is not supported.

Table 7.5: Nonparametric Bootstrap Confidence Intervals for Hypothesis 3

	Estimate	95% CI Lower	95% CI Upper	p-value
ACME (control)	0.001101	-0.00139	0.01	0.34
ACME (treated)	0.000284	-0.00134	0	0.67
ADE (control)	0.002445	-0.00748	0.01	0.59
ADE (treated)	0.001628	-0.00879	0.01	0.78
Total Effect	0.002729	-0.00693	0.01	0.53
Prop. Mediated (control)	0.403346	-3.84403	4.99	0.62
Prop. Mediated (treated)	0.104066	-1.33502	1.43	0.91
ACME (average)	0.000692	-0.00084	0.00	0.33
ADE (average)	0.002037	-0.00791	0.01	0.69
Prop. Mediated (average)	0.253706	-2.28147	3.35	0.65

*p<0.1; **p<0.05; ***p<0.01

7.2 Litigation Resources and Trial Outcomes

The remaining studies investigated the potential impact of the financial size of an organization and two legal strategies on increasing the likelihood of winning in court. These two legal strategies specifically focused on developing litigation ability in-house and appointing a CLO to the top executive team. Table 7.6 presents the results of these studies.

The primary objective of the first study was to validate previous research findings that found organizations generally have a higher success rate in court proceedings (e.g., Wheeler et al., 1987). Larger organizations, with greater financial resources to invest in litigation strategies, and therefore a higher probability of winning their court cases (Galanter, 1974b, 2013).

Thus, the remaining studies examined the effect of two legal strategies. The first strategy involved developing litigation ability in-house, which refers to the organization's investment in building its internal legal team and expertise. This strategy aimed to enhance the organization's capacity to handle legal matters internally, potentially leading to better outcomes in court. The objective of the second study was to investigate how an organization's investment

in a specific strategy, namely developing litigation ability in-house, mediates its potential to achieve favourable outcomes in court.

The second legal strategy examined in the study involved the appointment of a CLO to the organization's top executive team. The CLO, as a senior legal executive, played a crucial role in enhancing the organization's ability to mobilize external litigation resources through its internal litigation department.

Overall, these remaining studies sought to explore the potential benefits of the financial size of an organization and the investment in in legal strategies, specifically developing litigation ability in-house and appointing a CLO, in enhancing the chances of achieving favourable outcomes at court.

Table 7.6: Cross Sectional Regressions of Trial Outcome (Hypothesis 4, 5, 6, and 7)

	Dependent variable:				
	Trial Outcome		In-house Litigation Ability	Trial Outcome	
	(1)	(2)	(3)	(4)	(5)
Market Capitalization	0.267		2.915***	−0.650	0.192
	(0.214)		(0.558)	(0.624)	(0.230)
In-house Litigation Ability (Yes = 1)		0.417		1.009*	0.333
		(0.326)		(0.574)	(0.403)
CLOY					−0.466
					(0.540)
Party (Plaintiff = 1)	1.209***	1.308***	−0.086	1.189***	1.242***
	(0.355)	(0.351)	(0.539)	(0.360)	(0.359)
Opposing Party (Government = 0)					
Individual	0.530	0.459	1.003	0.428	0.462
	(1.045)	(1.048)	(1.366)	(1.044)	(1.073)
Private Business	0.539	0.506	−0.378	0.505	0.500
	(1.059)	(1.060)	(1.401)	(1.056)	(1.084)
TSX Company	−0.948	−0.885	−0.675	−0.968	−0.919
	(1.412)	(1.404)	(1.980)	(1.406)	(1.422)
Litigator Experience	0.252*	0.259*	0.259	0.230*	0.258*
	(0.136)	(0.136)	(0.204)	(0.137)	(0.137)
Litigation Frequency	−0.020	0.020	1.441***	−0.082	−0.053
	(0.099)	(0.077)	(0.331)	(0.106)	(0.102)
Market Capitalization:In-house Litigation Ability (Yes = 1)				1.006	
				(0.663)	
In-house Litigation Ability:CLO					0.260
					(0.700)
Constant	−0.439	−0.740	0.199	−1.157	−0.479
	(1.044)	(1.039)	(1.365)	(1.124)	(1.088)
Observations	262	262	262	262	262
Log Likelihood	−167.876	−167.842	−80.098	−166.094	−166.895
Akaike Inf. Crit.	351.752	351.684	176.196	352.188	355.791

Note: *p<0.1; **p<0.05; ***p<0.01

7.2.1 Financial Resources and Trial Outcome

Studies have confirmed Galanter (1974b) hypothesis that larger organizations, possessing substantial financial resources, might enjoy certain advantages in the litigation process. These advantages could potentially contribute to a higher likelihood of winning their court cases compared to smaller organizations with more limited financial means. I thus expected that the market capitalization of the organization would influence the odds of a favourable trial outcome.

I conducted a binomial logistic analysis using the trial outcome as the dependent variable and the market capitalization (in millions) as the independent variable. The model included control variables that have been associated with the odds of winning the lawsuit at court (Galanter, 2013): the organization's status in the litigation (e.g., plaintiff or defendant) , the type of opposing litigant (e.g.,individual, private business, government, or TSX company), the number of trials the organization was involved in for the previous two years , and the experience of the litigation lawyer (in years). The results are presented in Table 7.6.

The overall model was significant ($\chi^2(7) = 22.49$, p = .002). The McFadden R-squared value calculated for this model was 0.06. There was some evidence that there might be a positive association between the market value of the organization and the odds of winning the lawsuit at court ($\beta = .27$, OR = 1.31, 95%CI[.86, 1.98], p = .212) such that, holding the other variables constant, the odds of winning the trial increased by 31 percent (95%CI[-.14, .98]) for each standard deviation increase in market capitalization.

However, the effect was not statistically significant (p = .212); financial resources may not be a determining factor in litigation success. Furthermore, the effect size observed is small, so even if future studies found a significant effect, the impact on the odds of winning at trial is likely marginal. It is worth noting that when considering the effect size based on the confidence intervals, this small effect is encompassed between a negative small effect and a potentially substantial positive improvement on the odds of winning at trial. But the large standard error introduces imprecision into the results, raising concerns about the accuracy and reliability of the findings. Consequently, the outcomes of the analysis are inconclusive; there is

no substantial evidence to support the hypothesis that the organization's market value has a meaningful impact on the outcome of the trial. Hypothesis 4 is not supported.

7.2.2 In-house Litigation Resources and Trial Outcome

Legal scholars have suggested that organizations that have invested in legal resources may have a competitive advantage (e.g., Argyres & Mayer, 2007). Applying the RBV to the legal context, scholars suggest that legal resources, such as specialized legal expertise, and well-developed legal processes, can provide organizations with distinct capabilities that set them apart from their competitors (Bagley, 2008; Bird, 2008). These resources can be valuable, rare, difficult to imitate, and non-substitutable, giving organizations a competitive edge in legal matters and ultimately above average organizational performance. Studies in the management literature have also shown that access to litigation lawyers is critical in protecting valuable intellectual property (Agarwal et al., 2009). Thus, I expected that anorganization which invests in developing internal litigation ability will be more likely to win at trial than a organization that elects to retain counsel from an external law firm.

I conducted a binomial logistic regression analysis using the trial outcome as the dependent variable and the in-house litigation capability as the independent variable. The model included control variables that have been associated with the odds of winning the lawsuit at court (Galanter, 2013): the organization's status in the litigation (e.g., plaintiff or defendant) , the type of opposing litigant (e.g.,individual, private business, government, or TSX company), the number of trials the organization was involved in for the previous two years , and the experience of the litigation lawyer (in years). The results are presented in Table 7.6.

The overall model was significant ($\chi^2(7) = 22.56$, p = .002), The McFadden R-squared value calculated for this model was .06. There was a weak positive association between the litigation ability of the organization and the odds of winning the lawsuit at court (β = .42, OR = 1.52, 95%CI[.80, 2.87], p = .20). The coefficient (β = .42) was positive as expected in Hypothesis 5, indicating that if there is at least one litigation lawyer within the organization, the odds of winning the trial increase by 52 percent (95%CI[-.20, 1.87]). However, the association is not statistically significant.

The effect size observed is small. It is worth noting that when considering the effect size of either extreme on the confidence interval, this effect is somewhere between a negative marginal effect and a potentially substantial impact on the odds of winning at trial. This suggests that the true effect may be at least negligible or possibly have a more significant influence. But the large standard error introduces imprecision into the results, raising concerns about the accuracy and reliability of the findings. Consequently, the outcomes of the analysis are inconclusive and the results of the analysis did not provide substantial evidence to support the hypothesis that the organization's internal litigation ability has a meaningful impact on the outcome of the trial; Hypothesis 5 is not supported.

7.2.3 Financial Resources, In-house Litigation and Trial Outcomes

Galanter (1974b) theorized that an increase in winning at court was because organizations had the financial means to acquire high quality litigation resources, such as lawyers. I expected then that the influence of the organization's financial size on the trial outcome was mediated through the investment in developing internal litigation ability.

Two models were tested to investigate whether the influence of the financial size of the organization on the favourability of the trial outcome is mediated by the organization's investment in in-house litigation ability. Both models included control variables that have been associated with the odds of winning the lawsuit at court (Galanter, 2013): the organization's status in the litigation (e.g., plaintiff or defendant) , the type of opposing litigant (e.g.,individual, private business, government, or TSX company), the number of trials the organization was involved in for the previous two years , and the experience of the litigation lawyer (in years). The analysis followed the mediation procedure proposed by Tingley et al. (2014) and utilized the 'mediation' package (version 4.5.0) developed by (Tingley et al., 2019). The results are presented in Table 7.6 and Table 7.7

The first logistic regression model was significant ($\chi^2(8) = 38.12$, $p < .001$). The McFadden R-squared value calculated for this model was .13 indicating a moderate association between the market reaction and the independent variables. There was a significant and very strong association between the market capitalization of the organization and their in-house litigation

ability (β = 2.91, OR = 18.36, CI%[1.898, .4.095], p < .001). This finding suggests that organizations with greater financial resources are more likely to have developed some level of internal litigation ability compared to organizations with limited financial means.

In the second logistic regression model, which included the organization's market value and in-house litigation ability as predictors of winning the court decision, controlling for the interaction between the market value and the in-house litigation ability (Tingley et al., 2014). The overall model was significant ($\chi^2(10) = 24.45$, p = .006). The McFadden R-squared value calculated for this model was .07 indicating a small association between the market reaction and the independent variables. The financial size of the organization had a negative very small but statistically non-significant effect on the odds of winning at trial, reducing the odds by 48 percent (β = -.65, OR = .52, 95%CI[.129, 1.611], p = .30]), reducing the odds by 48 percent (95%CI[-.871, .611]) when keeping the other variables constant. The organization's in-house litigation ability was moderately associated with an increased chance of a favourable court decision (β = 1.01, OR = 2.74, 95%CI[.952, 9.597], p = .08]). increasing the odds by 174 percent, holding the remaining variables constant. The bootstrap confidence interval derived from 1000 samples indicated that the indirect effect coefficient was significant (β = .108, OR = 1.11, 95%CI[.998, 1.234], p = .056) which supported the hypothesis that the in-house litigation ability mediates the relationship between the trial outcome and market value. Table 7.7 presents the results of the mediation analysis.

The results of the analysis indicate that there is no significant direct effect; however, it is worth noting that when considering the effect size of the confidence intervals, this small effect is encompassed between a negative small effect and a small effect. This suggests that the true direct effect is somewhere in between these marginal effects. While more research is necessary, these results provide some evidence that the in-house litigation ability partially mediates the relationship between financial resources and the trial outcome. But caution is warranted, given that the two underlying mechanisms as studied under Hypothesis 4 and 5, were inconclusive. Thus, Hypothesis 6 is supported, but with caution.

Table 7.7: Nonparametric Bootstrap Confidence Intervals for Hypothesis 6

	Estimate	95% CI Lower	95% CI Upper	p-value
ACME (control)	0.03429	-0.02822	0.12	0.258
ACME (treated)	0.18176	-0.00474	0.32	0.054 .
ADE (control)	-0.02198	-0.18633	0.19	0.844
ADE (treated)	0.12550	-0.07696	0.31	0.224
Total Effect	**0.15979**	**-0.03535**	**0.34**	**0.094 .**
Prop. Mediated (control)	0.21459	-0.73755	2.03	0.324
Prop. Mediated (treated)	1.13754	-2.13269	6.07	0.132
ACME (average)	**0.10803**	**-0.00180**	**0.21**	**0.056 .**
ADE (average)	0.05176	-0.11985	0.23	0.576
Prop. Mediated (average)	0.67607	-1.19492	3.82	0.142

*p<0.1; **p<0.05; ***p<0.01

7.2.4 The CLO, In-house Litigation Resources and Trial Outcomes

Bagley (2016) and Bird (2015) emphasized the strategic significance of the CLO within organizations, highlighting the critical role the CLO plays on the executive team as they possess a deep understanding of legal issues and can provide strategic guidance in navigating complex legal and regulatory environments. Thus, the CLO may be a form of institutional interlock, bridging the gap between the organization's internal litigation department and the legal system(Pfeffer & Salancik, 2003).

In the context of litigation resources, organizations often require access to the legal system and external resources to effectively navigate the complexities of litigation. As an institutional interlock, the CLO is expected to navigate the legal landscape, provide strategic guidance, and ensure that the internal litigation department has access to the necessary resources and information from the legal system. Thus, I expected that the CLO would improve the organization's internal litigation ability to mobilize higher quality litigation resources embedded in the legal system in order to improve the probability of winning at court.

I conducted a binomial logistic regression analysis using the trial outcome as the dependent variable and a moderating variable to account for the interaction between the in-house litigation capability and the CLO. The model included control variables that have been associated with the odds of winning the lawsuit at court (Galanter, 2013): the organization's status in the

litigation (e.g., plaintiff or defendant) , the type of opposing litigant (e.g.,individual, private business, government, or TSX company), the financial size of the organization, the number of trials the organization was involved in for the previous two years , and the experience of the litigation lawyer (in years). The results are presented in Table 7.6

Table 7.6 presents the results. The overall model was found to be statistically significant, indicating that the variables included in the model collectively have an influence on the trial outcomes ($\chi^2(10) = 24.46$, p = .006). The McFadden's R-squared value of .07 suggests a small association between the predictors included in the model and the observed trial outcomes.

When examining the main effects, it was observed that neither the in-house litigation ability (β = .33, OR = 1.39, 95% CI [.633, 3.071], p = .409) nor the presence of a CLO (β = -.47, OR = .63, 95% CI[.218, 1.809], p = .388) had a substantial impact on the likelihood of winning the trial. Organizations with some form of internal litigation ability may have 39 percent (95%CI[-.367, 2.071]) higher odds of winning over organizations who do not. However, this effect was not statistically significant (p = .409). Interestingly, the coefficient for the CLO (β = -.47) indicated a negative association, suggesting that the presence of a CLO might decrease the organization's odds of winning by 37 percent (95%CI[-.782, .809]). However, similar to the in-house litigation ability, this effect was not statistically significant.

The interaction between the in-house litigation ability and the CLO was not statistically significant (β = .26, OR = 1.30, 95% CI [.331, 5.226], p = .710). This indicates that the combined effect of these two variables on the trial outcomes was not statistically different from what would be expected based on their individual effects.

The presence of a CLO did not have a significant impact on the relationship between in-house litigation ability and trial outcomes. The interaction effect was not strong enough to suggest that the CLO enhanced or influenced the association between the in-house litigation ability and trial outcomes. Hypothesis 7 was not supported.

7.3 Conclusion

A summary of the results are present in Table 7.8.

Table 7.8: Summary of Results

	Hypothesis	Model	Variable of Interest	Effect size	Result
1a	A defendant firms stock price declines at the start of a trial.	significant	not significant	very small	inconclusive
1b	A plaintiff firms stock price declines at the start of a trial.		not significant	very small	inconclusive
2a	The stock price of the prevailing firm will increase at the announcement of the court decision.	not significant	not significant	very small	inconclusive
2b	The stock price of the unsuccessful firm will decrease at the announcement of the court decision.		not significant	very small	inconclusive
3	The partys position in the lawsuit mediates the relationship between the abnormal market returns and the court decision.	mediation was not significant			inconclusive
4	The financial size of the organization increases the odds of winning the trial.	significant	not significant	very small	inconclusive
5	Organizations with in-house litigation ability have higher odds of winning the trial than organizations with no in-house litigation ability.	significant	not significant	small	inconclusive
6	In-house litigation ability mediates the relationship between an organizations financial resources and trial outcomes	mediation was significant			Supported (with caution)
7	The chief legal officer moderates the relationship between the in-house litigation ability and trial outcomes.	significant	not significant	very small	inconclusive

Chapter 8

Discussion and Future Research

This chapter presents the results of the analysis conducted in this dissertation, focusing on the exploration of legal resources and the application of resource dependence theory in the context of litigation. First, I discuss the findings and their implications for theory and practice. The chapter then addresses the limitations of the study and proposes potential areas for future research. Finally, it highlights the contributions of this research to theory and practice, emphasizing its relevance for understanding the management of litigation risks and its implications for regulatory oversight.

8.1 Market Reaction to Trials and Court Decisions

Lawsuits that end up in court are widely recognized as costly and public affairs that can impact organizational performance and value (Cutler & Summers, 1987; Engelmann & Cornell, 1988). The management literature has focused on the negative impact of litigation events on organizational performance rather than the potential strategic value of a favourable court decision that may resolve a source of environmental uncertainty. Studies in the economic literature have found evidence that organizations lose market value when they are named defendants in a lawsuit, as shareholders and investors become concerned about future profitability and viability (e.g., Karpoff et al., 2008; Karpoff et al., 2005). Other studies have found that the market reacts positively when these defendant organizations settle the lawsuit before trial (e.g., Bhagat et al., 1998). However, Haslem (2005) found that the market reacted positively when the defendant organization resolved the matter through trial rather than through a private settlement. The objective of analyzing market reactions to trials and their outcomes stems from the concern expressed in the management literature regarding the potential ad-

verse effects of trials on organizational performance.

8.1.1 Abnormal Market Returns and Trials

As stated in Hypothesis 1, I expected that there would be a decline in the stock price for both defendant and plaintiff organizations as the trial day approached. I argued that the market returns would decline in the five days leading up to the first day of the trial because of anticipation of increased uncertainty about the trial outcome and the additional investment in time, money and effort. Traditional economic reasoning suggests that shareholders and investors would react negatively to the time and expense associated with lawsuits, especially trials (Engelmann & Cornell, 1988).

Hypothesis 1b predicted that the plaintiff organization would experience an adverse market reaction associated with the start of the trial. The results did not show a statistically significant change in the stock price for plaintiff organizations. This result is consistent with previous studies that concluded that plaintiff organizations did not experience a change in market value at the start of the lawsuit (Bhagat & Romano, 2002a).

Hypothesis 1a predicted that the defendant organization would also experience a negative reaction associated with the start of the trial. Again, the results were not significant. But this is contrary to previous studies that have found that the market value of defendant organizations declines when the lawsuit is filed (Arena & Ferris, 2018; Hutton et al., 2015) or when it is settled (Haslem, 2005). This result is also inconsistent with Haslem (2005), who found that the market reacted positively when the defendant organization went to court instead of settling.

8.1.2 Abnormal Market Returns in Response to Trial Outcomes

The next two hypotheses were centred on how the market reacted to the court decision. I theorized that the court's decision would be an important information event that would enable shareholders to assess the organization's future performance (Haslem, 2005). Hypothesis 2a predicted that market returns would increase when the organization won the trial; Hypothesis 2b predicted that the market returns would decrease when the organization lost the trial.

The results did not show a statistically significant change in the stock price for both successful and unsuccessful organizations. This result is surprising as prior studies have found that there was a change in the market value of the litigating organizations when the lawsuit is settled (e.g., Bhagat et al., 1998; Bhagat et al., 1994; Karpoff et al., 2008; Karpoff & Lott Jr, 1993; Narayanamoorthy & Zhou, 2016; Romano, 1991). As well, the case studies of Engelmann and Cornell (1988) and Cutler and Summers (1987) offered evidence that the market value of the defendant organization declines. The market value of the plaintiff organization increases when the court's decision is announced.

In the third study, I built on previous research suggesting that the context and specific position of the organization involved in the litigation shape market perceptions. Existing studies have highlighted the importance of the context and specific position of organizations involved in lawsuits for market perceptions of events during litigation. For example, it has been suggested that the magnitude of the market reaction is influenced by the nature of the claims made against the defendant organization (Karpoff et al., 2005) or by the litigation stakes (Narayanamoorthy & Zhou, 2016). However, the results demonstrated that market perceptions of lawsuit trial outcomes were not significantly mediated by the role played by organizations in the litigation.

8.1.3 Conclusion

These studies examining market reactions to trials and their outcomes all yielded inconclusive results; thus, the market may not perceive trials or trial outcomes as significant events. Even if these effects were statistically significant, the magnitude of the effect was very small. This result aligns with earlier research that found minimal market valuation changes. For instance, Bhagat et al. (1998) found that defendant organizations lost an average of 0.97 percent of their market value of equity (or 15.96 million USD) which amounted to a marginal impact on the organization's market capitalization (Cohen's f2 = 0.05). In examining the confidence intervals for each of the effects of the trials and decisions, the magnitude of the effect was marginal on either end, suggesting that while the effect was not significant, the true effect would be marginal in terms of its practical importance. Of course, the magnitude of the

effect must be evaluated according to the context of the organization (Narayanamoorthy & Zhou, 2016); any change of market value, especially a decline, must be evaluated relative to the organization's threshold of tolerance. For example, this threshold may be related to the organization's financial resources; a very large organization may be able to withstand a loss in market value associated with losing the trial, but for a smaller organization, any such decline may be devastating.

Another explanation for these results could be that the information regarding the trial had already been incorporated into the market. The decision to resolve the matter in front of a court may be considered a "voluntary corporate event" similar to the filing of a lawsuit by a plaintiff, in which the plaintiff organization has control over the type, timing, and magnitude of any public announcement (Bhagat et al., 1998, p. 24). In the context of a trial, organizations may announce that the parties have failed to settle the lawsuit privately and decided to resolve the matter at trial. The organization may have been transparent with investors or launched public relations or media campaigns that set expectations. Additionally, many large organizations have institutional shareholders with significant holdings, giving them a seat at the board table and potential insights into the trial strategy and possible outcomes (Schnatterly et al., 2008). Finally, stakeholders outside the organization and the litigation may influence investor perceptions. For example, analysts who closely follow the industry or company conducting a trial may provide research reports and predictions based on their insights and analyses. Key opinion leaders, professionals, and experts in the field may provide their perspectives and predictions regarding the trial's outcome through interviews, articles, and conferences that can shape market expectations.

Regression models in this group of studies showed limited explanation capabilities, accounting for only a small fraction of the variation in abnormal market returns; also, hypotheses 2 and 3 were not statistically significant. This finding indicates that the relationships between the independent variables and the abnormal market returns are weak or non-existent, or other factors are not included in the model that affects how the market reacts to trial events. For example, the sample had a high ratio of trials that lasted less than five days involving individual cases implying these were low-stakes lawsuits with minimal potential to affect the organiza-

tion substantially. In such instances, the organization may be able to absorb any losses resulting from an unfavourable trial outcome. Thus the market is likely to pay little notice to these trials. Including additional measures to account for the context in which market reactions to trials occur may improve the accuracy of the underlying models.

The sample size was potentially an issue, but there were likely issues with the methodology. As discussed in Chapter 7, the event history analysis method utilizes a market model of daily returns from the TSX. In this approach, an abnormal return is identified when the actual stock price of the organization deviates significantly from the expected price according to this general market model. However, by focusing solely on the broader market model, this approach may misclassify significant or non-significant deviations that could be relevant when viewed in the context of the entire stock exchange. By considering market dynamics at the industry level, the analysis may capture the significance of deviations in the stock price and provide a more comprehensive analysis of the organization's performance in relation to the event or trial.

The event history analysis yielded more non-significant abnormal changes in stock price compared to significant abnormal changes in the sample. Specifically, there were 27 trials with statistically significant abnormal market returns around the start of the trial compared to 229 trials with non-significant returns. Similarly, there were 29 trials with significant abnormal market returns compared to 229 trials with non-significant results on the date the court decision was announced. This imbalance in the sample poses challenges when interpreting the results of the multivariate analysis. For example, the large number of non-significant events can reduce the statistical power of the regression model. With fewer significant events to estimate the impact of significant market reactions, the model may be unable to detect and accurately quantify their effects.

A criticism of event history analysis is the potential masking effect of compounding effects, which can conceal a significant market reaction or be the actual cause of the trial rather than a response to the trial. For example, factors such as macroeconomic conditions, industry trends, and concurrent events may confound the analysis. In event history analysis, isolating the

impact of a specific event on stock prices is challenging due to confounding factors such as macroeconomic conditions, industry trends, and concurrent events that can influence market returns. However, the AARs presented in Table 7.1, Table 7.3, and Table 7.4 suggest that there were significant reactions on specific days, which might be related to the trial or its outcome. However, further research is necessary to ensure that these reactions were not simply compounding effects. Moreover, such research could shed light on organizations' strategies to alleviate concerns among shareholders and other stakeholders.

Overall, the lack of significant results is surprising for these studies considering prior studies that found abnormal market dynamics around the initial filing of the lawsuit and then upon the announcement of a settlement (See Arena & Ferris, 2017; Bhagat & Romano, 2002a). The findings were also contrary to Cutler and Summers (1988) and Engelmann and Cornell (1990), who were among the first scholars to conclude that litigation, especially trials, destroys shareholder wealth and should be avoided. Thus, the non-significant market reactions observed raise intriguing questions about the relationship between trials and market dynamics.

For example, the sample used in this study was limited to a specific jurisdiction and time frame that is much different from studies that mostly involved lawsuits in the United States from the 1980s to 1990s (Arena & Ferris, 2018). Future research should focus not only on the relationship between contextual factors and market reactions but also on whether previous research findings can be applied in the present context. This may be done by replicating earlier research using diverse samples from varied jurisdictions and time periods. Such replication efforts would provide an opportunity to examine the potential influence of several factors, including the effects of new regulations, the evolving societal attitudes towards litigation, and the transition from a shareholder base dominated by individual investors to one predominantly composed of institutional shareholders (Schnatterly et al., 2008). Researchers can better understand how these factors shape the relationship between lawsuits and organizational performance by investigating these aspects.

8.2 Litigation Resources and Trial Outcomes

This dissertation posits that litigation, especially trials, can yield strategic value for organizations when they are successful at trial. In the remaining four studies, three different resources - the financial size of the organization, in-house litigation ability, and the appointment of a CLO - were hypothesized to enhance the probability of achieving favourable outcomes in trial proceedings.

8.2.1 The Influence of Financial Resources on Trial Outcomes

The first study examined the relationship between an organization's financial resources and the odds of winning the trial. Previous studies (e.g., Galanter, 1974b; Songer & Sheehan, 1992; Wheeler et al., 1987) have suggested that larger organizations with greater financial resources may enjoy advantages in the litigation process, leading to higher odds of winning court cases compared to smaller organizations. Thus, Hypothesis 4 predicted that the odds of winning in court were positively related to the financial size of the organization. The analysis yielded inconclusive results, failing to support the hypothesis that organizations with greater financial resources possess a heightened probability of winning trials in comparison to their counterparts with fewer financial resources contrary to earlier studies Galanter (1974a, 1974b). Even if there was a statistically significant effect, the magnitude of the impact was not substantial, even at either extreme of the confidence interval, which is consistent with the study by Wheeler et al. (1987), which found that while organizations may have an advantage in court, the advantage is marginal.

These findings cast doubt upon previous assertions suggesting that organizations with greater finances enjoy inherent advantages within the litigation process. The disparity between these findings and previous studies may stem from several factors. One potential explanation is that an organization's financial strength does not assure a commitment to investing in high-quality litigation resources. Another potential reason may be that larger organizations are willing and able to pursue cases even when the chances of success are minimal. Their financial resources allow them to bear the potential losses or pursue appeals and thus are more willing to take

their chances at court. Finally, it could be argued that the rules of civil procedure effectively level the playing field within the courtroom, rendering the influence of financial resources less significant. The results of this study might be evidence that the laws governing the litigation process ensure fairness in the courtroom, aligning with assumptions in the economics literature (Cooter & Rubinfeld, 1989; Priest & Klein, 1984) and the management literature (see Subsection 2.5.4, Chapter 2).

8.2.2 In-house Litigation Ability and Trial Outcomes

The second study in this section examined whether organizations that invested in developing internal litigation ability were more likely to win trials compared to those relying on external law firms. Recently, scholars have highlighted the importance of legal resources and capabilities and have suggested that organizations with well-developed legal resources, including specialized expertise and robust legal processes, may have a competitive advantage over rivals by being able to better adapt to its legal environment (Bagley, 2008; Bird, 2008; Masson & Shariff, 2011). Empirical studies found that internal legal expertise, usually in the form of in-house legal counsel, improved organizational performance as well (e.g., Argyres & Mayer, 2007; DiMatteo, 2010; Hitt et al., 2001; Somaya et al., 2007). Thus, Hypothesis 5 predicted that organizations with in-house litigation ability had higher odds of winning the trial than organizations without such ability. The results indicated that the odds increased when the organization had in-house litigation ability, but this relationship was not statistically significant.

These results are surprising, considering prior empirical evidence suggests that bringing legal knowledge in-house is beneficial to the organization. For example, Somaya et al. (2007) found that in-house patent lawyers improved the number of organizational patents in S&P 500 organizations in the US. But this advantage may only be relevant if the legal expertise is closely associated with core organizational activities.

For example, banking and insurance organizations and companies providing products and services are frequently involved in legal proceedings. This was evident in the frequency at which these sectors appeared in the sample of trials for this study; organizations in these sectors comprised 77.8 percent of the trials in the sample. These organizations often encounter

litigation as a routine aspect of their operations due to the nature of their industry. In some sectors, like the insurance industry, litigation is a fundamental part of the business model (Brown, 2018). Thus, the relevance of litigation expertise may vary depending on the nature of the core business activities. The advantage of bringing such expertise in-house may be more pronounced in industries integral to their operations.

8.2.3 Financial Resources, In-house Litigation Ability, and Trial Outcomes

Galanter (1974) posited that organizations with greater financial resources are more likely to win in court because they can acquire high-quality litigation resources, such as skilled lawyers. Subsequent studies showed that organizations were more like to win in court if they were represented by experienced lawyers (Marvell, 1978; McGuire, 1995; Szmer et al., 2007). Thus, Hypothesis 6 predicted that the influence of an organization's financial size on trial outcomes was mediated by its investment in developing internal litigation ability. By exploring the mediating role of in-house litigation capability, this study aimed to provide empirical evidence of how organizations leveraged their financial resources to improve the odds of winning in court.

The third study's findings supported the hypothesis that in-house litigation ability is mediating in the relationship between trial outcomes and financial size. The relationship between an organization's financial size and the odds of winning the trial was partially explained by its investment in internal litigation capability. However, the results of this study should be taken with caution. The two previous studies examining the effect of an organization's financial resources and in-house litigation ability were inconclusive, suggesting that more research is needed to confirm the results of study 3. For example, in-house litigation lawyers may be embedded in a larger litigation strategy, as with Walmart (see Section 1.4.1). Thus, due to the in-house litigation lawyers' size or availability or the legal issues' nature, some lawsuits may be handled exclusively by external law firms. For example, Walmart outsources personal injury lawsuits involving its retail stores to a vast network of external counsel. Many organizations have also established long-term relationships with external law firms. Such an arrangement provides organizations access to a wealth of litigation expertise that may be challenging to

develop internally within a dedicated litigation department focused solely on the organization's legal matters.

8.2.4 The Impact of the CLO on Trial Outcomes

The final study in the group investigated the role of CLOs as institutional interlocks within organizations and their impact on internal litigation ability and trial outcomes. The role of CLOs within organizations has been recognized as strategically significant, as they possess a deep understanding of legal issues and can provide strategic guidance in navigating complex legal and regulatory environments (Bagley, 2016; Bird et al., 2015). CLOs may act as institutional interlocks, bridging the gap between an organization's internal litigation department and the legal system. Hypothesis 7 thus predicted a positive interaction between in-house litigation ability and the presence of a CLO, suggesting that combining the two would enhance the probability of winning in court. However, the interaction term was non-significant, indicating that it did not have a meaningful impact beyond the individual effects of in-house litigation ability and the presence of a CLO. Moreover, in-house litigation ability and the presence of a CLO did not individually show significant effects.

The direction of the coefficient for the CLO, which was negative and opposite to the hypothesis, is intriguing and warrants further research. There could be several reasons why no meaningful effect was observed. One possibility is that the CLO may be far removed from the litigation function, particularly in large organizations or those with extensive litigation departments. Consequently, they may have limited involvement in communicating strategic information that assists with case selection, providing essential advice, or responding to the need for external resources within the legal system. The CLO's role may be largely ceremonial, and the CLO's job description may be a little different from that of a traditional general counsel (Nelson & Nielsen, 2000).

Additionally, the CLO may be opposed to litigation, adhering to the traditional risk-averse or economically driven assumptions prevalent in the management literature, as discussed in Chapter 2. They may prioritize avoiding litigation and instead seek alternative strategies. It is also possible that the CLO has begun to identify more with the organization's objectives

rather than strictly with their profession (Hopkins et al., 2015). This shift in perspective may make them less inclined to pursue trials and view them as opportunities to change the legal landscape (Nelson & Nielsen, 2000).

8.2.5 Conclusion

In addition to the above suggestions, the results of these studies may be explained by measurement issues. For example, the study might benefit from a more accurate measure of an organization's financial size. Market capitalization primarily represents the market's valuation of the company's equity, which may not necessarily align with its substantial financial resources. For example, an organization's total assets consider all tangible and intangible assets and its current and long-term resources, allowing for a better assessment of an organization's capacity to invest in litigation strategies and engage in frequent or prolonged legal disputes.

The measurement of in-house litigation ability was also overly simplified. Identifying in-house litigation ability based solely on the presence of at least one lawyer with litigation in their titles does not fully capture the breadth and depth of an organization's litigation capabilities. This approach assumes that such titles directly correspond to litigation expertise, overlooking other factors, such as experience, specialization, and resources. Also, the binary variable used to represent the presence or absence of in-house litigation ability ignores the variance in the size and composition of litigation departments across organizations. Some organizations may have small teams handling occasional litigation matters, while others may have extensive and comprehensive departments or even separate entities dedicated to litigation (Brown, 2018; Saddleton, 2021).

Moreover, the frequency of trials in which the organizations were involved and the presence of a litigation department were strongly associated, suggesting that larger litigation departments likely encounter a wider variety of legal issues than smaller organizations that handle specific matters. Future studies should consider a more multifaceted approach to measuring litigation ability, taking into account factors such as the interaction between in-house and external litigation counsel, the range of legal issues managed in-house, the point at which case management transfers to external counsel, and the relationship between in-house and external

legal teams.

The above reasoning also applies to the CLO. Notably, the coefficient for organizations with a CLO was negative, but the effect size remained uncertain. This finding suggests that the title of CLO alone may not be sufficient and that there may be other factors or alternative job titles that could play a role in influencing trial outcomes. Restricting the search for CLOs to organizations explicitly using this specific title may overlook other equivalent positions within organizations. This could result in an incomplete representation of the presence and influence of high-level legal officers. Future studies should focus on developing a better understanding of the specific responsibilities, priorities, and perspectives of CLOs concerning litigation. Reviewing job descriptions and interviews could help uncover critical differences between CLOs and other legal leaders within organizations.

Finally, future research should explore additional measures of litigation resources beyond in-house litigation ability. Factors such as specialized legal expertise, well-developed legal processes, and access to external legal resources could be considered to provide a more comprehensive understanding of how litigation resources mediate the relationship between financial size and trial outcomes. Moreover, investigating industry-specific factors and comparing results across industries would contribute to a more nuanced understanding of the dynamics at play. Additionally, qualitative research methods, such as interviews and case studies, could provide deeper insights into the mechanisms through which financial size and litigation resources interact to influence trial outcomes.

8.3 Limitations and Future Research

In addition to the improvements mentioned above in the theoretical and empirical models, several limitations regarding the sample, measurements, and assumptions may have contributed to the lack of significant findings. By addressing these limitations, future studies may provide deeper insights into the dynamics at play within the litigation process.

8.3.1 Data Sample

Overall, while the study provided insights into the relationship between organizational characteristics and trial outcomes, it is crucial to acknowledge the limitations of the data and context. Future research should consider expanding the scope of analysis to encompass a broader range of litigation types, organizational factors, and legal contexts to enhance the generalizability and depth of understanding in this area.

The sample included trials in which only Canadian publicly traded stock companies were named. The sample excluded trials involving any of these organizations' subsidiaries; this masked the frequency and results of these public organizations' trials. As well, insurance companies are not usually explicitly listed as parties to disputes involving their policyholders, but they may have a significant impact on the outcome of the trial. These organizations often provide financial resources, legal expertise and strategic guidance to the parties involved, which can significantly affect the dynamics and results of disputes. Consequently, future research should consider including the subsidiaries of these publicly traded organizations and lawsuits in which they may not be a named party but are nonetheless invested in the trial's outcome.

Administrative courts are established to be a formal but less expensive way of resolving disputes than traditional judicial systems. These adjudicators who make final determinations on legal disputes have a unique knowledge of the subject to be considered. These specialized units play an important role in resolving legal conflicts and dealing with specific industry or regulatory issues and, thus, are an important context to examine organizational litigation strategies.

Finally, the sample was limited to organizations in Canada; future research may consider including data from other countries to gain additional insights into how organizations engage in the litigation process. For example, exploring and comparing data from the US and Canada would be valuable, especially considering that most past research in this area has primarily been conducted in the US context, where different procedural rules apply and may affect outcomes (Arena & Ferris, 2018).

8.3.2 Construct and Variable Measurement

Another limitation of the study is the coding of trial outcomes that served as an independent variable in the first three studies and a dependent variable in the following four studies. The binary encoding of trial results as wins or losses follows the assumption in the economic literature that trials are considered zero-sum games but, in reality, oversimplifies the complexity of trial decision-making. Court decisions are unlikely to declare a distinct "winner" or "loser"; instead, the outcome for the organization is somewhere between these two extremes. For example, the court may find both parties partially liable, or the defendant must pay much less in damages than the plaintiff had claimed. In addition, organizations may define success based on the strategic objectives of going to trial, such as setting important precedents or establishing a reputation. Future research should develop more comprehensive scales to account for the range of potential outcomes coming out of a trial.

8.3.3 Assumptions

A critical assumption made in this dissertation was that the rules of civil procedure effectively mitigate tactics that might undermine the principles of procedural justice during litigation. However, moments of opportunism or exploitation may arise, allowing more powerful litigants to unfairly influence the process and raising concerns about procedural justice. Thus, the objectives of rules of civil procedure that govern the litigation process strive to constrain the parties from such moments while simultaneously increasing their mutual interest in resolving the legal dispute efficiently and fairly.

But as stated by Drees and Heugens (2013), organizations are likely to develop alternative strategies when faced with legal constraints. These strategies pose challenges to maintaining fairness during the litigation process, as they often are beyond the purview of legal regulation. As suggested in Chapter 5, RDT provides a suitable framework for understanding the litigation dynamics; in the context of a lawsuit, the litigating parties depend on each other and the court for the resources to resolve the matter, highlighting the interdependence and resource dynamics at play. For example, one party in the exchange may be vulnerable when the power

differential significantly favours one party over the other or when one party is not as invested in the outcome of the lawsuit or dependent on the resources under the control of the other party (or the legal system) (Casciaro & Piskorski, 2005; Katila et al., 2008).

The litigation process provides fertile ground for studying RDT in action; analyzing the strategic tactics used by the litigating parties and assessing their influence on the outcome of the trial can reveal the power dynamics, resource dependence and potential inequalities that may exist in the arena of litigation. Future research could explore the extent to which organizations seek to control the litigation process by examining court records, press releases, and other artifacts related to trials.

8.3.4 Conclusion

In summary, future research should address the current study's limitations by expanding the scope of analysis, considering different types of litigation, industries, and organizational factors, and examining the interplay between resource-based strategies, extralegal tactics, and trial outcomes. Furthermore, contextual factors at various levels should be considered to gain a more comprehensive understanding of litigation dynamics and its impact on organizations.

8.4 Contribution

This dissertation makes several contributions to the management literature. Firstly, it challenges the predominant economic-based model of litigation found in management literature. The inconclusive findings of the studies based on these assumptions suggest that there is much more to understand about the complexities of the litigation process. This underscores the need for a deeper understanding of the dynamics of litigation.

This research also contributes to the growing literature integrating legal perspectives into organizational research. Building upon previous studies (e.g., Bagley, 2016; Bird et al., 2015; Lan & Heracleous, 2010), it provides insights into how organizations can better manage litigation and utilize legal resources. The studies in this dissertation serve as an initial step toward identifying effective strategies for managing litigation events more efficiently and value-

creating.

Thirdly, the litigation process offers a unique and powerful context for empirical studies within the framework of RDT. The institutional aspect of RDT is often understudied (Drees & Heugens, 2013; Hillman et al., 2009; Oliver, 1991, 1997). This dissertation explores how the CLO functions as a form of institutional interlock, aiming to enhance the mobilization of the legal system. By delving into the role of the CLO and its influence within the organizational context, this research sheds light on the intersection of institutional dynamics and resource dependency in the context of litigation.

This dissertation contributes to the large body of studies that examine how the market reacts to litigation events by explicitly focusing on the Canadian context. While extensive research and studies have been conducted on how the market reacts to litigation events in the United States, the Canadian context has often been underrepresented in the literature (Arena & Ferris, 2018). By exploring litigation strategies and outcomes within the Canadian context, this research offers insights into how the market reacts to litigation events in Canada, providing a more comprehensive understanding of the global landscape of organizational litigation.

Finally, the non-significant findings obtained from this dissertation provide valuable insights and indicate that much remains to be explored and understood about the complexity of litigation and its implications for organizational dynamics. This dissertation contributes by highlighting areas for further investigation and making recommendations for future research.

In summary, this dissertation contributes to the literature by considering the legal environment beyond the US, examining outcomes within the Canadian legal system, and extending the understanding of how organizations manage litigation and utilize legal resources. It paves the way for further research to identify effective strategies for managing litigation events, incorporate legal perspectives into strategic decision-making, and elucidate the institutional dynamics within the litigation process.

8.5 Implications for Policy and Practice

The findings suggest that the Canadian market may not exhibit the same negative reactions to trial events involving publicly listed companies as those observed in previous studies on the New York Stock Exchange. This implies that organizations on the Toronto Stock Exchange may be less concerned about sustained declines in market value when deciding whether to settle or proceed to trial. Additionally, meaningful corporate actions taken in the aftermath of trial outcomes can mitigate adverse market reactions.

Despite the inconclusive results, organizations should consider their legal processes and resources. The study emphasizes the value created and captured through a strategic mix of external contacts, in-house counsel, and the CLO. Properly managing these legal resources may create a competitive advantage, particularly in an increasingly litigious environment. The research suggests that organizations should audit their current legal resources, review their conflict resolution policies, and develop a formal legal strategy. From a practical standpoint, the dissertation highlights the importance of strategic investments in litigation and legal resources for organizations. It challenges the assumption that merely going to trial will inevitably result in adverse financial consequences. This insight enables organizations to make informed decisions regarding their litigation strategies and resource allocation, enhancing their ability to manage litigation risks effectively.

From a practical standpoint, the dissertation highlights the importance of strategic investments in litigation and legal resources for organizations. It challenges the assumption that going to trial to resolve a legal dispute will inevitably result in substantial and negative financial consequences. This insight enables organizations to make informed decisions regarding their litigation strategies and resource allocation, enhancing their ability to effectively manage litigation risks.

Furthermore, the study has implications for public policy discussions, particularly in industries such as banking and insurance. Understanding which organizations succeed in litigation and why is crucial, as companies from the banking and insurance industries represent a sig-

nificant portion of the sample. The findings shed light on the potential role of these organizations as hidden regulators and contribute to ongoing discussions of regulatory oversight in these sectors.

In terms of practical implications, this dissertation emphasizes the importance of effectively allocating legal resources within organizations. Understanding the impact of in-house litigation ability and the CLO on trial outcomes enables organizations to make informed decisions regarding resource allocation, strategic investments, and developing a robust legal strategy. This knowledge enhances organizations' ability to manage litigation risks and mitigate legal disputes' adverse financial and reputational consequences.

Moreover, the research contributes to the development of effective risk management strategies. By examining the influence of internal legal capabilities on trial outcomes, organizations can better assess and manage their litigation risks, improving overall risk management practices. The dissertation's findings also have implications for discussions of regulatory oversight. Understanding the role of in-house litigation ability and the CLO in trial outcomes provides insights into potential regulatory implications. It emphasizes the need for appropriate oversight, particularly in industries such as banking and insurance. These insights contribute to ongoing discussions and debates on regulatory reforms and the importance of ensuring effective oversight mechanisms.

Additionally, the insights gained from the dissertation can influence discussions and debates on legal and judicial reforms. By providing empirical evidence on the impact of internal legal capabilities on trial outcomes, the research contributes to discussions on promoting access to justice, strengthening in-house legal capacities, and enhancing the efficiency and effectiveness of the judicial system. These insights inform the development of strategies to improve fairness and efficacy in legal and judicial processes.

In summary, the dissertation's findings offer practical guidance for organizations in effectively allocating their legal resources. They contribute to developing risk management strategies, inform discussions of regulatory oversight, and influence debates on legal and judicial reforms. By considering the influence of in-house litigation ability and the CLO on trial outcomes, or-

ganizations, policymakers, and stakeholders can make informed decisions and work towards improving the management of litigation risks, promoting regulatory fairness, and enhancing the legal and judicial systems.

Appendix A

Articles Included in Literature Review

Table 1: Articles included in Literature Review

Name	IV	DV	Context	Findings in relations to the present study
Kesner and Johnson (1990)	Ratio of insider board members	Lawsuit filed against firm by shareholders Trial outcomes (win/lose)	56 lawsuits in Delaware between 1975 and 1986	Directors sued for breach of fiduciary duty had a larger proportion of internal directors. There was no significant correlation between the composition of the board and the outcome of the court case (e.g. win or lose). The defendants overwhelmingly won these cases, 46 were dismissed, and 10 cases were found to have breached their fiduciary duty.
Barney et al. (1992)	Industry with legal exposure	Vertical integration Change in number of small firms in industry by percentage		Firms were less likely to vertically integrate their production systems in industries where there was a higher risk of being sued than in other industries, so small firm output was higher in these industries.
Bies and Tyler (1993)	Self-interest or perception of organizational fairness	Likelihood of being sued by employee	Survey of 141 currently employed workers	In a survey of 141 currently employed workers, the authors found that organizations are less likely to be the subject of litigation when employees perceive the moral and interpersonal behavior of managers as fair and impartial in enforcing rules and procedures.
Conlon and Sullivan (1999)	Number of issues Number of lawyers Relative amount of document Size of corporation (total assets)	Time to resolution Settle or trial decision Outcome favourability (Plaintiff/Defendant) Compliance (appeal by losing party)	117 disputes in Court of Chancery	More issue in dispute led to marginally faster speeds. Greater number of lawyers on either side led to slower resolution. Voluntary settlements are more likely when a plaintiffs absolute level of documentation is low and when documentation makes up a large proportion of the total documentation. Defendants won more than plaintiffs. The party with the higher ratio of documentation had a more favorable outcome. Outcomes marginally favoured larger organizations. Organizations with more legal representations were more likely to appeal than individuals with fewer lawyers.

Table 1: Articles included in Literature Review (continued)

Name	IV	DV	Context	Findings in relations to the present study
Kassinis and Vafeas (2002)	Ratio of directors from industrial firms Ratio of insider ownership	Lawsuit filed against firm	Pre-trial profiles of 209 violating organizations between 1994 and 1998	The likelihood of becoming a defendant increases with the size of the board, the proportion of directors in industrial companies, and the proportion of internal ownership, and decreases with the number of directorships held by outside directors.
Mezias (2002)	Number of American top officers, US operations or human resource professionals	Lawsuit filed against firm Trial outcomes (win/lose)	Matched sample of 486 British, German and Japanese subsidiaries to US owned firms	Foreign firms were more likely to face labour lawsuit judgments both federal and state jurisdictions.But firms that used American top officers or whose parent firm had more US operations were less likely to be sued, while those with human resource professionals were more likely to lose at court.
Somaya (2003)	Patent strategy	Settle or trial decision	709 patent litigation events from 1983 to 1993	The strategic value of the assets at stake determined whether the lawsuit was resolved by settlement or at trial. The higher the stakes, the more likely the lawsuit would be decided at court. Inter-industry comparisons show that non settlement of patent suits in both research medicines and computers is increased by strategic stakes.
James and Wooten (2006)	Type of discrimination class action lawsuit	Organizational response pattern Lawsuit outcomes (e.g. time, legal & stakeholder settlements)	Qualitative study of media accounts of 76 different discrimination lawsuits between 1999-2000	There were 4 paths to legal and stakeholder settlements, involving different responses to legal and social coercive forces, including plaintiff and process retaliation.

Table 1: Articles included in Literature Review (continued)

Name	IV	DV	Context	Findings in relations to the present study
Agarwal et al. (2009)	Lawsuits initiated by focal firm relative to other firms in industry	The number of patent citations by hiring firm		Firm litigiousness was found to deter rivals from misappropriating value when employee inventors are hired by rival organizations using data on enforcement activity, inter-industry inventor mobility, and patent citations in the U.S. semiconductor industry.
Shaver and Mezias (2009)	Number of pre-acquisition lawsuits Number of post acquisition lawsuits	Trial outcome (win/lose)		The results of a comparison of the number of judgments pre- and post-acquisition show that acquired firms faced a significant increase in lawsuit judgments post acquisition.
Clarkson and Toh (2010)	Average number of lawsuits initiated in the two years prior to year t-1 by firms in the same industry	Less R&D investment in a technological space by focal firm		Firms decrease investment in a technological space when their rivals' speed is enhanced by their downstream capabilities, or when rivals' exclusion is enhanced by their collective litigation experiences.
Reitzig and Wagner (2010)	Number of active lawsuits	Vertical integration upstream	Firms in patent lawsuits from 1980 to 2000	Firms are more likely to have inhouse patent lawyers to file patents (upstream) when they are engaged in more patent litigation (downstream).
Bakos and Dellarocas (2011)	Complaints over social media Lawsuit filed against firm	Level of contract fulfillment	Game theory	Reputation is less efficient than litigation in inducing any given level of effort and improves efficiency only in settings where the high litigation costs, insufficient damage awards, or low court accuracy induce sub-optimal effort or cause market failure.Adding reputation to existing litigation mechanisms increases seller effort and may require adjusting damage awards to avoid inducing excessive effort that reduces economic efficiency.

Table 1: Articles included in Literature Review (continued)

Name	IV	DV	Context	Findings in relations to the present study
Lumineau and Oxley (2012)	Lawyers Cooperative norms	Lawsuit filed against firm	Sample of lawsuits from private law firm	The introduction of lawyers to an exchange relationship does not necessarily result in litigating a dispute, but it is more likely to happen if cooperative norms have not developed over the exchange duration.
Koh et al. (2014)	Corporate Social Performance (CSP)	Lawsuit filed against firm		Firms are less likely to be sued if they pursue a strategy that supports CSP, adding 2-4 percent to firm value, but the magnitude of value depends on firm pragmatic and moral legitimacy.
Ganco et al. (2015)	Number of lawsuits initiated by the focal firm	Frequency of employee firm and market exit	US semiconductor industry	A firm's reputation for litigiousness reduces the frequency of job hopping to other firms in the industry, but also shifts the distribution of talent released to the market (i.e. higher turnover in the market).
Hopkins et al. (2015)	Compensation of GC	Lawsuit filed against firm for securities fraud		Firms with GCs who are highly compensated in a manner similar to the CEO and CFO are more likely to have lower quality financial reporting and more aggressive accounting practices, increasing the likelihood that the firm will be subject to a securities lawsuit.
Hutton et al. (2015)	Political donations Being sued	Lawsuit filed against firm Abnormal stock returns	Lawsuits involving publicly traded companies	Firms varied in their exposure to different litigation based on the political culture of the firm (e.g. Republican/Democrat), but the market reaction to the litigation announcement was similar, suggesting that the political leanings of a firm did not influence differences in expected litigation costs.
Donelson and Hopkins (2016)	Market-wide decline	Lawsuit filed against firm 5 days following disclosure		Organizations were more likely to be sued within 5 days of disclosure during large market wide declines, even though the market wide events were largely irrelevant.

Table 1: Articles included in Literature Review (continued)

Name	IV	DV	Context	Findings in relations to the present study
Eesley et al. (2016)	Activist type	Tactics to demand social change		Social movement organizations use protests and boycotts to drag companies through the mud with media attention, while religious groups and activist investors turn to lawsuits and proxy votes that attract very little media attention yet may foster investor risk perceptions.
Paik and Zhu (2016)	Number of patent lawsuits in the focal market	Global strategy of focal market firms	Lawsuits in global smartphone industry	As the number of lawsuits increase in a market, smartphone vendors not involved in any litigation will seek institutional arbitrage opportunities by focusing more on markets with weaker intellectual property (IP) protection. This strategic response is more pronounced for vendors whose stocks of patents are small and whose home markets have weak-IP systems.
Shi et al. (2016)	Difference in pay between CEO and TMT	Lawsuit filed against by shareholders	Shareholder class action lawsuits	Large salary discrepancies between the CEO and the TMT increase the likelihood of bad behaviour or wrongdoing, which is likely to result in a shareholder class action lawsuit. This is even more true for highly unrelated diversified companies and companies exposed to a low level of external uncertainty.
Tan (2016)	Relative prominence of focal firm to rivals	Lawsuit filed against focal firm	Semiconductor industry	Firms that command much higher levels of media coverage than rivals are able to avoid litigation more often than firms with comparable or lower levels of media coverage.

Table 1: Articles included in Literature Review (continued)

Name	IV	DV	Context	Findings in relations to the present study
Howard et al. (2017)	Global strategy of focal firm and partner Number of lawsuits the partner is defending	Interlock ties	Board interlock ties of 717 technology-based firms in 2002-2006	Formation is more likely when there is an alignment between the global strategy of the focus firms core technology and that of an external counterpart and when the counterpart actively defends its intellectual property in this area.
Theeke and Lee (2017)	Number of shared markets between the focal firm and rivals	Likelihood the focal firm will initiate litigation		The more markets that rivals share, the more likely that a firm will initiate patent litigation against a rival, suggesting that there are heterogeneity in capabilities to protect knowledge.
Barnett et al. (2018)	Corporate Social Responsibility (CSR)	Lawsuit filed against firm	408 firms from 2002-2011	CSR reduced the likelihood of organizations being sued.
Conti and Valentini (2018)	Change in US state law	New firm market entry		A change in the institutional environment that diminishes the ability of incumbent firms to establish judicial connections was followed by an increase in the number of new market entrants.
Crane and Koch (2018)	Court decision	Ownership structure Governance Organizational performance		The court decision limited the ability of shareholders to coordinate and litigation against management leading to concentrated ownership structures with a shift from individual to institutional shareholder ownership, fewer director and officer governance protections, and operating performance declines for those firms whose ownership structure did not change.

Table 1: Articles included in Literature Review (continued)

Name	IV	DV	Context	Findings in relations to the present study
Rudy and Black (2018)	Industry Litigation strategy	Litigation strategy Organizational performance	Patent litigation activity between 2002 and 2008 in the pharmaceutical and semiconductor industries	Firms in the pharmaceutical industry were more likely to follow a proactive proprietary patent litigation strategy, while firms in the semiconductor industry were more likely to engage in a proactive defensive patent litigation strategy.There was no relationship between the litigation strategy and organizational performance in the pharmaceutical industry, but firms that followed a proactive defensive patent litigation strategy in the semiconductor industry enjoyed better performance than firms that did not engage in this strategy.
Andrus et al. (2019)	Lawsuit filed against firm as lead defendant	Executive turnover the following year	4,000 executives from S&P companies	Executive members were more likely to leave the year after their firm was named lead defendant in a lawsuit.
Cohen et al. (2019)	Number of lawyers on general retainer Number of ongoing lawsuits	Lawsuits filed by NPE		The reduced ability to defend against NPEs was a function of the size of legal team on retainer by the organization and the number of ongoing lawsuits the organization was involved in.The more lawyers and less lawsuits reduced the likelihood of becoming a target.
Ganco et al. (2020)	Exit of firm's retained IP law firm	Technological diversification	Law firm exits and patent lawsuits from 2002 to 2010	A firm will slow expansion into new technological domains when its external IP law firm unexpectedly becomes unavailable (i.e. the law firm is dissolved).
Uribe et al. (2020)	Prior collaboration between opposing lawyers	Time to lawsuit resolution Abnormal stock returns	20,000 external legal counsel in intellectual property lawsuits filed from 2000 to 2015	Lawyers are uncooperative in court in order to distance themselves from opposing lawyers who are former collaborators. These dynamics are associated with longer, more contentious litigation and lost economic value for clients, as evidenced by an analysis of companies' abnormal stock market returns after a litigation has ended.

Table 1: Articles included in Literature Review (continued)

Name	IV	DV	Context	Findings in relations to the present study
Jones et al. (2021)	Change in US state law	R&D investment		Firms invested more in research and development, produced more patents in new technological classes and more patents based on new knowledge, generated more patents with significant impacts, and achieved higher patent value after legislation reduced the risk of being sued by shareholders.
Lin et al. (2021)	Lawsuit filed between focal firms	Cooperation between focal firms, and firms not involved in the litigation	Lawsuits involving mobile telecommunications firms within the 3GPP standards development organization	Litigating firms were found to increase their cooperative efforts once a lawsuit is filed, and defendant firms increased their cooperative efforts with firms not connected with the litigation but within the same ecosystem in order steer standards away from the aggressors.
Mezzanotti (2021)	Court decision	R&D investment	Lawsuits after eBay v. MercExchange	The decreased potential costs for defendants preceded by R&D investment suggesting that litigation negatively affected innovation because it lowers the return on such investments and exacerbates its financing constraints.
Ransbotham et al. (2021)	Electronic medical records	Time to lawsuit resolution	Medical malpractice lawsuits	The use of electronic medical records (EMRs) at the time of the alleged malpractice claim is associated with a four-month reduction in lawsuit resolution time.
Sytch and Kim (2021)	US federal district court where lawsuit is filed	Trial outcome (win/lose)	Patent litigation from 1990 to 2013	Firms will select courts in which their lawyers have past educational or professional affiliations with the judge, increasing the likelihood of winning a lawsuit.

Table 1: Articles included in Literature Review (continued)

Name	IV	DV	Context	Findings in relations to the present study
Bonini et al. (2022)	Number of long-tenured independent directors	Number of shareholder class action lawsuits	Shareholder lawsuits involving S&P 1,500 firms	Boards with independent (or outside) members with long tenure experienced fewer shareholder class action lawsuits.

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