The scale and scope of corporate litigation exposure and the factors that explain contingent loss disclosures

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Abstract:

We collect a sample of 75,421 lawsuits filed against 90,255 public company defendants from 2006 through 2016 using federal district court docket information. These lawsuits involve an array of allegations, including product liability, civil rights discrimination, improper compensation and labor practices, antitrust violations, pollution, trademark and copyright violations, and patent infringement. The vast majority of these lawsuits likely do not make it onto the radar of investors: only 3% of lawsuit-defendants disclose the pending litigation at any point, with disclosure by plaintiffs and fellow defendants increasing the overall rate of disclosure to 6%. If disclosed, the decision to do so typically occurs early in the legal process, suggesting that the type of claim and the circumstances surrounding its filing—as opposed to how the lawsuit unfolds over time—drive the decision to disclose. Prior SEC scrutiny, the desire to hide potential losses that may make existing debt look particularly risky, and incentives to shape the narrative relative to other available lawsuit information factor into firms' disclosure decisions. We also find that increased contingency-related concerns expressed in SEC comment letters coincided with the FASB's consideration of loss contingencies in the 2008 to 2012 timeframe. Yet, the rate of disclosure (particularly of losses) declined over our sample period. Overall, our findings inform the debate about contingency disclosure standards and enforcement. In so doing, our study offers researchers a measure of overarching legal exposure that allows for the study of litigation risk, as well as firm risk more broadly, from new and increasingly relevant perspectives.

Keywords: disclosure; corporate litigation; contingent liabilities; SEC enforcement; ESG performance; litigation risk

JEL Classifications: M41; K22; G14

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1. Introduction

The Financial Accounting Standards Board (FASB) and the Securities and Exchange Commission (SEC) have questioned whether public companies provide sufficient disclosure to warn investors of potential losses that may result from pending litigation. Investors have also expressed dissatisfaction with the lack of transparency surrounding legal proceedings and unease when large legal settlements take them by surprise (Investors Technical Advisory Committee, 2008). In connection with these concerns, standard setters began a loss contingency project in 2008 with the aim of obtaining feedback from constituents on a proposal to expand disclosure (FASB, 2008). Yet, following significant resistance from commenters who raised concerns about harm to firms' legal defenses and the dilutive effect of too much irrelevant information, the FASB ultimately abandoned the project in 2012. At the time, some regulators expressed the view that inadequate litigation loss disclosure was a compliance matter, not a standard setting matter (Chasan, 2012).

Nearly a decade later, some firms continue to frustrate regulators and investors with their approach to disclosing contingencies. When General Motors suddenly settled a lawsuit relating to their defective ignition switches, the SEC responded skeptically to the company's disclosures—charging the company with failing to adequately warn investors of the extent of the crisis as it developed. As one commentator noted, "The SEC said it seems like you're going from remote to probable in the blink of an eye. You disclose nothing, and then you disclose a large settlement. We don't think negotiations really go that way in the real world." (Whitehouse, 2017). In a more recent case, the SEC charged Mylan, N.V. with failing to timely disclose potential losses stemming from a probe by the Department of Justice into whether the company overcharged Medicaid for sales of EpiPen Auto-Injectors (Thomas, 2019). Investors advanced similar criticisms of Starbucks, when shareholders sued the company for "grossly" understating the impact of a contract breach with Kraft, which lead to a "crushing blow" to investors when an arbitrator ruled that Starbucks must pay $2.8 billion to Kraft (Williams, 2014).

Although long-standing investor and regulator attention to the issue of loss contingency disclosure exists, limited empirical evidence has informed the discussion. Understanding the scale and scope of firms' litigation risk is an important precursor to examining firms' decisions to disclose pending lawsuits. Accordingly, we assemble an extensive litigation dataset that allows us to explore the factors that shape firms' disclosure decisions.

To begin, using federal district court docket information, we identify a sample of 75,421 lawsuits filed against 90,255 public-company defendants (representing 3,230 unique public companies and their subsidiaries) from 2006 through 2016. The lawsuits involve an array of issues, including product liability, civil rights discrimination, unfair labor practices, antitrust violations, pollution, and intellectual property infringement. This broad sample of cases obtained directly from federal court filings allows us to identify a wide range of litigation faced by firms and, in turn, to identify the subset of lawsuits that firms choose to disclose to investors.[1]

As Panel A of Figure 1 illustrates, based on the litigation data we have assembled, a majority of public firms face the decision to disclose contingencies each year, with 62.4% of firm-year observations having pending corporate litigation during our sample period. In terms of concerns about a potential dilutive effect of added disclosure, Panel B of Figure 1 shows that a large majority of firms (75%) have 5 or fewer pending federal lawsuits each year. Nevertheless, the upper tail of the distribution skews much higher, with firms in the 99th percentile facing 163 pending lawsuits each year. Litigation exposure varies across firms, industries and time. For example, Dollar General Corp. had 2,412 lawsuits pending against them in 2006, but only 78 in 2016. In contrast, industry peer Target faced 83 and 129 lawsuits in 2006 and 2016, respectively, despite Target's larger size.

[1] We identify lawsuits using Public Access to Court Electronic Records (PACER). The Federal Judicial Center maintains a database of federal litigation but does so for only the first named defendant. Because we aim to develop a comprehensive measure of firms' overarching legal exposure, we obtain our lawsuit sample directly from federal district court dockets. Approximately 36.6% of the lawsuits in our sample involve public-company defendants that are not the first listed defendant. Thus, obtaining the lawsuit sample from the Federal Judicial Center would exclude a significant number of public-company defendants. We discuss our approach to sample selection and provide a detailed reconciliation of sources for litigation data in Section 2.

Shifting our attention to disclosure of these lawsuits at the firm-lawsuit level, we find that the vast majority of lawsuits likely do not make it onto the radar of investors: only 3% of lawsuit-defendants (i.e., 2,709÷90,255) disclose the pending federal litigation in their annual or quarterly reports at any point. Taking into account the disclosures of plaintiffs and fellow defendants, the overall rate of lawsuit disclosure climbs to 6% (i.e., 5,803÷90,255). This suggests that our comprehensive approach to sample identification is important because it affords insight into how legal exposure (as opposed to *disclosure* of pending litigation) varies across firms and time as well as the factors that explain firms' decisions to disclose legal contingencies in their financial statements.[2]

Consistent with increased regulator attention to contingencies as the FASB considered their loss contingency project, Figure 2 documents an uptick in litigation risk and contingency-related concerns expressed by the SEC via their comment letters in the 2008 to 2012 timeframe. In contrast, Figures 3 and 4 document a decline in the rate of disclosure particularly of losses after 2011.

Initial descriptive analyses suggest considerable heterogeneity in the nature of firms' litigation exposure, the outcomes of the legal process, and the decision to alert investors to the pending litigation. Civil rights cases account for more than one-third of the lawsuits filed against public-company defendants in our sample. Intellectual property disputes and labor cases constitute the next most frequent lawsuit types, representing 27% and 16% of the sample, respectively. Yet, the nature of litigation exposure varies considerably by industry, with environmental claims concentrating in energy and manufacturing; discrimination and labor claims concentrating in retail; intellectual property claims concentrating in business equipment; and product liability claims concentrating in healthcare and manufacturing. In terms of outcomes, we find that most public-company defendants (38%) resolve their lawsuits via settlement. Firms in our sample lose by jury verdict or by a judge's ruling only 3% of the time, as compared to winning 9% of the time. Nonetheless, outcomes differ

[2] For example, as we discuss in Section 2, Audit Analytics provides federal litigation data for matters *disclosed* to the SEC. Our findings indicate that the use of Audit Analytics data to examine firms' litigation exposure significantly understates the incidence of litigation and introduces a selection bias to the nature and frequency of litigation studied.

substantially depending upon the nature of the claim. Lawsuit-defendants lose nearly 17% of environmental cases filed against them, but civil rights claims result in losses only 1% of the time.

Disclosure rates also vary depending upon the nature of the claim and the ultimate outcome of the case. Civil rights and personal injury cases are less likely to be disclosed than other case types. Cases that are ultimately lost are disclosed more frequently than other outcomes, although there is no statistical difference in disclosure of cases that are lost versus won in the latter half of our sample period. Interestingly, the decision to disclose typically occurs relatively early in the legal process: 60% of disclosures occur within the first 90 days of the lawsuit filing, with 45% of cases that are ultimately lost disclosed within the first 90 days. This suggests that, to a large degree, the type of claim and the circumstances surrounding its filing—as opposed to how the lawsuit unfolds over time—explain the decision to disclose.

Managers weigh many factors in deciding whether to disclose a lawsuit and the rules regarding disclosure allow significant discretion. Consistent with the notion that firms wish to shape the narrative, we find that firms are more likely to disclose litigation when investors have already learned (or are more likely to soon learn) about the litigation via alternative information sources (e.g., a high-profile plaintiff, another defendant or the media). Interestingly, the association between disclosure and availability of other information appears strongest when firms win or settle a case (compared to losing a case). Our evidence also suggests that prior SEC attention to the firms' contingency disclosures factors into firms' subsequent decisions to disclose. While the overwhelming majority of SEC scrutiny focuses on the quality and content of existing disclosures (as opposed to questioning firms about the decision to disclose pending lawsuits), we find that firms are more likely to disclose a *new* litigation contingency if the SEC commented on the quality of firms' *prior* litigation disclosures. The likelihood of disclosure also decreases with the leverage of the firm, particularly for cases that the firm ultimately loses. This leverage result suggests that, despite creditor monitoring, risk of losses may lead some high debt firms to strategically hide litigation to appear less risky.

Our study advances the literature examining firms' use of contingency disclosures to alert investors to potential litigation losses. Prior research suggests merit to concerns about insufficient contingency disclosures. Fesler and Hagler (1989) and Desir et al. (2010) report that firms do not always disclose a litigation contingency in the period immediately before a material lawsuit resolves. Focusing on employment discrimination lawsuits, Hennes (2014) finds that most firms do not provide quantitative information about the magnitude of the potential loss, despite requirements to do so. More recently, Cen et al. (2018) and Chen et al. (2018) provide evidence of strategic or delayed disclosure of loss contingencies. These studies limit attention to contingency disclosures made by companies in their public SEC filings.

Two studies are notable exceptions to that limitation, using data from the Environmental Protection Agency and the Internal Revenue Service to study environmental and tax contingency disclosures. Specifically, Barth, McNichols and Wilson (1997) examine the role that regulatory and capital market concerns play in shaping the disclosure of environmental liabilities of 257 firms in the chemical, appliance, automotive and utility industries, while Gleason and Mills (2002) provide evidence of inadequate tax contingency disclosures for their sample of 100 large, industrial firms.

Obtaining lawsuit information directly from federal court filings allows our study to broaden the lens of analysis to lawsuits filed against—but not necessarily disclosed by—public companies. In fact, expanding the scope demonstrates that the overwhelming majority of lawsuits are never disclosed in firms' public SEC filings. Thus, our widened lens enables us to provide large scale evidence on the factors that shape firms' decisions to disclose pending lawsuits. As such, our findings inform discussions about mandated disclosure among academics and policymakers.

The impact of a lawsuit can extend well beyond the direct costs assessed by the court, affecting a firm's strategic trajectory. For example, Bizjak and Coles (1995) report that the primary concern of a defendant in an antitrust case is not the damages awarded but rather the loss of ability to employ certain business practices going forward. For this reason, legal exposure can represent a material risk

to some companies and, accordingly, can play a role in shaping investors' beliefs about the prospects of the company. Toward that end, the SEC is engaged in ongoing debate regarding risk disclosures (SEC, 2020; Lee, 2021). As part of this consideration, policymakers must weigh concerns about the strategic underreporting of emerging risks against concerns about the dilutive effect of superfluous disclosures.[3] Consequently, documenting the scale and scope of litigation exposure is an important precursor to understanding material legal risks and, ultimately, to informing regulators' decisions about optimal risk disclosure policies.

Finally, a vast stream of research examines securities litigation—using a variety of approaches to measure litigation risk (Francis, Philbrick and Schipper, 1994; Skinner, 1994; Kim and Skinner, 2012; Huang, Hui and Li, 2019). Our study shifts attention to corporate litigation, which is a relatively under-researched form of litigation risk. In so doing, we offer researchers a measure of overarching legal exposure that allows for the study of litigation risk, as well as firm risk more broadly, from new and increasingly relevant perspectives. For example, data on firm's corporate legal peril can facilitate the study of environmental, social and governance issues that impact firm value. Thus, our evidence of the scale and scope of firms' legal exposure informs a broader discussion about the relevance and usefulness of registrants' risk disclosures in contemporary contexts.

2. Assessing firms' exposure to federal corporate litigation

Sample collection process: Identifying federal lawsuits against public companies

We identify the lawsuits used in this study from Public Access to Court Electronic Records (PACER), which is an electronic service that provides docket information from federal courts in the United States.[4] Our lawsuit data collection process is described in detail in Appendix A. We start with

[3] A recent analysis of comment letters to the SEC regarding the proposed changes in Regulation S-K indicates that investors, in general, do not believe themselves to be burdened by immaterial information included in the risk disclosure section (Ho, 2020). Yet, research suggests that the addition of low-probability risks to a disclosure can lead certain investors to lower their perception of overall risk (Fanning et al., 2015).

[4] PACER has been used in prior research to identify defendants in a range of corporate litigation (e.g., Haslem, 2005; Ahorony, Liu and Yawson, 2015; Haslem, Hutton and Smith, 2017).

all lawsuits filed in the 94 federal district courts from 2006 through 2016.[5] We use this time frame because it can take years for a case to reach resolution and we want to be able to ascertain the final outcome for cases in our sample.

For each lawsuit, PACER provides a suit code that indicates the nature of the issue being litigated. We limit our sample to suit codes (listed in Appendix B) that are most likely to involve material claims against public companies and that cover a broad range of issues. Specifically, we choose lawsuits involving issues of product liability, intellectual property infringement, antitrust violations, environmental damage, improper labor practices for both union and non-union employees, and civil rights discrimination. This process results in 450,009 lawsuits filed against 1,345,581 defendants as seen in Table 1, Panel A.

There are two notable types of litigation that we exclude from our main sample. First, we exclude lawsuits brought by shareholders because extensive research on shareholder litigation already exists. In addition, our paper addresses the question of disclosure and there is no information asymmetry between investors and firms with respect to shareholder lawsuits. Second, we exclude product liability cases involving personal injury. PACER's user interface and page view limitations make it unfeasible to download the large volume of personal injury suits, many of which involve multi-district litigation (MDL). In a supplemental analysis later in the paper, we collect personal injury product liability suits using an alternative method in order shed some light on firms' litigation exposure to these types of suits.

Next, we select the lawsuits that involve at least one entity as a defendant (n = 423,400) and use a "fuzzy matching" procedure to link the list of defendant-organizations to the roster of public companies and their subsidiaries. A manual check to confirm matches (removing false positives)

[5] The United States has both a federal court system and a state court system. Cases against public companies may be brought in either court system but civil actions between parties in different states are typically tried in federal district courts, as are actions arising from violations of federal law. Consistent with prior research on corporate litigation (e.g., Haslem, 2005; Hutton, Jiang and Kumar, 2015; Adhikari, Agrawal and Malm, 2019), we do not include litigation in state courts or in foreign jurisdictions.

leaves us with a list of 116,670 lawsuit-defendants that are public companies. We remove lawsuit-defendants with missing data, as well as lawsuit-defendants from the financial industry. The sample selection process identifies a main sample of 90,255 lawsuit-defendants representing 75,421 lawsuits filed against 3,230 unique public companies. The sample is relatively evenly distributed across our sample period as reported in Panel B of Table 1.

Sample collection process: Measuring lawsuit outcomes

We use the Federal Judicial Center (FJC) to obtain information about the outcome of each case.[6] Using the case numbers and filing dates to merge the PACER lawsuit dataset with litigation data from the FJC allows us to code the outcomes for 87,974 lawsuit-defendants. It is important to note that we do not use the FJC as our main data source for the lawsuit sample because we aim to develop a comprehensive understanding of the scale and scope of firms' litigation exposure. The FJC data only lists the first named defendant in each lawsuit. Approximately 36.6% of the lawsuits in our PACER sample involve public-company defendants that are not the first listed defendant.[7] Comparing the PACER and FJC columns in Panel B of Table 1, we confirm that our more expansive approach to sample selection results in a more comprehensive measure of firms' exposure to corporate litigation.

[6] Wharton Research Data Services (WRDS) provides a searchable database of the information maintained by the FJC, with coverage dating back to cases active as of July 1969. Yet, accessing the FJC data via WRDS led to a dramatic reduction in sample size. For the suit codes included in our sample period, the FJC-WRDS dataset included only 3,842 lawsuits with available identifiers to link to Compustat/CRSP. Consequently, we access the FJC data independently of WRDS, merging the FJC outcome data to our PACER dataset via case numbers and filing dates obtained directly from federal court dockets.

[7] For example, in 2015, the Dana-Farber Cancer Institute filed a patent lawsuit against Ono Pharmaceutical Co., LTD., Tasuko Honjo, E.R. Squibb & Sons, L.L.C., and Bristol-Myers Squibb, Co. A federal court ruled in favor of Dana-Farber in 2019, with some commentators noting that the disputed patents could be worth billions. In 2010 and 2014, Adobe, Apple, Inc., Google, Intel, Intuit, Pixar and Lucasfilm settled antitrust lawsuits filed by the Department of Justice and company employees that accused the companies of colluding to refrain from recruiting each other's employees. In 2012, Black and Decker Corporation along with six other defendants settled an environmental claim with the State of Rhode Island, the Department of Justice and the Environmental Protection Agency. Because the FJC database only includes the first named defendant for each lawsuit, Adobe is the only lawsuit-defendant from the above examples included in the FJC sample. As such, these examples highlight the importance of obtaining litigation data directly from federal court filings via PACER when documenting the scale and scope of litigation.

A limitation of using FJC to identify outcomes is that we do not have the outcomes for defendants that are not listed first. In our descriptive statistics and first multivariate test, we assume the outcome for the first-named defendants applies to all defendants. This is not always the case and, thus, we also examine just first defendants in our outcome analyses.

Ideally, there would be clear, discrete outcomes for every case. In reality, case resolutions are complex (e.g., two firms settle multiple lawsuits between them for one overall amount; one claim in a case may be dismissed while another claim in the same case is settled). Case resolutions also fall along a broad continuum (e.g., a firm may lose a case at trial but the penalty is immaterial). Moreover, different courts, different judges, and different clerks use different docketing procedures, resulting in varying levels of information about case outcomes. Finally, the outcome of a case may not reflect the real economic cost to the firm. For example, a case may be voluntarily dismissed (which is generally a favorable outcome) because the defendant acquires the plaintiff. Moreover, direct costs are often defrayed by insurance. As noted earlier, legal costs and damages paid may be immaterial, but the case outcome may materially affect how the firm is able to operate going forward (e.g., ability to use intellectual property). Thus, we recognize that case outcomes are a noisy measure of the impact of a given lawsuit.

With the above caveats in mind, we use FJC judgment/disposition codes to classify each case outcome into one of five categories as detailed in Appendix C. We code a lawsuit as LOSS if a judge or jury heard the facts of the case and decided in favor of the plaintiff. We code a lawsuit as WIN if a judge or jury heard the facts of the case and decided in favor of the defendant. We code a lawsuit as SETTLE if the docket indicated the parties settled. Most settlement amounts are not disclosed so it is difficult to understand the financial impact of a settlement. TRANSFER cases represent cases that were sent to a state court or another federal district court. OTHER/DISMISS cases include all cases that do not fall into any of the previous four categories. Most OTHER/DISMISS cases are either

cases for which the court did not provide a clear outcome or cases that were dismissed before trial, either by the plaintiff voluntarily or by the court.

Sample collection process: Measuring lawsuit disclosure

Audit Analytics (AA) provides data on federal litigation for matters involving public companies disclosed to the SEC. We use AA to identify lawsuits that were disclosed at any point in our sample period via plaintiffs' or defendants' SEC filings or via disclosure by other entities (e.g., audit firms, governmental agencies). Specifically, we merge AA and the PACER sample using case number and central index key (CIK). This merge yields the subset of 3,253 lawsuits (N=5,803 lawsuit-defendants) that were publicly disclosed. To assess the completeness of the AA lawsuit disclosure data, we use a Python algorithm to identify the disclosure of lawsuits in firms' SEC filings. Because firms do not consistently disclose case numbers or the identity of plaintiffs, we find that the use of AA data to identify the disclosure of lawsuits dominates the use of a Python algorithm.

Panel C of Table 1 documents the overlap between our main lawsuit-defendant sample and the litigation data maintained by AA. We note that very few lawsuits (3%=2,709÷90,255) are disclosed by defendants in their SEC filings. The overall rate of disclosure climbs to 6% (=5,803÷90,255) when the disclosures of other parties (co-defendants, plaintiffs, governmental agencies, etc.) are considered.

Lawsuit descriptive statistics

Table 2 examines the sample composition by suit type, industry, and outcome. Panel A indicates that the two most common types of lawsuits in our sample are civil rights (37%) and intellectual property (27%).[8] An untabulated breakdown of the PACER and FJC samples by suit type indicates that the reduction in sample size for the FJC sample is not evenly distributed across suit

[8] Product liability claims only represent 6.3% of lawsuits presented in Table 2. As discussed earlier, we exclude personal injury suits from our main sample. In a supplemental analysis, we examine personal injury suits, which significantly increases the number of product liability cases.

types. In particular, the smaller FJC sample skews to include a relatively higher proportion of civil lawsuits (48% versus 37%) and a relatively lower proportion of the remaining suit types.

The nature of litigation exposure differs considerably by industry as seen in Table 2, Panel B. Most intellectual property rights cases are in the business equipment and retail industries (28% and 26%, respectively). Civil rights and labor cases are also most common in the retail sector (35% and 45%, respectively). More than half of the environmental cases concentrate in manufacturing and energy firms (24% and 34%, respectively). The highest frequency of antitrust cases is in 'other'; these cases primarily reflect lawsuits in the airline industry (e.g., baggage fee multidistrict litigation).

In terms of outcomes, Panel C of Table 2 indicates that most public-company defendants (38%) resolve their lawsuits via settlement. Judgments against public-company defendants happen infrequently, as only 3% of cases result in losses. In contrast, firms in our sample win 9% of the time. Lawsuit outcomes, however, vary depending upon the nature of the claim. For example, almost 17% of environmental claims result in losses. Civil cases alleging discrimination settle 45% of the time and result in judgments against the firm only 1% of the time.

Overall, the evidence presented in Table 2 reveals the richness of the litigation dataset, suggesting considerable heterogeneity in firms' litigation exposure as well as the outcomes of the legal process. Next, we examine firm and lawsuit-specific factors that explain firms' choices to disclose pending lawsuits.

3. Evaluating disclosure, analyses & results

Reporting litigation contingencies

The two main sources of guidance related to reporting loss contingencies by public companies are FASB Accounting Standards Codification Topic (ASC) 450-20 and Item 103 of Regulation S-K. ASC 450-20 requires firms to determine whether the likelihood that a contingency results in a material loss is *remote*, *reasonably possible,* or *probable.* If the likelihood of a material loss is deemed

reasonably possible then no accrual is required but firms must disclose information in the footnotes about the nature and estimated magnitude of the contingency. If the likelihood of a material loss is deemed *probable* then firms must accrue an estimate of the loss on the financial statements (if possible) and disclose information on the nature of the contingency.

The SEC requires public companies to describe all material pending legal proceedings in the Management Discussion and Analysis section in accordance with Regulation S-K Item 103. The disclosure must include the name of the court, the date instituted, the principal parties, a description of the factual basis alleged, and the relief sought. Disclosure is not required for ordinary routine litigation incidental to the business and claims for damages less than 10% of the current assets of the firm.[9] Regulation S-K specifically sets a lower trigger for disclosure of litigation related to environmental issues, which may not be considered ordinary routine litigation.[10]

As discussed earlier, some financial statement users have expressed concerns that disclosures under these existing rules do not provide sufficient information about the probability, magnitude, and timing of cash flows associated with loss contingencies. In response to these concerns, the FASB added a project on loss contingencies to its agenda and issued exposure drafts in 2008 and 2010 that required more qualitative and quantitative information about contingent liabilities. In particular, the FASB proposed expanding disclosure requirements to include certain contingencies considered *remote*. The exposure drafts were met with substantial resistance by many firms and their legal advisors (Holder, Karim, Lin and Woods, 2013). Comment letters to the FASB argued that more disclosure regarding the amount of potential losses would have a prejudicial effect on the outcome of

[9] If the legal and factual issues of any proceeding are in large degree similar to other proceedings (pending or contemplated) then the firm must consolidate all related proceedings when applying the 10% threshold.

[10] During the sample period in this paper, firms were required to disclose environmental proceedings if a government authority initiated the suit and sought relief of $100,000 or more. In 2020, the SEC changed the disclosure threshold to provide more flexibility for firms. Now firms must disclose environmental litigation if potential sanctions exceed $300,000, or such other amount that the firm determines will result in the disclosure of all material environmental litigation proceedings. In no event may the firm elect an alternative threshold that exceeds $1 million or 1% of the current assets of the firm.

the litigation and disclosing loss contingencies deemed remote would dilute the value of the information currently disclosed. In 2012, the FASB voted to discontinue its project on loss contingencies. At that time, the FASB chairwoman suggested that the current rules were appropriate and problems with insufficient disclosure could be addressed through improved compliance with the current rules.

The SEC did increase comment letters related to litigation risk and specific contingency disclosures to ensure that firms satisfy the requirements of both GAAP and Regulation S-K Item 103, but those comment letters have waned in more recent years (Figure 2). The decrease in comment letters may be due to increased firm compliance and/or decreased SEC scrutiny. We note that the percentage of lawsuits being disclosed decreases over our sample period (Figure 3), particularly for lawsuits that the defendant firms lose (Figure 4). We explore the effect of receiving an SEC comment letter on subsequent disclosure in our empirical analysis.

Prior empirical research suggests that concerns about insufficient contingency information have some merit (e.g., Fesler and Hagler, 1989; Desir et al., 2010; Hennes, 2014). These studies generally select their samples based on disclosure in firms' SEC filings. If a litigation contingency is not disclosed, then it will not be included in a sample created using SEC filings. Thus, while these prior studies provide many interesting insights, they are unable to investigate factors that influence the decision *whether* to disclose for the broad array of lawsuits firms face.

Lawsuit disclosure model specification

The decision to disclose a litigation contingency requires managers to exercise significant judgment, as they must assess the probability of a loss and estimate the expected cost. In addition, managers likely weigh the costs and benefits of disclosing a potential liability. Capital market pressure to provide material information in a timely manner may prompt managers to disclose the litigation contingency. Managers want to maintain their reputations and avoid further legal problems from

shareholders alleging that the firm withheld negative news (Skinner, 1994). Alternatively, capital market incentives may cause managers to present positive financial results for compensation or debt contracting reasons. When evaluating whether to disclose, managers must also consider proprietary costs (Glaeser, 2018) – the accounting treatment of a contingent liability can signal management's assessment of the likelihood of a loss while the case is still pending. Disclosure may weaken the firm's strategic position and negatively influence the outcome of lawsuit. Moreover, disclosure may encourage similar lawsuits, particularly against companies perceived as having deep pockets. We consider these issues when developing our empirical model about factors that influence the likelihood of disclosing pending litigation. All variables used in our model are defined in Appendix C.

We estimate the likelihood of a firm defendant *i* disclosing lawsuit *j* at any time as a function of firm attributes, the information environment, and lawsuit characteristics, using the following empirical specification:

$$\begin{aligned} P(DISCLOSE_{i,j}=1) = {} & \beta_0 + \beta_1 LEVERAGE_i + \beta_2 SEC\ COMMENT_i + \beta_3 FASB\ COMMENT_i \\ & + \beta_4 OTHER\ PARTY\ DISCLOSURE_{i,j} + \beta_5 ENTITY\ PLAINTIFF_{i,j} + \beta_6 LITIGATION\ NEWS_{i,j} + \\ & \beta_7 CAR_{filedate}\ NEGATIVE_{i,j} + \beta_8 CAR_{filedate}\ POSITIVE_{i,j} + \beta_9 LENGTH_{i,j} + \beta_{10} \#CASES_i \\ & + \beta_{11} SIZE_i + \beta_{12} ANALYST\ COVERAGE_i + \beta_{13} MB_i + \beta_{14} ROA_i \end{aligned} \quad (1)$$

The dependent variable, DISCLOSE, equals one if the defendant firm discloses the lawsuit at any time during the sample period.

With respect to LEVERAGE, it is an open question as to whether higher levels of debt are associated with more or less transparency surrounding pending litigation. On one hand, Watts and Zimmerman (1986) predict that managers are more likely to make non-conservative financial reporting choices when the likelihood of violating an accounting-based debt covenant is higher. Disclosure of a litigation loss contingency may not necessarily trigger a covenant violation, particularly if the contingency is not accrued. Nevertheless, along the lines of the debt covenant

hypothesis, disclosure of a litigation loss may increase creditors' assessment of bankruptcy risk and increase the costs of the borrowing. If so, managers of firms with more leverage will be less likely to disclose pending lawsuits. On the other hand, firms often must make representations to lenders regarding pending material litigation when loans originate. Additionally, loans may include covenants requiring the borrower to notify lenders of new litigation that commences while the loan is outstanding. Consistent with this notion, Barth et al. (1997) report that the number of times a firm accesses public financing (either debt or equity) is positively associated with disclosure of Superfund site contingent liabilities. Thus, creditors may monitor highly levered firms more, resulting in greater transparency about lawsuits in which the firm is a defendant. Because of these competing arguments, we make no prediction about the sign of the coefficient on LEVERAGE.

As mentioned previously, the SEC temporarily increased the frequency of comment letters addressing litigation risk and contingent loss disclosures during a portion of our sample period. Brown, Tian and Tucker (2018) provide evidence that comment letters influence disclosure of industry peers. Similarly, we expect comment letters to influence *future* disclosures of the same firm. If the firm has recently received a comment letter from the SEC related to litigation disclosure, then the firm faces higher regulatory risk from noncompliance. Specifically, we create an indicator variable (SEC COMMENT) which is equal to one if the firm defendant received an SEC comment letter in the year before the lawsuit was filed and predict a positive coefficient on this indicator.

As also mentioned earlier, the FASB issued two exposure drafts regarding expanded disclosure of contingent losses which many firms opposed. We set an indicator variable (FASB COMMENT) equal to one if the firm sent a comment letter to the FASB in 2008 or 2010 regarding either of these exposure drafts. We expect firms that opposed the proposals to expand disclosure are less likely to disclose litigation contingencies under the current rules.

Firms face allegations of wrongdoing from other firms, nonprofit organizations, federal, state and local governments, and individuals. Legal claims filed by an ENTITY PLAINTIFF (defined as another firm, nonprofit or governmental agency) are less likely to be frivolous and, thus, more likely to be material. On average, entities have more resources and superior capabilities to pursue lawsuits compared to individuals, increasing the probability of a loss for the defendant firm. Along these lines, Bhagat, Bizjak and Coles (1998) report that firms suffer greater stock price declines upon the filing of a lawsuit by a governmental agency. Similarly, Ramnath, Shane, Willenborg, and Kochenburger (2006) find that plaintiff size is an important determinant of the probability of a firm losing a patent-related lawsuit. Therefore, we expect that managers are more likely to disclose a litigation contingency when a lawsuit is filed by an entity plaintiff.

Managers have less incentive to remain silent about a given lawsuit when significant public information about the suit exists. Haslem et al. (2017) report that media coverage is associated with more negative returns for the defendant firm surrounding a lawsuit filing. They suggest one reason this happens is that the negative tone of business press articles cause investor overreaction. Similar to the choice to issue management guidance when investors' expectations are askew (Ajinkya and Gift, 1984), managers may opt to disclose information about pending litigation in order to clarify or correct information previously available. We define LITIGATION NEWS as the number of litigation-related news items in the 90 days following the lawsuit filing and we predict firms with more litigation-related news are more likely to disclose. Managers have a similar incentive to disclose when another party to the lawsuit (i.e., the plaintiff or another defendant) discloses. Thus, we also expect a positive coefficient on OTHER PARTY DISCLOSURE.

A defendant firm's stock price movement on the filing date of a lawsuit reflects investors' awareness of the litigation and their assessment of expected costs. A more negative market reaction suggests investors know about the lawsuit and anticipate some loss. We measure investor reaction as

the abnormal return in the five-day window surrounding the lawsuit filing. We then create two indicators – one for large negative reactions ($CAR_{filedate}$ NEGATIVE) and one for large positive reactions ($CAR_{filedate}$ POSITIVE), where large is defined as the abnormal return is greater than 2% (negative or positive, respectively). We expect that firms are more likely to disclose a litigation contingency when they experience large, negative returns around the lawsuit filing date. We acknowledge, however, that stock price drops may reflect a change in investors' beliefs about management quality more generally rather than about the outcome of the lawsuit specifically. In this case, we would not observe a link between negative filing date returns and loss contingency disclosures. Interestingly, Little, Muoghalu and Robinson (1995) find no association between the market reaction to hazardous waste lawsuits and disclosures. We have no prediction for the association between positive abnormal returns surrounding the lawsuit filing date and the likelihood of disclosure.

Another signal about the severity of the lawsuit is LENGTH, which measures the amount of time that the litigation is ongoing. We assume that the likelihood of incurring a material loss increases with time, all else equal. Cases with no merit generally do not survive the defendant's motion for summary judgment while legitimate allegations can take years to resolve. Thus, we predict that the decision to disclose a loss contingency is positively associated with the length of time (measured in years) that the litigation is outstanding.

We control for #CASES, which is the number of cases in which the firm is named as a defendant in the same calendar year in which the particular lawsuit is filed. We expect the coefficient on #CASES to be negative as specific disclosure of a large number of cases may result in information overload and be less decision-relevant to financial statement users. We also include a control for size. Firms with abundant resources risk the perception of deep pockets and being the target of more lawsuits. Additionally, larger "war chests" generally provide an advantage in defending lawsuits,

decreasing the likelihood of a material loss. Moreover, any one case is less likely to be material for a larger firm. We measure SIZE (total assets) in the year the lawsuit is filed and predict that SIZE is negatively associated with the likelihood of disclosing a contingent litigation loss. Further, we include profitability (ROA), number of analysts following the firm (ANALYST COVERAGE), and the market-to-book ratio (MB) to control for other firm characteristics and the information environment. We make no predictions on the signs of the coefficients for these controls. Finally, when estimating Equation (1), we include year and industry fixed effects and cluster standard errors by firm.

Lawsuit disclosure descriptive statistics

Table 3, Panel A presents the frequency of disclosure by type of lawsuit and outcome. Only 3.0% of the lawsuits in the sample are mentioned in the firm's legal proceedings or contingency footnote. This percentage should not necessarily be interpreted as evidence that firms provide insufficient disclosure because potential losses from the undisclosed lawsuits may be immaterial or remote in probability. Suits involving intellectual property have the highest frequency of disclosure (7.4%), while suits involving civil rights issues have the lowest frequency of disclosure (0.2%). Losses are disclosed at a higher frequency (7.2%) than other outcomes.

Table 3, Panel B sheds light on the timing of disclosure by lawsuit-defendants for the subset of observations that are in fact disclosed. The majority of disclosures (n = 1,623 or 60%) are made within 90 days of the lawsuit filing. The within 90-day disclosure rate for cases that are ultimately lost is lower than for cases that are won or settled, but still relatively high (n = 82 or 45%). Overall, 86.6% (n = 2,347) of the lawsuits that are disclosed by the defendant firms are disclosed before the case is terminated. This rate is fairly consistent across outcomes (85% for losses, 85% for wins, 90% for settlements). Further, 25.7% (n = 695) of the lawsuits disclosed by a defendant firm are also disclosed by another party to the lawsuit (i.e., a plaintiff or other defendant). Of these dual-disclosed lawsuits, approximately half (n = 336) are disclosed by firm defendants before the other party reports.

The top of Table 4, Panel A presents the descriptive statistics for the variables in our disclosure model for all 90,255 lawsuit-defendant observations. Six percent of the lawsuits are against firms that have received an SEC comment letter regarding loss contingency reporting and 23% of the lawsuits involve firms that submitted a letter to FASB on the related exposure drafts.[11] Another party (plaintiff or other defendant) disclosed the litigation for 3% of the lawsuit-defendants. On average, there are 11 litigation-related news stories about the firm in the 90 days following the lawsuit filing date, but the median number of news stories is zero. Thirty-seven percent of the lawsuits involve an entity plaintiff, and the average lawsuit LENGTH is 1.3 years.

As seen with the firm-year observations at the bottom of Panel A, firms face 6.93 new cases on average during the year in which a lawsuit was filed. The median number of new lawsuits filed per firm-year is 2. For a few firms, the number of new cases is much larger, even when excluding personal injury suits, consistent with the frequency of pending cases shown in Figure 1.

Panel B of Table 4 presents descriptive statistics for each lawsuit-defendant partitioned by the decision to disclose the lawsuit. The firms that disclose a lawsuit have lower leverage and are more likely to receive an SEC comment letter. Firms that disclose are also less likely to submit a comment letter to the FASB and these firms face fewer cases in total. Defendants that report litigation are more likely to have other parties that disclose the same suit. Moreover, disclosing firms are more likely to experience a large negative stock price reaction on the lawsuit filing date. Disclosed lawsuits take more time to resolve than lawsuits that are not disclosed. Contrary to our prediction, the univariate results indicate firms that disclose have fewer litigation-related news items in the 90 days following the lawsuit filing.[12]

[11] Each observation at the top of Panel A in Table 4 represents one lawsuit for one defendant firm. Of the 3,230 unique firms in our sample, 142 (4.4%) sent a comment letter to the FASB. The higher percentage in the table is due to the fact that firms defending a larger number of lawsuits were more likely to submit a comment letter.

[12] This unexpected result may be due to the fact that litigation news is driven by firm size and the number of cases, both of which are negatively associated with disclosure. We control for firm size and number of cases in the multivariate model and, thus, litigation news better reflects incremental media attention in the multivariate model.

Lawsuit disclosure multivariate analyses

The results from estimating Equation (1) using all lawsuits in the PACER sample are presented in the first column of Table 5. The ROC score for this model is .885, indicating that the model predicts disclosure of litigation contingencies reasonably well. The coefficient on LEVERAGE is significantly negative.[13] All else equal, higher levels of debt are associated with a lower likelihood of disclosing a litigation contingency. The receipt of a litigation-related SEC Comment Letter in the year prior to the lawsuit filing is positively associated with disclosure. This is consistent with regulatory scrutiny influencing disclosure decisions. ENTITY PLAINTIFF, OTHER PARTY DISCLOSURE and LITIGATION NEWS are positively associated with disclosure as expected.

The coefficients on the remaining explanatory variables in Equation (1) are largely consistent with our predictions. The length of the lawsuit and the occurrence of large, negative returns around the lawsuit filing date are both positively associated with disclosure. The negative coefficients on SIZE, ROA and #CASES suggest that larger and more profitable firms are less likely to disclose, as are firms facing more lawsuits. Finally, contrary to our expectation, we find no association between disclosure and submitting a comment letter to the FASB related to the loss contingencies exposure drafts.[14]

We next remove cases that lasted less than one year in column [2], cases that were transferred in column [3], and cases with an "OTHER/DISMISS" outcome in column [4] because these lawsuits are less likely to be relevant to decision makers. Our results are not affected when we remove these cases. The results in column [5] of Table 5 exclude year and industry fixed effects and provide similar inferences to the previous columns.

[13] We measure leverage using total debt in these tabled results. Our inferences are consistent if we instead measure leverage using long-term debt or total liabilities.

[14] In untabulated analyses we narrow our focus to disclosure likelihood during the time period that the FASB considered their loss contingency project (i.e., 2008 through 2012) and find some evidence of reduced likelihood of disclosure for firms that submitted comments to the FASB about the project.

In Panel A of Table 6, we present the results from including the *outcome* of the lawsuit in Equation (1).[15] Specifically, we include indicator variables for LOSS, WIN, TRANSFER, AND SETTLE. Thus, the observations with no indicator variable are OTHER/DISMISS outcomes and the coefficient on the outcome indicator variables reflect the difference between that indicator variable and other/dismiss outcomes. In column [1] using our full sample, the coefficients on LOSS, WIN and SETTLE are positive and significant. We next test for differences in the coefficients on the definitive outcome indicators (loss, win and settle cases). We find no evidence of a difference in the probability of disclosing LOSS and WIN lawsuits ($p = 0.137$) using the full sample. Both LOSS and WIN lawsuits, however, are more likely to be disclosed than SETTLE lawsuits for the full sample.

Recall for our full sample, we assume that the outcome for the first defendant applies to all defendants. In column [2] of Panel A, Table 6, we make no assumption about the outcome across defendants and examine only first defendants. The results using just first defendants suggest that losses are in fact more likely to be disclosed than other case outcomes. Next, we divide our first defendant sample into two time periods (2006-2011 and 2012-2016). This cut is approximately halfway through our sample period and coincides with the decrease in SEC Comment Letters seen in Figure 2. Interestingly, in column [4], we observe no significant difference in the likelihood of disclosure for LOSS cases and WIN cases in the later period ($p = 0.137$).[16]

In Panel B of Table 6, we estimate Equation (1) separately by outcome for LOSS, WIN and SETTLE suits using just first defendants.[17] The n in these tests drops substantially for the LOSS and WIN columns because fewer suits have such outcomes. Results in columns [1] through [3] are similar

[15] We include all the determinants from Table 5 in our model estimation in Table 6, Panel A but, for ease of presentation, we do not report the coefficients on these variables. The inferences for these variables in Table 6 are identical to the inferences for these variables in Table 5.

[16] When we examine the full sample across the two sub-periods, we observe similar results to columns [3] and [4]. The difference in the coefficients on LOSS and WIN are significant in the early period ($p = 0.086$) and insignificant in the later period ($p = 0.682$).

[17] Results are similar when we use the full sample instead of first defendants.

with a few notable exceptions. First, the coefficient on LEVERAGE is not significant for win outcomes. Second, the coefficient on SEC COMMENT and $CAR_{filedate}$ $NEGATIVE_i$ is only significant in the settle column. Finally, the coefficient on ENTITY PLAINTIFF is not significant for loss outcomes.

There are two interesting results in Panel B related to the magnitude of the coefficients. First, the coefficient on LEVERAGE is larger for LOSS cases relative to the other outcomes. This result is consistent with loss firms considering creditors' assessments of litigation contingencies when making disclosure decisions. Untabulated results indicate the difference in coefficients on LEVERAGE across the outcome categories is most pronounced in the later part of our sample period (2012-2016).[18]

Second, the coefficient on ENTITY PLAINTIFF is significantly larger in the WIN and SETTLE columns compared to LOSS column, with the coefficient on ENTITY PLAINTIFF in the LOSS column. This is consistent with win firms wanting to demonstrate their position of strength relative to major plaintiffs. Similarly, settle firms may want to shape the narrative when an entity plaintiff is involved. At the same time, the coefficient on OTHER PARTY DISCLOSURE is larger for WIN and SETTLE as compared to LOSS, which is also consistent with firms' desiring to influence stakeholders' views of the matter.

In Table 7, we examine how the type of issue being litigated is associated with disclosure. We present the results from including the *type of lawsuit* in Equation (1) for the entire sample and by outcome. The observations with no indicator variable are PRODUCT cases; thus, the coefficient on the lawsuit type indicator variables reflect the difference between that lawsuit type and product liability cases. After controlling for other determinants of disclosure, column [1] indicates that LABOR lawsuits are more likely to be disclosed than other types of lawsuits. Then, in order of

[18] During the later sub-period, the coefficient on LEVERAGE for LOSS observations is -4.106 (compared to -1.580 for full period). This coefficient is significantly different from the coefficient for WIN observations (p = .043) and SETTLE observations (p = 0.039).

likelihood, are ANTITRUST cases, INTELLECTUAL PROPERTY cases, and ENVIRONMENT cases. Consistent with Table 3, CIVIL RIGHTS are significantly less likely to be disclosed. For loss outcomes in column [2], ANTITRUST cases are more often disclosed than other lawsuit types. For win outcomes in column [3], there is no difference in disclosure frequency across case outcomes except that CIVIL RIGHTS cases are disclosed less frequently.

Product Liability Personal Injury Suits Supplemental Analysis

The advantage of using PACER to collect a sample of litigation against public companies is that PACER provides full information for the entire population of lawsuits filed in federal courts. The drawbacks of using PACER include the cost and poor user interface/search capabilities.[19] PACER does not easily allow for bulk downloads. As mentioned earlier, we do not include suits alleging personal injury or death resulting from defective products in our main sample. The reason we exclude these suits is that there is a high number of personal injury suits and we face PACER restrictions with respect to the number of pages we can download at one time. Even when we limit the personal injury suit search to one state in one half-year period, the search results cut off such that we cannot guarantee we identify all cases using PACER.

Some companies face significant legal exposure from personal injury suits and, thus, it is worthwhile to document personal injury litigation against these companies. Because of the PACER limitations, we instead use FJC to identity product liability personal injury suits. Specifically, we download all lawsuits with suit codes 365 ("Personal Injury-Product Liability") and 367 ("Healthcare/Pharmaceutical Personal Injury Product Liability") from 2006 to 2016 from FJC. We then identify public company defendants and exclude observations without necessary data. This process results in a sample of 193,712 personal injury lawsuits against 720 unique public companies.

[19] See https://www.abajournal.com/web/article/out-of-pace-with-reality-pacer, which discusses the class action lawsuit filed against PACER for excessive fees, as well as functionality limitations.

As noted earlier, there are limitations to using FJC to identify our sample. FJC only lists the first defendant, so we are understating personal injury litigation exposure for firms not listed as the first defendant.[20] Also, we are unable to identify an ENTITY PLAINTIFF using FJC data.

Table 8 provides information on these personal injury lawsuits. As seen in Panel A, most of the defendants are pharmaceutical companies and medical equipment manufacturers (93%). These healthcare personal injury lawsuits involve 125 companies. In other words, a small number of companies comprise the preponderance of personal injury suits against public companies. As shown in Panel B of Figure 1, the vast majority of firms (95%) have 2 or fewer personal injury lawsuits pending each year. At the same time, only 20 unique firms have >500 cases pending in any year at some point during 2006-2016. Of those, only 3 unique firms (Johnson & Johnson, Pfizer, Inc. and Merck & Co., Inc.) have >500 cases pending *every* year during the sample period, with all of those years being dominated by a large roster of personal injury suits.

Panel B of Table 8 indicates that the most common outcome for personal injury lawsuits is settlement. Less than 1% of these cases are lost by judgment, likely because companies prefer to settle. Approximately 17% of the suits are transferred to another court, which is not surprising as these suits often involve MDL.[21]

We again use AA to measure disclosure. Panel C of Table 8 indicates that a mere 0.04% of personal injury lawsuits are disclosed according to AA. The frequency of disclosure increases to 0.58% for suits that are ultimately lost. The personal injury disclosure rate is lower than the 3% disclosure rate we observe in Table 3 for other types of lawsuits. There are several possible explanations for the low disclosure rate on personal injury suits. First, more personal injury suits may

[20] For example, a personal injury suit filed against Stanley Black & Decker et al. includes Home Depot as a defendant. Using FJC data, we don't identify this potential legal exposure to Home Depot.

[21] MDL refers to the process of efficiently handling a large number of cases where the same allegation is being litigated in several different courts. Cases consolidated under MDL involve complex issues, most often related to product liability. It is challenging to track these cases through the court system because the suits move to various courts (with new case numbers).

be considered nuisance suits, where the likelihood of a loss is remote, relative to other types of suits. Second, more personal injury suits may result in loss amounts deemed immaterial for purposes of disclosure relative to other types of suits. Third, personal injury suits are more likely to involve MDL. In these instances, a company faces hundreds or thousands of lawsuits. Such cases are likely disclosed in broad terms by the firm but not on an individual suit basis. Thus, AA would not indicate that the suits are disclosed. For example, according to its 2020 Form 10-K, Johnson & Johnson faces approximately 25,000 plaintiffs alleging talcum powder caused cancer and other injuries. Johnson & Johnson does not disclose every talcum powder lawsuit filed in its 10-K, but it does provide information to assess the impact of potential losses from the allegations as a whole.

Panel D of Table 8 sheds additional light on the personal injury lawsuit sample. We present lawsuit-related variables on a firm-lawsuit basis. We present firm characteristics on a firm-year basis. There are some interesting differences compared to our main sample. First, the average number of cases filed per firm year for the personal injury sample is 91 case compared to 7 cases (from Table 4) for our main sample. As noted earlier, for a few firms, the number of personal injury cases is much larger. For example, in our sample of federal litigation, Johnson & Johnson was the defendant in 12,930 personal injury cases filed in one year; as of 2016, they had 41,958 personal injury cases pending. Second, firms in the personal injury sample are twice as likely to have submitted a comment letter to FASB regarding the contingent loss exposure drafts compared to our main sample (16% vs. 8%). Personal injury lawsuits are longer in duration on average (2.4 years vs. 1.3 years).

We examine determinants of the disclosure decision for firms facing personal injury suits in Panel E. For this analysis, we examine variables at the lawsuit level. Recall that only 77 cases out of 193,712 cases are disclosed according to AA. Accordingly, these results should be interpreted with caution. In particular, a significant number of individual cases that were consolidated as MDL may be included in the DISCLOSE = 0 columns because these cases were not individually disclosed.

LEVERAGE is significantly higher for firms that disclose, which is inconsistent with our results for the main sample. The length of cases is significantly shorter for firms that disclose which is also inconsistent with our expectations and prior results. The remaining results in Panel E are generally in line with the results for our main sample in Panel B of Table 4.

In untabulated tests, we estimate model (1) for the personal injury suits. The only determinant with a reliably significant coefficient is OTHER PARTY DISCLOSURE. Overall, our takeaways for Table 8 are that (i) a small number of firms face a large number of personal injury product liability cases and (ii) disclosure for these cases differs from other types of cases.

Caveats

As discussed earlier, assembling a comprehensive dataset of public-company defendants of corporate litigation involves navigating a variety of hurdles in terms of accessing the full universe of lawsuits, identifying the full roster of named defendants, and ascertaining the ultimate outcome of the case. The key advantage of using PACER as the starting point for our sample collection is that this allows us to access the universe of lawsuit-defendants for cases filed in federal courts and, thus, it allows us to step back to consider the lawsuits filed against—but not necessarily disclosed by—public companies. Yet, a few caveats remain.

Our litigation dataset limits attention to lawsuits filed in the federal court system. Cases against public companies may be filed at the federal or the state level. Nevertheless, civil actions between parties in different states are typically tried in federal district courts, as are actions arising from violations of federal law. Moreover, litigation at the state level is often ordinary routine litigation that is incidental to normal business operations and, as such, is not subject to mandated disclosure requirements. Accordingly, we believe that our approach to measuring firms' litigation exposure captures the overwhelming majority of material legal matters filed against public companies or their subsidiaries. At the same time, PACER's user interface and page view limitations make it unfeasible

to download certain suit codes, notably personal injury lawsuits. Even so, the suit codes included in our dataset are the most likely to involve material claims against public companies and they cover a broad range of issues. Finally, for reasons discussed in Section 2, assigning clear and discrete outcomes to each case is difficult. The fact that the outcome data maintained by the FJC is limited to the first defendant further complicates the task. We, however, believe this introduces noise, not bias, to our empirical tests.

4. Conclusion

The FASB and the SEC have questioned whether public companies provide sufficient disclosure to warn investors of potential losses that may result from pending litigation. Investors have also expressed dissatisfaction with the lack of transparency surrounding legal proceedings and unease when large legal settlements take them by surprise. Furthermore, recent regulatory efforts seek to modernize firms' risk disclosures with the goal of increasing relevance and minimizing repetition. Although long-standing investor and regulator attention to the issue of loss contingency disclosure exists, limited empirical evidence exists to inform the discussion.

Obtaining lawsuit information directly from federal court filings allows our study to broaden the lens of analysis to the full population of federal lawsuits filed against public companies. Accordingly, we provide the first large scale evidence that speaks to the scale and scope of firms' litigation exposure and the factors that shape firms' decisions to disclose pending lawsuits. As such, our findings inform the debate about contingency disclosure standards and enforcement. In so doing, we provide researchers with a measure of legal exposure that allows for the study of litigation risk, as well as firm risk more broadly, from new perspectives.

An extensive stream of research examines disclosure in the context of securities litigation—using a variety of approaches to measuring litigation risk. Our study shifts attention to disclosure in

the context of corporate litigation. We envision future research exploiting time-series and cross-sectional variation in our measure of corporate litigation exposure. For example, data on alleged corporate misbehavior allows for the study of an array of present-day issues, including climate change, civil rights discrimination, fair pay practices, big tech monopoly power, and intellectual property protection. Consequently, we expect that our approach to assessing firms' litigation exposure may be used to inform a broader discussion about the relevance and usefulness of registrants' risk disclosures in many other under-researched contexts.

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Appendix A ■ Lawsuit data collection procedure

STEP	PROCEDURE	*N*
1	Download roster of plaintiffs ("Party Role" = *pla*) and defendants ("Party Role" = *dft*) by year (2006 — 2016) and by the nature of the suit ("NOS" = 195, 245, 385, 410, 442, 445, 446, 710, 720, 790, 820, 830, 840, 893) from Public Access to Court Electronic Records (PACER), which provides docket information for all 94 U.S. district courts (www.pacer.gov).	450,009 lawsuits
2	Flag lawsuits that involve an entity as a defendant. Entities identified as having text in the Last Name field and no text in the First Name and Middle Name fields in the PACER download.	423,400 lawsuits
3	"Fuzzy match" the defendant organizations with the roster of public companies (and their subsidiaries using SeekEdgar) using the *COMPLEV* function [requiring first 4 letters to match and the Levenshtein edit distance < 8] and the *SPEDIS* function [requiring first 4 letters to match and the asymmetric spelling distance < 30] in SAS. Then, manually check fuzzy matches to remove false positive matches.	116,670 lawsuit-defendants
4	Remove lawsuit-defendants from the financial industry and those observations with missing data.	90,255 lawsuit-defendants
5	Merge PACER lawsuit data with Federal Judicial Center (FJC) data (https://www.fjc.gov/research/idb) by case number and filing dates in order to obtain lawsuit outcomes.*	87,974 lawsuit-defendant outcomes
6	Merge PACER lawsuit data with Audit Analytics (AA) lawsuit disclosure data to identify those lawsuits that were disclosed to investors via plaintiffs' or defendants' SEC filings or via disclosure by other public entities (e.g., audit firms, government agencies).** To ensure our merge was complete, we manually check SEC filings for disclosure for any lawsuit defendants where the case was listed in AA but the electronic merge did not indicate a match.	5,803 disclosed lawsuit-defendants

* PACER lawsuit data includes all named defendants, while FJC lawsuit data lists only the first named defendant. PACER data indicates that 67% (23.7%) of our sample involve lawsuits that include more than one defendant (public-company defendant) and approximately 36.6% of these observations involve public-company defendants that are not the first listed defendant. Our matching procedure assumes that the outcome for the first-named defendant is the same outcome for all defendants. We remove this assumption by limiting our analysis to the 58,048 lawsuit-defendants for which FJC provides outcome data in robustness tests.

**Audit Analytics provides data on civil litigation filed in federal district court for matters involving public companies disclosed to the SEC as material pending litigation. To explore the completeness of the AA lawsuit disclosure data, we use a Python algorithm to identify the disclosure of lawsuits in firms' SEC filings. Because firms do not consistently disclose case numbers or the identity of plaintiffs, we find that the use of AA data to identify the disclosure of lawsuits dominates the use of a Python algorithm.

Appendix B ■ Suit codes

Suit code	Description	Suit type	Total lawsuit-defendants	Public-company-lawsuit defendants
195	Contract – Product Liability	PRODUCT	6,952	837
245	Real Property – Tort Product Liability	PRODUCT	12,359	2,164
385	Torts – Personal Property / Product Liability	PRODUCT	29,550	2,695
410	Other Statutes – Antitrust	ANTITRUST	89,343	7,758
442	Civil Rights – Employment	CIVIL RIGHTS	320,537	27,162
445	Civil Rights – Amer. w/Disabilities – Employment	CIVIL RIGHTS	35,457	3,159
446	Civil Rights – Amer. w/Disabilities – Other	CIVIL RIGHTS	94,798	3,518
710	Labor - Fair Labor Standards Act	LABOR	210,585	9,965
720	Labor - Labor/Management Relations	LABOR	20,487	1,072
790	Labor - Other Labor Litigation	LABOR	31,385	3,664
820	Property Rights – Copyrights	IP	116,983	4,159
830	Property Rights – Patent	IP	111,411	17,316
840	Property Rights – Trademark	IP	219,915	2,700
893	Other Statutes – Environmental Matters	ENVIRONMENT	45,819	4,086
			1,345,581	**90,255**

Appendix C ■ Variable definitions

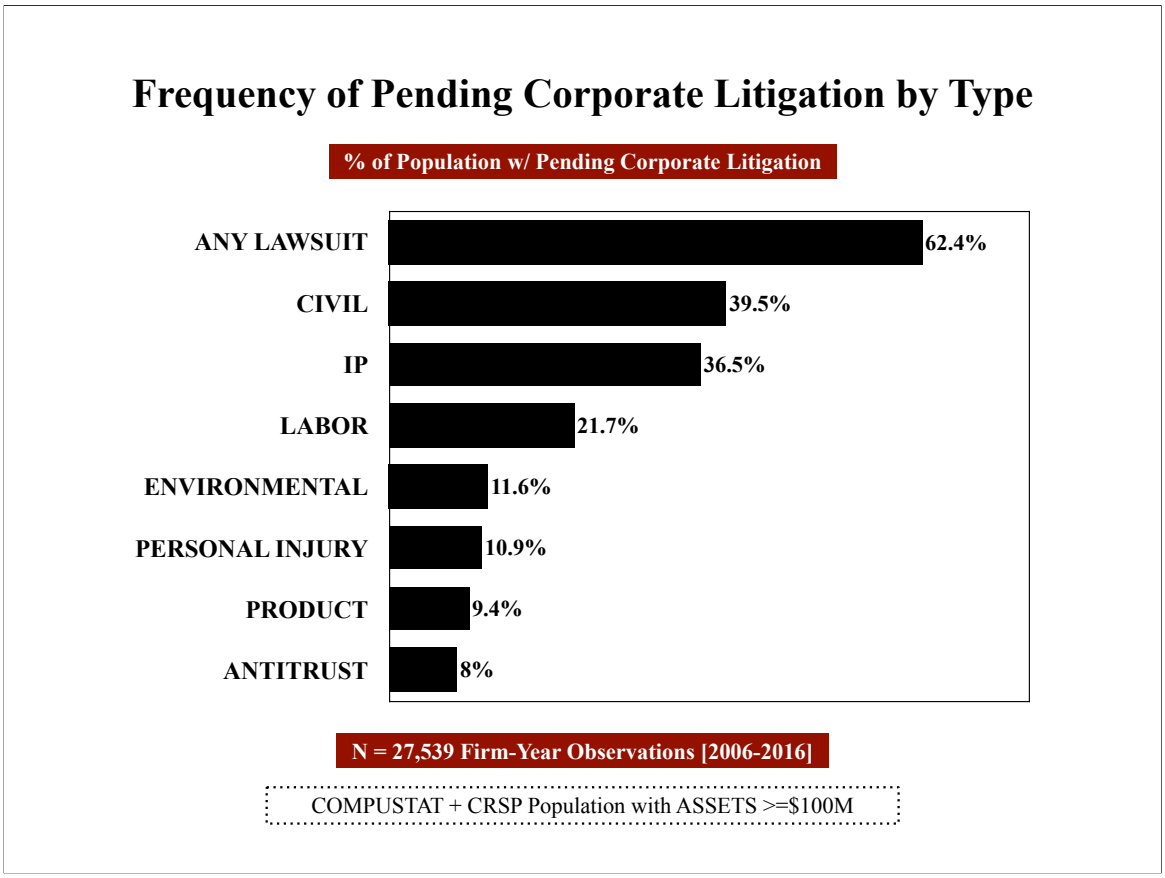
We identify a sample of lawsuits filed against public company defendants from 2006 through 2016 via Public Access to Court Electronic Records (PACER). We obtain information about the outcome of the lawsuit using data maintained by the Federal Judicial Center (FJC). Please see Appendix B for details.

LAWSUIT TYPE (Source: PACER)	
INTELLECTUAL PROPERTY	Indicator set equal to one for lawsuits that relate to patent issues (suit code = 820, 830, 840).
ANTITRUST	Indicator set equal to one for lawsuits that relate to allegations of antitrust violations (suit code = 410).
ENVIRONMENT	Indicator set equal to one for lawsuits that relate to environmental issues (suit code = 893).
CIVIL RIGHTS	Indicator set equal to one for lawsuits that relate to allegations of civil rights violations (suit code = 442, 445, 446).
LABOR	Indicator set equal to one for lawsuits that relate to allegations of improper compensation and labor practices (suit code = 710, 720, 790).
PRODUCT	Indicator set equal to one for lawsuits that relate to product liability issues (suit code = 195, 245, 385).
LAWSUIT OUTCOME (Source: FJC)	
LOSS	Indicator set equal to one if the judgement of the case was in favor of defendant (Judgement = 1).
WIN	Indicator set equal to one if the judgement of the case was in favor of defendant (Judgement = 2).
SETTLE	Indicator set equal to one if the case was settled (Disposition = 5,13).
TRANSFER	Indicator set equal to one if the case was transferred (Disposition = 0,1,10,11).
OTHER/DISMISS	Indicator set equal to one if the case was dismissed (Disposition = 2,3,6,12, 14) or the case was not in any category of loss, win, settle, or transfer.
LAWSUIT CHARACTERISTICS (Sources: Audit Analytics, PACER, CRSP and RavenPack)	
DISCLOSE	Indicator variable set equal to one if the case was disclosed by the defendant in any year in its 10-K/10-Q.
FIRST DEFENDANT	Indicator variable set equal to one if the defendant is the first defendant of the case.
ENTITY PLAINTIFF	Indicator variable set equal to one if the plaintiff filing the lawsuit is another company or governmental entity (determined by spaCy NER).
OTHER PARTY DISCLOSURE	Indicator variable set equal to one if other parties of the lawsuit (e.g., the plaintiff or fellow defendants) disclose the lawsuit in any year in their 10-Ks/10-Qs.
LITIGATION NEWS	The count of the number of litigation-related news items in the 90 days following the lawsuit filing. (We use the natural logarithm in regressions.)
LENGTH	The length of the lawsuit (in years) from the date of filing to the date of termination.
$CAR_{filedate}$	Fama-French-Carhart cumulative abnormal return from the date of the lawsuit filing through the five trading days following from CRSP.
$CAR_{filedate}$ NEGATIVE	Indicator set equal to one if the $CAR_{filedate} < -0.02$.
$CAR_{filedate}$ POSITIVE	Indicator set equal to one if the $CAR_{filedate} > +0.02$.

FIRM-LAWSUIT CHARACTERISTICS (Sources: Audit Analytics, Compustat, FASB, IBES and PACER)	
LEVERAGE	Total debt divided by total assets as of the fiscal year end of the year of the lawsuit filing.
SIZE	Total assets in millions as of the fiscal year end of the year of the lawsuit filing. (We use the natural logarithm in regressions.)
MB	Market value of equity divided by book value of assets as of the fiscal year end of the year of the lawsuit filing.
ROA	Earnings before interest and tax (EBIT) divided by total assets for the fiscal year during which the lawsuit was filed.
ANALYST COVERAGE	The count of the number of analysts following the firm as of the fiscal year end of the year of the lawsuit filing. (We use the natural logarithm in regressions.)
FASB COMMENT	Indicator variable set equal to one if the firm sent a comment letter to the FASB in 2008 or 2010.
SEC COMMENT (LAG)	Indicator variable set equal to one if the firm received a litigation-related or contingent loss-related comment letter from the SEC in the fiscal year prior to the lawsuit filing.
#CASES	The number of lawsuits in which the firm is named as a defendant during the calendar year in which the particular lawsuit was filed. (We use the natural logarithm in regressions.)

Figure 1 ■ Frequency of Pending Corporate Litigation

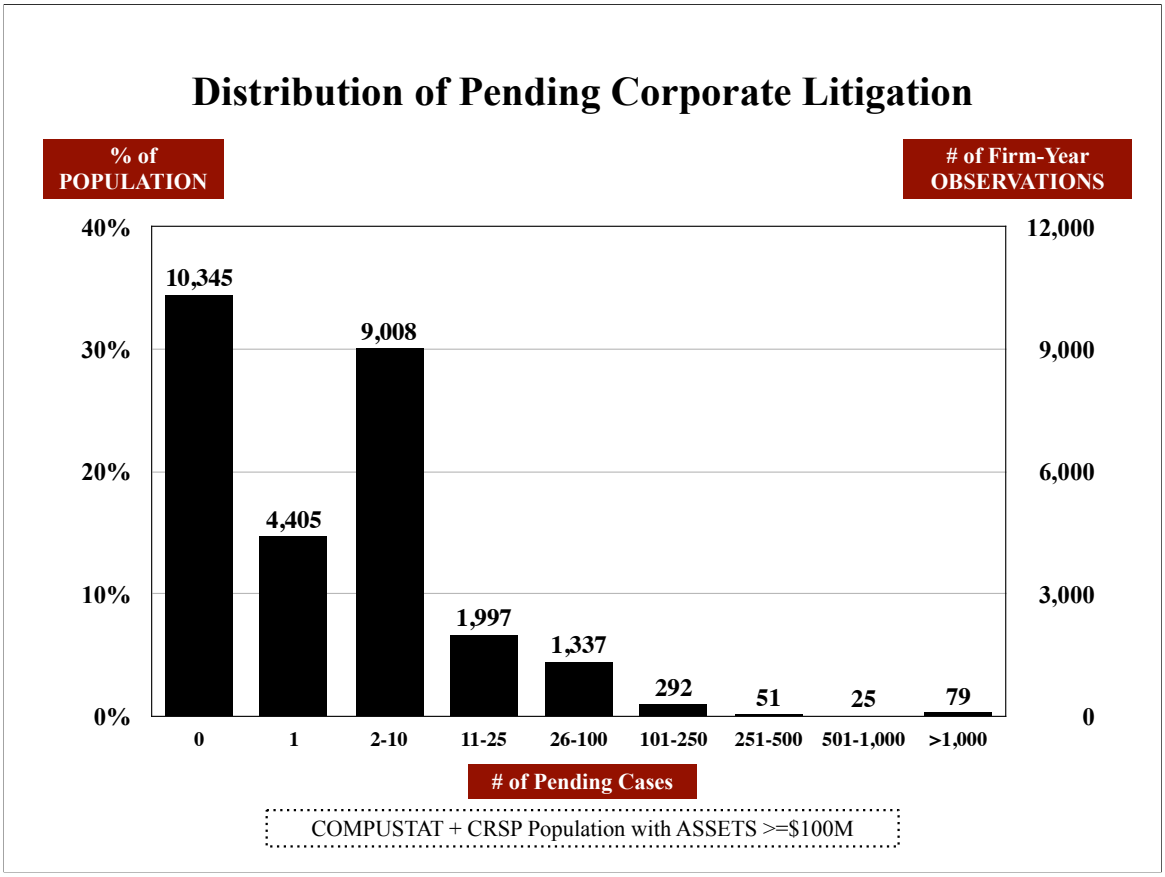
Panel A: Frequency by Suit Type



* Removing the constraint on firm size (i.e., ASSETS>$100M), we find that 51.2% of firm-year observations have pending corporate litigation during 2006-2016.

Figure 1 ■ Frequency of Pending Corporate Litigation (continued)

Panel B: Distribution of Pending Corporate Litigation

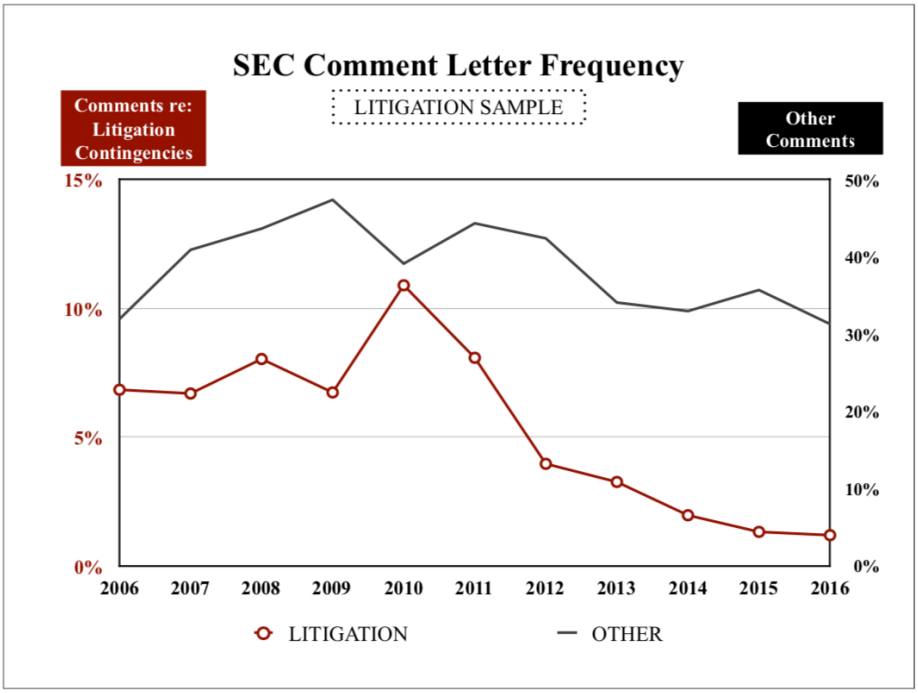


# of Pending Corporate Litigation Cases by Suit Type [N = 27,539 Firm-Year Observations]								
	ALL	**CIVIL**	**ANTI-TRUST**	**PROD.**	**IP**	**ENVIR.**	**LABOR**	**PERSON. INJURY**
MIN	0	0	0	0	0	0	0	0
MEDIAN	1	0	0	0	0	0	0	0
75th PCT	5	1	0	0	1	0	0	0
90th PCT	16	5	0	0	4	1	2	1
95th PCT	34	10	1	1	8	2	3	2
99th PCT	163	33	26	9	30	6	12	27
MAX	42,111	334	251	146	183	711	2,389	41,958

* 20 unique firms have >500 cases pending in a year at some point during 2006-2016; only 3 unique firms (Johnson & Johnson, Pfizer, Inc., and Merck & Co., Inc.) have >500 cases pending every year during 2006-2016.

Figure 2 ■ SEC comment letter frequency over time

Panel A: Litigation sample



Panel B: Compustat population

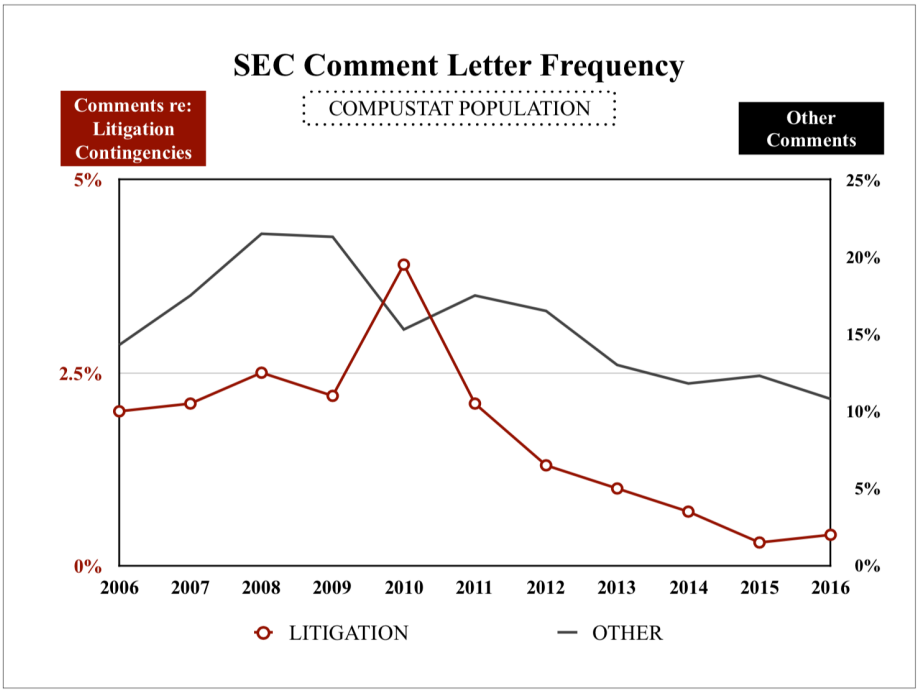
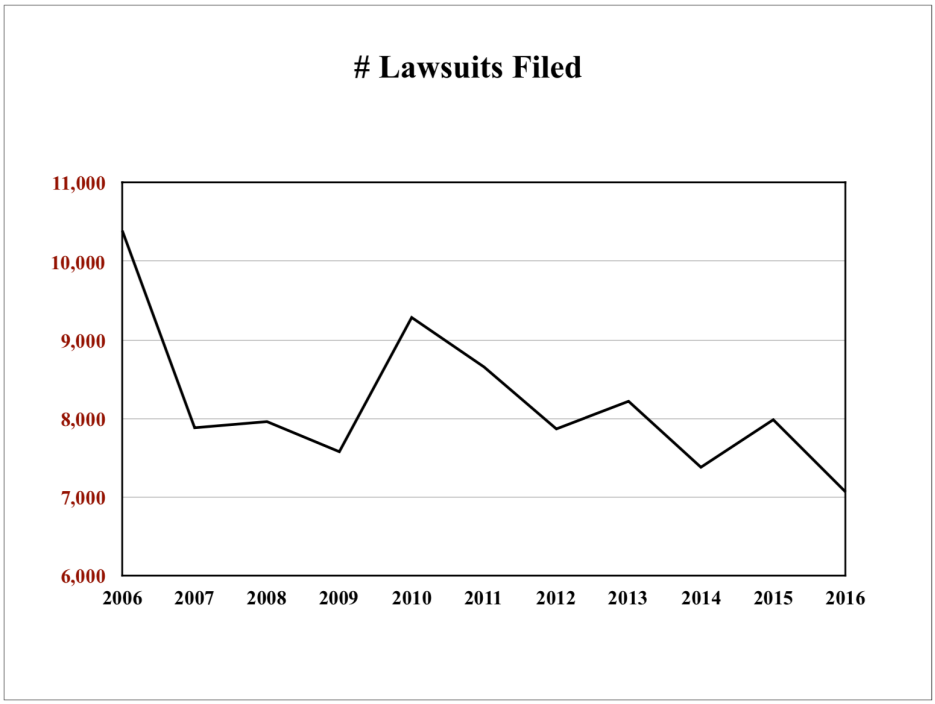


Figure 3 ■ Litigation filings and disclosure frequency over time

Panel A: Lawsuit filings



Panel B: Disclosure frequency

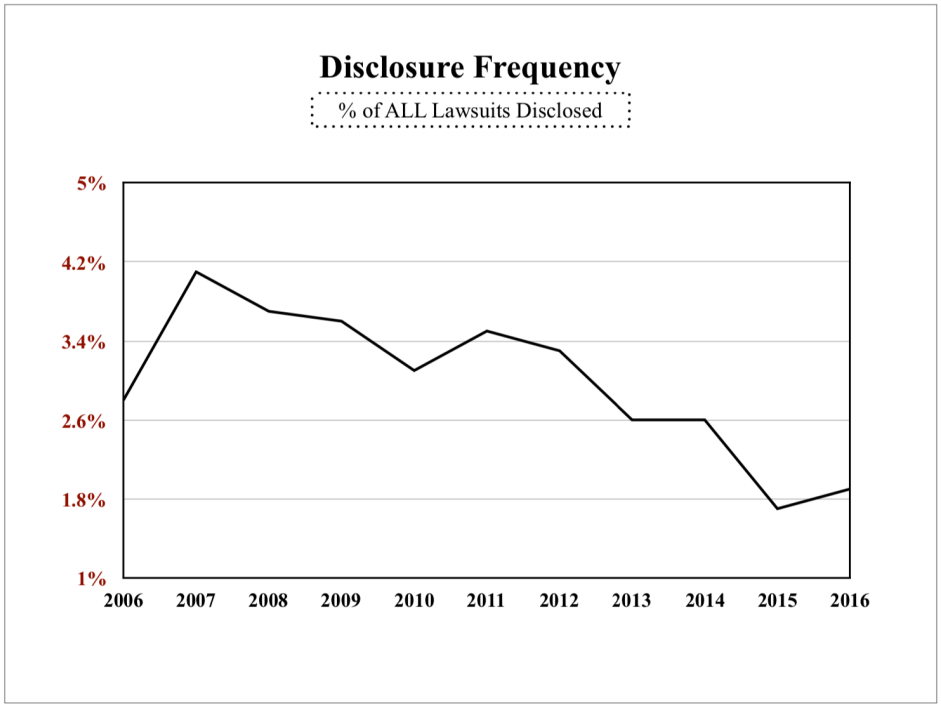


Figure 4 ■ Litigation disclosure frequency over time by lawsuit outcome

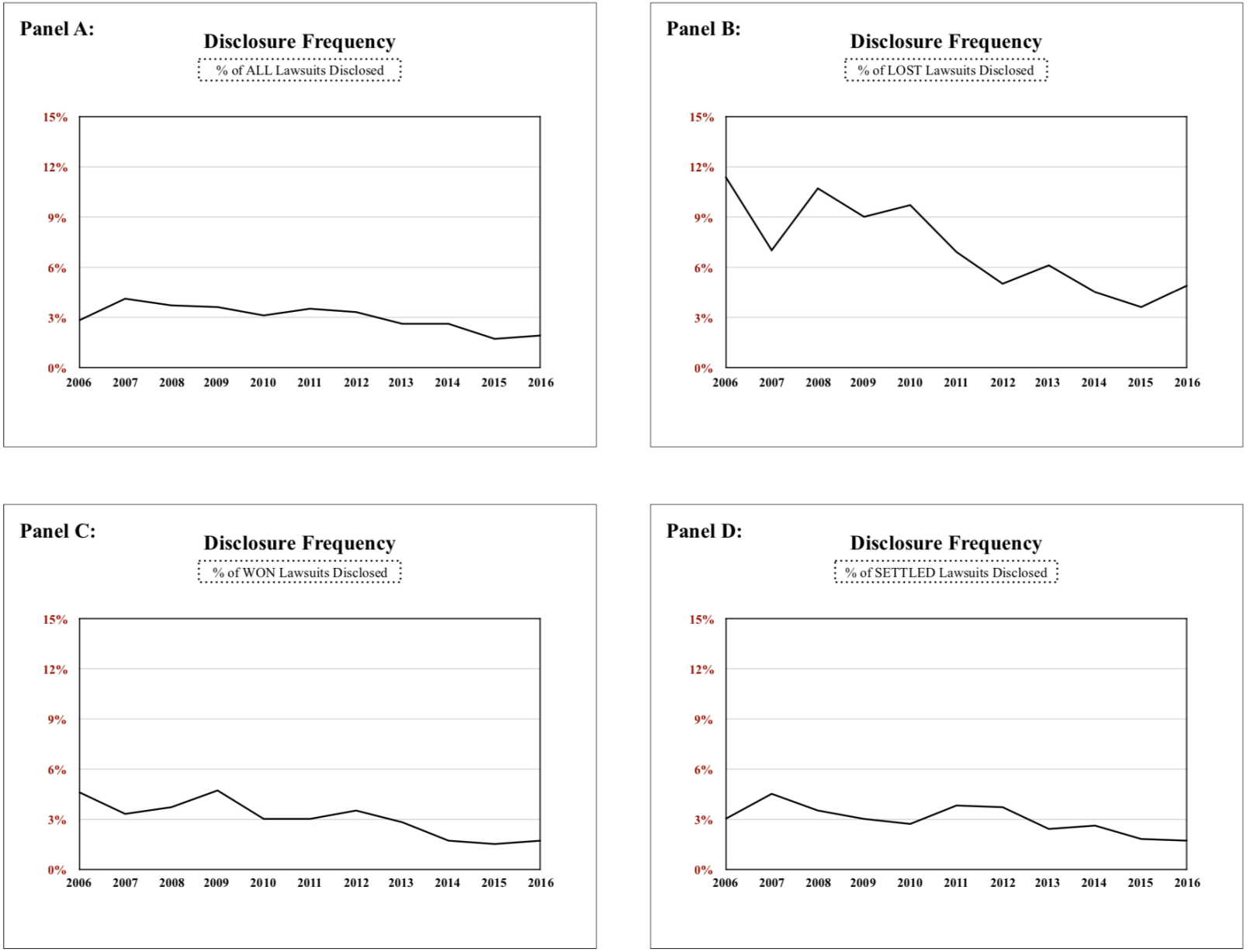


Table 1 ■ Sample selection

We identify lawsuits filed against public company defendants from 2006 through 2016 via Public Access to Court Electronic Records (PACER). See Appendices A and B for details.

Panel A: PACER lawsuit data

	# of lawsuits	# of lawsuit-defendants
Total observations in PACER (2006 through 2016)	450,009	1,345,581
Keep observations with organization defendants	423,400	1,002,342
Keep observations with public-firm defendants	94,047	116,670
Keep observations in non-financial industry	83,760	102,533
Keep observations with non-missing control variables	75,421	90,225
Main lawsuit-defendant sample		**90,255**
Unique firms		3,230

Panel B: PACER lawsuit data versus Federal Judicial Center (FJC) lawsuit data

	PACER: # of lawsuit-defendants	FJC: # of lawsuit-defendants
2006	10,391	5,685
2007	7,881	4,713
2008	7,959	4,687
2009	7,576	4,873
2010	9,285	4,995
2011	8,655	5,198
2012	7,866	5,564
2013	8,218	5,569
2014	7,378	5,304
2015	7,983	5,725
2016	7,063	4,925
Total	**90,255**	**57,238**

* PACER lawsuit data includes all named defendants, while FJC lawsuit data lists only the first named defendant. PACER data indicates that 67% (23.7%) of our sample involve lawsuits that include more than one defendant (public-company defendant) and approximately 36.6% of these observations involve public-company defendants that are not the first listed defendant.

Panel C: Audit Analytics (AA) lawsuit disclosure data

	# of lawsuits	# of lawsuit-defendants
	3,253	5,803
Disclosed by defendant in their own 10-K or 10-Q filing	2,417	2,709
Disclosed by other party (e.g., plaintiff, co-defendant, govt. agency, etc.)	1,560	3,789

Table 2 ■ Lawsuit characteristics

This table provides lawsuit descriptive statistics for 75,421 lawsuits filed against 90,255 public company defendants (3,230 unique firms) from 2006 through 2016 in federal district court. See Appendix C for variable definitions.

Panel A: Lawsuits by suit type

	PACER Full Sample:	
Suit type	***n***	**%**
Antitrust	7,758	8.60%
Civil Rights	33,839	37.49%
Environmental	4,086	4.53%
Intellectual Property	24,175	26.79%
Labor	14,701	16.29%
Product	5,696	6.31%
Total	**90,255**	**100%**

Panel B: Lawsuits by industry and suit type (PACER Full Sample)

	n	**All**	**Antitrust**	**Civil**	**Envmt.**	**IP**	**Labor**	**Product**
Non-durables	4,645	5.15%	7.17%	5.44%	2.74%	5.25%	4.57%	3.39%
Durables	3,008	3.33%	5.61%	1.94%	2.40%	2.67%	1.38%	17.05%
Manufacturing	8,406	9.31%	9.58%	9.49%	23.79%	6.24%	4.95%	21.84%
Energy	3,230	3.58%	0.94%	2.20%	33.87%	0.93%	3.02%	6.32%
Chemicals	1,630	1.81%	1.69%	1.49%	7.71%	1.35%	1.28%	2.91%
Business Eqpmt.	11,270	12.49%	12.90%	6.69%	5.60%	28.39%	4.22%	5.14%
Telecom	7,187	7.96%	8.06%	6.96%	1.84%	12.13%	7.37%	2.07%
Utilities	1,193	1.32%	1.50%	1.70%	4.26%	0.55%	1.05%	0.72%
Shops/Retail	26,130	28.95%	4.73%	34.91%	3.30%	26.45%	45.04%	14.06%
Healthcare	7,399	8.20%	14.10%	6.28%	2.45%	8.99%	5.61%	18.98%
Other	16,157	17.90%	33.73%	22.92%	12.04%	7.04%	21.50%	7.51%
Total	**90,255**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Panel C: Lawsuits by outcome and suit type (PACER Full Sample)

	n	**All**	**Antitrust**	**Civil**	**Envmt.**	**IP**	**Labor**	**Product**
Win	7,712	8.77%	6.51%	13.94%	2.39%	6.46%	5.31%	3.90%
Loss	2,533	2.88%	2.33%	1.20%	16.56%	3.36%	3.05%	1.32%
Settle	33,355	37.91%	15.58%	45.49%	27.45%	32.31%	45.15%	34.95%
Transfer	10,267	11.67%	32.72%	5.40%	16.19%	6.71%	17.43%	24.54%
Other/Dismiss	34,107	38.77%	42.85%	33.98%	37.41%	51.16%	29.06%	35.29%
Total	**87,974**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

* Matching the lawsuit case number from PACER to FJC data, we obtain outcome data for 87,974 of the 90,255 lawsuit-defendant observations from PACER.

Table 3 ■ Lawsuit disclosure

This table examines disclosure frequency for 75,421lawsuits filed against 90,255 public company defendants (3,230 unique firms) from 2006 through 2016 in federal district court. See Appendix C for variable definitions.

Panel A: Disclosure frequency by type and outcome

	n	DISCLOSE =1	%
Suit type:			
Antitrust	7,758	296	3.82%
Civil Rights	33,839	82	0.24%
Environment	4,086	116	2.84%
IP	24,175	1,790	7.40%
Labor	14,701	367	2.50%
Product	5,696	58	1.02%
Total	**90,255**	**2,709**	**3.00%**
Outcome:			
Win	7,712	240	3.11%
Loss	2,533	182	7.19%
Settle	33,355	989	2.97%
Transfer	10,267	178	1.73%
Other/Dismiss	34,107	1,032	3.03%
Total	**87,974**	**2,621**	**2.98%**

Panel B: Disclosure timing (PACER Full Sample)

	# of lawsuit-defendants			
	All	**Loss**	**Win**	**Settle**
Disclosed lawsuits	2,709	182	240	989
Disclosed within 90 days of lawsuit filing	1,623	82	149	580
Disclosed within 1 year of lawsuit filing	2,310	130	197	850
Disclosed before case termination	2,347	154	204	890
Disclosed lawsuits by more than one party	695	33	60	243
Disclosed within 30 days of another party disclosure	134	6	15	47
Disclosed before another party disclosed	336	19	27	11

Table 4 ■ Lawsuit and firm descriptive statistics

This table provides lawsuit descriptive statistics for 75,421 lawsuits filed against 90,255 public company defendants (3,230 unique firms) from 2006 through 2016 in federal district court. See Appendix C for variable definitions.

Panel A: Full PACER sample (*n*=90,255 lawsuit-defendants & *n*=14,505 firm-years)

	Mean	P25	Median	P75	Std. Dev.
All lawsuit observations (n=90,255)					
DISCLOSE	0.03	0.00	0.00	0.00	0.17
SEC COMMENT (LAG)	0.06	0.00	0.00	0.00	0.24
FASB COMMENT	0.23	0.00	0.00	0.00	0.42
OTHER PARTY DISCLOSURE	0.03	0.00	0.00	0.00	0.17
ENTITY PLAINTIFF	0.37	0.00	0.00	1.00	0.48
LITIGATION NEWS (unlogged)	11.07	0.00	0.00	3.00	37.15
$CAR_{filedate}$ NEGATIVE	0.22	0.00	0.00	0.00	0.42
$CAR_{filedate}$ POSITIVE	0.21	0.00	0.00	0.00	0.41
LENGTH (years)	1.27	0.35	0.82	1.61	1.49
#CASES (unlogged)	112.43	6.00	19.00	60.00	393.00
Firm-year observations (n=14,505)					
LEVERAGE	0.26	0.09	0.24	0.38	0.22
SEC COMMENT (LAG)	0.04	0.00	0.00	0.00	0.21
FASB COMMENT*	0.08	0.00	0.00	0.00	0.27
#CASES (unlogged)	6.93	1.00	2.00	5.00	33.73
SIZE (unlogged)	8579.03	610.63	2023.50	6927.00	19212.78
ANALYST COVERAGE (unlogged)	13.72	5.00	12.00	21.00	11.14
MB	3.05	1.30	2.16	3.65	4.98
ROA	0.08	0.04	0.08	0.13	0.09

* Of the 3,230 unique firms in the PACER sample, 142 sent a comment letter to the FASB in 2008 and/or 2010 in relation to the FASB's loss contingency project.

Table 4 ■ Lawsuit and firm descriptive statistics (continued)

Panel B: Lawsuit sample partitioned by incidence of disclosure (*n*=90,255 lawsuit-defendants)

	DISCLOSE=0 (*n*=87,546)		DISCLOSE=1 (*n*=2,709)		Tests of DIFFERENCES	
	Mean	**Median**	**Mean**	**Median**	**Mean**	**Median**
LEVERAGE	0.28	0.25	0.21	0.16	***	***
SEC COMMENT (LAG)	0.06	0.00	0.08	0.00	***	***
FASB COMMENT	0.24	0.00	0.10	0.00	***	***
OTHER PARTY DISCLOSURE	0.02	0.00	0.26	0.00	***	***
ENTITY PLAINTIFF	0.36	0.00	0.79	1.00	***	***
LITIGATION NEWS (unlogged)	11.17	0.00	7.82	0.00	***	***
$CAR_{filedate}$ NEGATIVE	0.22	0.00	0.33	0.00	***	***
$CAR_{filedate}$ POSITIVE	0.21	0.00	0.26	0.00	***	***
LENGTH (years)	1.24	0.81	2.22	1.61	***	***
#CASES	115.40	20.00	16.60	4.00	***	***
SIZE (unlogged)	39777.40	10000.00	11874.55	1684.87	***	***
ANALYST COVERAGE (unlogged)	20.67	21.00	17.38	14.00	***	***
MB	3.44	2.47	3.76	2.37	***	***
ROA	0.10	0.10	0.07	0.07	***	***

Table 5 ■ What factors predict the disclosure of contingent liabilities?

This table examines factors that predict the likelihood that a firm discloses the lawsuit. ***,**,* denote significance at the 1%, 5%, and 10% level, respectively, for two-tailed tests. We estimate a logistic regression with the coefficient effect representing the marginal effect. We cluster standard errors by firm. Intercept included but not reported. See Appendix C for variable definitions.

		Dependent variable = DISCLOSE Coefficient effect (robust z-statistic)				
Lawsuit LENGTH must be > 1 year		N	Y	N	N	N
Transferred cases included		Y	Y	N	N	Y
Other/Dismiss outcome cases included		Y	Y	Y	N	Y
		[1]	**[2]**	**[3]**	**[4]**	**[5]**
LEVERAGE	**(?)**	-0.696***	-0.805***	-0.727***	-0.862***	-0.588**
		(-2.66)	(-2.79)	(-2.66)	(-2.91)	(-2.02)
SEC COMMENT (LAG)	**(+)**	0.501***	0.393***	0.476***	0.519***	0.428***
		(4.02)	(2.99)	(3.71)	(3.95)	(3.41)
FASB COMMENT	**(−)**	-0.186	-0.201	-0.092	-0.160	0.042
		(-0.85)	(-0.91)	(-0.40)	(-0.66)	(0.19)
OTHER PARTY DISCLOSURE	**(+)**	1.591***	1.379***	1.464***	1.423***	1.707***
		(19.06)	(16.09)	(16.45)	(12.68)	(20.02)
ENTITY PLAINTIFF	**(+)**	1.208***	1.088***	1.257***	1.296***	1.242***
		(12.68)	(9.72)	(12.83)	(11.22)	(13.05)
LITIGATION NEWS	**(+)**	0.219***	0.213***	0.230***	0.235***	0.256***
		(4.10)	(4.18)	(4.20)	(4.19)	(5.45)
$CAR_{filedate}$ NEGATIVE	**(+)**	0.212***	0.218***	0.220***	0.213***	0.192***
		(4.05)	(3.35)	(4.10)	(2.98)	(3.72)
$CAR_{filedate}$ POSITIVE	**(?)**	0.059	0.027	0.065	0.044	0.031
		(1.01)	(0.38)	(1.11)	(0.54)	(0.55)
LENGTH (years)	**(+)**	0.221***	0.133***	0.225***	0.228***	0.231***
		(13.02)	(6.34)	(11.67)	(8.88)	(13.45)
#CASES (firm-year)	**(−)**	-0.418***	-0.419***	-0.422***	-0.421***	-0.468***
		(-8.51)	(-8.24)	(-7.59)	(-6.70)	(-8.97)
SIZE	**(−)**	-0.353***	-0.354***	-0.372***	-0.374***	-0.365***
		(-7.80)	(-7.40)	(-7.63)	(-6.94)	(-8.91)
ANALYST COVERAGE	**(?)**	0.202***	0.205***	0.220***	0.259***	0.253***
		(3.42)	(2.98)	(3.55)	(3.65)	(4.38)
MB	**(?)**	0.019	0.021	0.019	0.017	0.019
		(1.33)	(1.39)	(1.31)	(1.13)	(1.62)
ROA	**(?)**	-1.246**	-1.225*	-1.282**	-1.370**	-1.698***
		(-2.00)	(-1.82)	(-2.01)	(-1.98)	(-3.24)
Year fixed effects		Y	Y	Y	Y	N
Industry fixed effects		Y	Y	Y	Y	N
Observations		89,900	37,853	77,388	43,413	90,255
Pseudo R^2		0.287	0.277	0.290	0.291	0.260
ROC area		0.885	0.871	0.885	0.885	0.874

Table 6 ■ Lawsuit outcomes

This table examines factors that predict the likelihood that a firm discloses the lawsuit. ***,**,* denote significance at the 1%, 5%, and 10% level, respectively, for two-tailed tests. We estimate a logistic regression with the coefficient effect representing the marginal effect. We cluster standard errors by firm. Intercept included but not reported. See Appendix C for variable definitions.

Panel A:

		Dependent variable = DISCLOSE Coefficient effect (robust z-statistic)			
		FULL SAMPLE	**FIRST DEFENDANT**	**FIRST DEFENDANT (2006-2011)**	**FIRST DEFENDANT (2012-2016)**
		[1]	**[2]**	**[3]**	**[4]**
LOSS		0.536***	0.811***	0.791***	0.653***
		(4.35)	(5.11)	(4.48)	(2.61)
WIN		0.296***	0.235*	0.169	0.153
		(2.81)	(1.95)	(1.22)	(0.68)
TRANSFER		0.095	0.144	0.084	0.200
		(0.89)	(1.16)	(0.53)	(1.00)
SETTLE		0.112*	0.109	-0.006	0.206*
		(1.92)	(1.56)	(-0.07)	(1.94)
We do not include an indicator for OTHER/DISMISS cases so the sign and magnitude of the coefficient on each case outcome indicator should be interpreted relative to OTHER/DISMISS cases.					
Test: LOSS vs. WIN	*p-value*	0.137	0.003	0.003	0.137
Test: LOSS vs. SETTLE	*p-value*	0.001	0.000	0.000	0.064
Test: WIN vs. SETTLE	*p-value*	0.089	0.310	0.223	0.816
Table 5 determinants included		Y	Y	Y	Y
Year fixed effects		Y	Y	Y	Y
Industry fixed effects		Y	Y	Y	Y
Observations		87,630	55,820	29,466	26,315
Pseudo R^2		0.290	0.299	0.313	0.296
ROC area		0.886	0.890	0.895	0.893

Table 6 ■ Lawsuit outcomes (continued)

Panel B:

		Dependent variable = DISCLOSE Coefficient effect (robust z-statistic)		
		LOSS **[1]**	**WIN** **[2]**	**SETTLE** **[3]**
LEVERAGE	**(?)**	-1.580** (-2.33)	-0.492 (-0.79)	-0.955*** (-2.85)
SEC COMMENT (LAG)	**(+)**	-0.185 (-0.43)	0.131 (0.38)	0.686*** (3.68)
FASB COMMENT	**(−)**	-0.294 (-0.65)	-0.477 (-1.16)	0.210 (0.68)
OTHER PARTY DISCLOSURE	**(+)**	0.832* (1.70)	2.064*** (5.28)	2.031*** (8.83)
ENTITY PLAINTIFF	**(+)**	0.351 (1.42)	2.238*** (7.96)	1.489*** (10.95)
LITIGATION NEWS	**(+)**	0.367*** (3.85)	0.248*** (2.61)	0.222*** (3.30)
$CAR_{filedate}$ NEGATIVE	**(+)**	0.272 (0.96)	0.281 (1.34)	0.221** (2.12)
$CAR_{filedate}$ POSITIVE	**(?)**	-0.136 (-0.50)	0.031 (0.13)	0.053 (0.44)
LENGTH (years)	**(+)**	0.384*** (5.94)	0.321*** (4.12)	0.325*** (6.29)
#CASES (firm-year)	**(−)**	-0.393*** (-2.60)	-0.372*** (-2.60)	-0.523*** (-6.11)
SIZE	**(−)**	-0.192* (-1.71)	-0.373*** (-3.38)	-0.365*** (-5.58)
ANALYST COVERAGE	**(?)**	-0.179 (-1.46)	0.233 (1.56)	0.244*** (3.36)
MB	**(?)**	0.004 (0.19)	0.072*** (3.45)	0.004 (0.24)
ROA	**(?)**	-0.963 (-0.68)	-1.464 (-1.01)	-1.608** (-2.20)
First defendant only		Y	Y	Y
Year fixed effects		Y	Y	Y
Industry fixed effects		Y	Y	Y
Observations		1,135	5,076	23,105
Pseudo R^2		0.230	0.379	0.318
ROC area		0.828	0.926	0.894

Table 7 ■ Lawsuit type

This table examines factors that predict the likelihood that a firm discloses the lawsuit. ***,**,* denote significance at the 1%, 5%, and 10% level, respectively, for two-tailed tests. We estimate a logistic regression with the coefficient effect representing the marginal effect. We cluster standard errors by firm. Intercept included but not reported. See Appendix C for variable definitions.

		Dependent variable = DISCLOSE Coefficient effect (robust z-statistic)			
		FULL SAMPLE [1]	**LOSS [2]**	**WIN [3]**	**SETTLE [4]**
ANTITRUST		1.129***	2.658***	1.090	1.224**
		(5.25)	(2.75)	(1.61)	(2.38)
ENVIRONMENT		0.387*	1.592*	0.216	1.770***
		(1.65)	(1.67)	(0.26)	(3.90)
INTELLECTUAL PROPERTY		0.796***	1.419*	0.650	1.432***
		(3.94)	(1.70)	(1.06)	(3.93)
CIVIL RIGHTS		-1.185***	-0.091	-2.585***	-1.272***
		(-4.97)	(-0.10)	(-3.23)	(-2.72)
LABOR		1.450***	0.814	0.644	1.878***
		(6.74)	(0.88)	(0.92)	(4.45)
We do not include an indicator for PRODUCT cases; the sign and magnitude of the coefficient on each suit type should be interpreted relative to PRODUCT cases.					
Test: ANTITRUST vs. ENVIR	*p-value*	0.000	0.101	0.237	0.259
Test: ANTITRUST vs. IP	*p-value*	0.061	0.028	0.361	0.601
Test: ANTITRUST vs. CIVIL	*p-value*	0.000	0.000	0.000	0.000
Test: ANTITRUST vs. LABOR	*p-value*	0.086	0.005	0.387	0.131
Test: ENVIR vs. IP	*p-value*	0.010	0.703	0.503	0.270
Test: ENVIR vs. CIVIL	*p-value*	0.000	0.004	0.000	0.000
Test: ENVIR vs. LABOR	*p-value*	0.000	0.189	0.529	0.768
Test: IP vs. CIVIL	*p-value*	0.000	0.001	0.000	0.000
Test: IP vs. LABOR	*p-value*	0.000	0.213	0.986	0.092
Test: CIVIL vs. LABOR	*p-value*	0.000	0.027	0.000	0.000
First defendant only		N	Y	Y	Y
Table 5 determinants included		Y	Y	Y	Y
Year fixed effects		Y	Y	Y	Y
Industry fixed effects		Y	Y	Y	Y
Observations		89,900	1,962	6,053	26,230
Pseudo R^2		0.316	0.234	0.393	0.389
ROC area		0.906	0.841	0.935	0.935

Table 8 ■ Personal injury product liability cases

This table provides lawsuit descriptive statistics and disclosure frequency for 193,712 personal injury lawsuits involving 720 unique defendant firms from 2006 through 2016 in federal district court. We identify personal injury lawsuits in the Federal Judicial Center database using suit codes 365 and 367. We use Audit Analytics to measure disclosure. See Appendix C for variable definitions. ***,**,* denote significance at the 1%, 5%, and 10% level, respectively, for two-tailed tests.

Panel A: Personal injury suits by industry

	n	%
Non-durables	7,414	3.83%
Durables	878	0.45%
Manufacturing	2,465	1.27%
Energy	57	0.03%
Chemicals	357	0.18%
Business Equipment	228	0.12%
Telecom	58	0.03%
Utilities	15	0.01%
Shops/Retail	1,606	0.83%
Healthcare	179,374	92.60%
Other	1,260	0.65%
Total	**193,712**	**100.00%**

Panel B: Personal injury suits by outcome

	n	%
Win	8,029	4.14%
Loss	689	0.36%
Settle	88,052	45.46%
Transfer	33,671	17.38%
Other/Dismiss	63,271	32.66%
Total	**193,712**	**100.00%**

Panel C: Personal injury suits disclosure frequency

	n	DISCLOSE =1	DISCLOSE %
Win	8,029	10	0.12%
Loss	689	4	0.58%
Settle	88,052	26	0.03%
Transfer	33,671	12	0.04%
Other/Dismiss	63,271	25	0.04%
Total	**193,712**	**77**	**0.04%**

* Of the 77 lawsuits that were disclosed by defendant firms according to Audit Analytics, 44 were disclosed within 90 days of the lawsuit filing, 61 were disclosed within one year of the lawsuit filing, and 65 were disclosed before the case was terminated.

Table 8 ■ Personal injury product liability cases (continued)

Panel D: Disclosure determinants descriptive statistics

	Mean	P25	Median	P75	Std. Dev.
***All lawsuit observations* (*n*=193,712)**					
OTHER PARTY DISCLOSURE	0.000	0.000	0.000	0.000	0.008
ENTITY PLAINTIFF	*NA – Identity of plaintiff is not available from FJC data.*				
LITIGATION NEWS (unlogged)	18.461	0.000	6.000	22.000	30.410
$CAR_{filedate}$ NEGATIVE	0.045	0.000	0.000	0.000	0.207
$CAR_{filedate}$ POSITIVE	0.051	0.000	0.000	0.000	0.219
LENGTH (years)	2.407	0.488	2.392	3.762	1.872
***Firm years* (*n*=2,136)**					
LEVERAGE	0.272	0.148	0.251	0.373	0.179
SEC COMMENT (LAG)	0.061	0.000	0.000	0.000	0.239
FASB COMMENT	0.163	0.000	0.000	0.000	0.370
#CASES	90.690	1.000	1.000	4.000	693.802
SIZE (unlogged)	22,905	1,794	6,181	20,692	47,396
ANALYST COVERAGE (unlogged)	17.161	8.000	17.000	25.000	10.812
MB	3.451	1.636	2.557	4.047	3.649
ROA	0.102	0.062	0.098	0.143	0.072

Panel E: Disclosure determinants partitioned by disclosure

All lawsuit observations (n = 193,712)	**DISCLOSE=0** (*n*=193,635)		**DISCLOSE=1** (*n*=77)		**Tests of DIFFERENCES**	
	Mean	**Median**	**Mean**	**Median**	**Mean**	**Median**
LEVERAGE	0.21	0.22	0.26	0.26	***	*
SEC COMMENT (LAG)	0.05	0.00	0.06	0.00		
FASB COMMENT	0.61	1.00	0.12	0.00	***	
OTHER PARTY DISCL.	0.00	0.00	0.03	0.00	***	***
LIT. NEWS (unlogged)	18.47	6.00	1.56	0.00	***	***
$CAR_{filedate}$ NEGATIVE	0.04	0.00	0.21	0.00	***	***
$CAR_{filedate}$ POSITIVE	0.05	0.00	0.25	0.00	***	***
LENGTH (years)	2.41	2.39	1.78	1.27	***	***
#CASES	5,398	4,931	348	7.00	***	***
SIZE (unlogged)	74,062	45,000	15,249	1,636	***	***
ANALYST COV. (unlogged)	25.37	25.00	13.69	10.00	***	***
MB	3.82	3.49	3.49	2.83		
ROA	0.13	0.14	0.11	0.13	***	***