

**Trial Preparation Factors That Auditors Should Consider in Assessing Litigation Risk:  
Insights from Audit Litigators**

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## **Trial Preparation Factors That Auditors Should Consider in Assessing Litigation Risk: Insights from Audit Litigators**

### **ABSTRACT**

Prior research finds that most audit disputes resolve via settlements and that litigators' expectations of jury verdicts are the key driver of settlement terms. We extend this research by examining how litigators develop expectations of jury verdicts and how they manage factors influencing these expectations. Using the Elaboration Likelihood Model as a lens, we interview 61 audit litigation attorneys, trial consultants, and expert witnesses. We find that litigators expect key technical (e.g., audit and accounting standards) and non-technical (e.g., argument emotionality) case aspects to affect jury verdicts and therefore settlements. We also report that, due to unique features of audit litigation, litigators who sue auditors primarily focus on non-technical factors, while defense litigators—on technical factors. We develop and validate a framework showing how different audit trial preparation factors could affect settlements, enabling auditors to better assess engagement risk. We discuss implications for auditors and suggest multiple venues for future research.

*To understand more about audit litigation . . . if you want to deal with what's really going on, the focus needs to be on how cases are prepared . . . and what factors are considered.*  
(Anonymous audit litigation attorney, Maksymov et al. 2020, p. 1409)

## **1. Introduction**

Recent research in audit litigation has posed some questions that future research needs to answer to aid development of new important research venues relevant to this stream of literature (Soltes 2014; Donelson 2020; Maksymov et al. 2020; Gimbar and Mercer 2021). First, audit litigation creates incentives for auditors to provide high quality audits, but in its current state poses an existential risk even to the largest audit firms (Defond and Zhang 2014; Peterson 2017) in part because audit firms struggle assessing litigation risk accurately (Maksymov et al. 2020; Gimbar and Mercer 2021). Thus, Maksymov et al. (2020) and Gimbar and Mercer (2021) call for research to explore how auditors can assess litigation risk more accurately. Second, related calls for research also come from Soltes (2014) for field evidence on drivers of audit litigation and from Donelson (2020) for examination of how audit litigators' strategies differ depending on which side they represent. Our study responds to these calls.

Importantly, while audit litigation disputes typically resolve via settlement (Palmrose 1991), recent research finds that audit litigators prepare for each case as if it is going to trial, develop expected ranges of jury verdicts during trial preparation, and base settlement recommendations primarily on these expectations (Maksymov et al. 2020; Pickerd and Piercey 2021). Thus, understanding the key factors influencing litigators' expectations of jury verdicts is important to better understand how auditors can assess litigation risk more accurately (Maksymov et al. 2020; Gimbar and Mercer 2021). However, research is lacking on how litigators develop these expectations during trial preparation. Maksymov et al. (2020) note that the key to understanding how audit litigators develop verdict expectations is to understand *what* factors they consider in preparing for trials and *how* they expect these factors to affect resolution. Thus, our study responds to the calls in the prior literature (Soltes 2014; Donelson 2020; Maksymov et al. 2020; Gimbar and Mercer 2021) by examining these questions.

To examine these questions, we conduct semi-structured interviews of 61 audit litigators, including 47 experienced attorneys, 12 trial consultants, and 2 expert witnesses. We use persuasion theory, and in particular the Elaboration Likelihood Model (ELM, Petty and Cacioppo 1986), as the theoretical lens to guide our data analysis. The ELM posits that people can be persuaded with different levels of elaboration—i.e., thinking about the information (Petty and Brinol 2012b). At the higher end of the elaboration continuum (hereafter “higher elaboration”), people more carefully and thoroughly consider the details of information because they are more able and more motivated to do so (e.g., Petty and Brinol 2010; Griffith, Nolder, Petty 2018). At the lower end of the elaboration continuum (hereafter “lower elaboration”)—a common human tendency—people consider information less carefully and thoroughly because they are less able or less motivated to do so and thus rely relatively more on simple cues such as their emotion (ibid.). We adapt the ELM to the audit litigation trial preparation and propose a framework describing what factors audit litigators consider in trial preparation and how they expect these factors to affect resolution by influencing the likelihood that jurors will use lower versus higher elaboration.

Our results reveal that audit litigators develop expectations of trial outcomes and manage these expectations throughout the trial preparation process by considering and attempting to influence multiple characteristics related to trial venue, potential jurors, and case arguments to their advantage. One key result, driven by the unique features of audit litigation such as auditors’ responsibility to follow complex audit guidance, is that each side primarily focuses on a different juror elaboration level in trial preparation. Plaintiff’s litigators (“PLs”) primarily focus on *lower elaboration* where jurors use relatively less technical information, such as the effect of audit failure on the livelihoods of the investors, in their decision making. This is because given the complexity of audit litigation, it is easier to convince lay jurors of auditors’ negligence based on non-technical rather than technical factors such as nuances of accounting standards and audit guidance. Litigators who defend auditors or defendant’s litigators (“DLs”), on the other hand, primarily focus on *higher elaboration* where jurors use relatively

more technical information in their decision making because auditors often have to defend their judgments using the accounting standards and guidance to overcome jurors' common misperceptions of auditing.

For example, in selecting a trial venue, PLs work towards securing a venue where the jury pool is less sophisticated because they believe this group focuses more on non-technical case facts that are more likely to elicit lower-elaboration based (e.g., emotion-based) decision making in an audit case. DLs, on the other hand, prefer a jury pool that is more business savvy as they believe this populace is more capable and motivated to rely on technical case facts that are more conducive to higher-elaboration-based decision making in an audit case. It is important for auditors to understand this dynamic because many litigators believe state courts—where audit litigation is growing rapidly (Donelson 2020)—favor PLs because state courts are more likely to draw jurors who engage in lower elaboration than federal courts.

Our study makes important contributions to the audit litigation research literature. First, our results address the calls by Maksymov et al. (2020) to shed light on how audit litigators develop and manage expectations of trial outcomes that they use to negotiate settlements and by Gimbar and Mercer (2021) to better understand how auditors can assess risk of loss from audit litigation more accurately. We show how litigators develop their expectations of audit case resolution throughout the trial preparation process as they consider various factors related to trial venues, potential jurors, and case arguments. These insights should enable audit firms to more accurately assess risk of loss from audit litigation, as part of assessing engagement risk for each audit (DeFond et al. 2016).

Second, our results address the call by Donelson (2020) to examine how audit litigators' tactics differ depending on which side they represent. Our results show that generally PLs (DLs) in audit disputes work toward increasing the likelihood that jurors will use lower (higher) elaboration to process information and reach judgments. We find that the difference in preferences stems from the different incentives and challenges that each side faces in audit litigation—DLs (PLs) tend to benefit more from

jurors' more elaborative (less elaborative) judgments. The different strategies of PLs and DLs likely explain why prior research finds that audit litigation provides inconsistent signals about audit quality. For example, we find that audit lawsuits processed in federal as opposed to state courts are more likely to have judges and jurors who will process case information at higher elaboration on which DLs focus their cases. Thus, studies using federal court information are more likely to find a stronger connection between audit litigation and audit quality (see review at DeFond and Zhang 2014). Importantly, these results should be of use to auditors who sometimes prevent settlements, thereby putting their firms at risk of increased liability, because they believe that they acted consistent with the applicable audit guidance and thus should not settle (Maksymov et al. 2020).

Third, our results address the call for researchers to provide new insights on drivers of audit litigation (Soltes 2014). To illuminate how various factors drive litigators' expectations, we validate a framework of audit litigator trial preparation we developed based on ELM. This framework provides guidance on how litigators expect to use the key factors we identified—characteristics of trial venues, potential jurors, and case arguments—to influence the likelihood that jurors will use the elaboration level favorable to their side and how these factors could affect litigators' expectations of jury verdicts. This framework will be helpful to future researchers in audit litigation, as they would be able to use it to design their research, interpret research findings, and develop and test new theories to move the field forward. While the debate in psychology continues on whether low or high elaboration results in better decisions (Dijksterhuis 2004; Dijksterhuis et al. 2006; Dijksterhuis and Aarts 2010; Arnott and Gao 2019; Weinberger and Stoycheva 2020), our study shows that key players in audit litigation systematically try to manage and appeal to different level of elaboration in jurors, eliciting different jury conclusions.

Overall, we believe our results will be useful to audit practitioners to be able to better assess the risk of loss from audit litigation (Peterson 2017; Maksymov et al. 2020; Gimbar and Mercer 2021). Using these insights, auditors could, for example, make the necessary custom adjustments to specific

engagement letters as well as the audit fee and the audit portfolio structures to minimize their and their firm's exposure to litigation loss. Our results should also be of use to experimental researchers who could now examine how specific factors likely individually or jointly affect audit litigators' judgments—an area where experimental research is particularly needed to better understand the drivers of audit litigation (Donelson, Kadous, McInnis 2014; Goodson, Grenier, and Maksymov 2022). Our results could also help archival researchers examining audit litigation to interpret findings within the institutional context we provide and to refine research designs by incorporating some of the characteristics we have identified, such as the sophistication of the potential jury population in a given jurisdiction, into their empirical models. Our findings also raise many important questions for future research that we discuss in the paper, including 10 broad topics that we discuss in detail in conclusion.

## **2. Theoretical Foundation**

### ***Assessment of Risk of Loss from Audit Litigation***

Before undertaking an audit engagement, auditors estimate the engagement risk—the risk of all possible losses related to the audit engagement (DeFond et al. 2016). Assessment of risk of loss from audit litigation is part of this estimate. Accurately assessing risk of loss from audit litigation for each audit engagement is critically important for audit firms to estimate appropriate audit fees, to stay solvent, and to avoid protracted and expensive litigation by being able to assess what settlement terms are reasonable for an audit dispute (Peterson 2017; Maksymov et al. 2020; Frank, Maksymov, Peecher, and Reffett 2021; Gimbar and Mercer 2021). Audit firms tend to struggle making this assessment (ibid.).<sup>1</sup> For example, Gimbar and Mercer (2021) show that auditors consistently misestimate litigation risk, and a prominent attorney interviewed by Maksymov et al. (2020) remarked that audit firms “are

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<sup>1</sup> For example, an experienced former audit partner told us that this partner never considered potential trial-related factors, such as potential jury pool characteristics, in assessing litigation risk, explaining this position as follows: “I as a firm never want to get to a jury trial and will most likel[y] settle before I would get to a jury. [So] why bother considering jury pool participants in my risk assessment?” Thus, one potential reason for audit firms' systematic misestimation of litigation risk could be line audit partners' lack of understanding of the drivers of audit litigation and settlements. Future research could further explore this topic.

very bad at assessing their own exposure to the loss [from litigation], which is why they are not very good at settling cases” (1430). For this reason, Peterson (2017) noted that at any given time even the largest audit firms are much closer to insolvency due to audit litigation than the public or even the firms themselves often realize. Peterson argues that this risk could be mitigated significantly if auditors had a better understanding of the factors that drive audit litigation outcomes.

Most lawsuits against auditors settle (Palmrose 1991; Maksymov et al. 2020). Litigators negotiate settlements based on their expectations of trial outcomes and develop those expectations during trial preparation (ibid.). Thus, it is critically important for the audit profession to gain a better understanding of what factors litigators consider and try to influence that drive litigators’ expectations of trial outcomes during trial preparation. With this understanding, auditors could more accurately assess risk of loss from audit litigation that they estimate for every audit engagement by considering which factors would apply in trial preparation in a potential audit dispute and how they might affect expected litigation outcomes. Auditors could then make the necessary adjustments to, for example, the engagement letter, their audit fee and audit portfolio structures, and engagement team composition to minimize their exposure to litigation loss.

### ***Uniqueness of Audit Litigation***

Importantly, accurate understanding of what factors litigators consider in audit trial preparation and these factors’ role in resolution cannot be achieved by transferring answers from academic studies in other legal fields for three reasons. First, the legal literature has not thoroughly explored what factors litigators consider in trial preparation, much less how they might use these factors differently depending on the side they represent (Devine and Caughlin 2014; Devine et al. 2001). Second, legal fields commonly studied differ significantly in key aspects of case resolution such as the willingness of litigators to settle versus go through a jury trial (e.g., Alexander 1991; Eisenberg and Lanvers 2009; Sandefur 2015; Poppe and Rachlinski 2016). Third, audit litigation has features that could affect the role of technical aspects of a case in resolution of audit disputes (Maksymov et al. 2020; Frank et al.



2021)—i.e., aspects that can be evaluated against the relevant benchmark such as the applicable law or professional standards (Sandefur 2015; Poppe and Rachlinski 2016).

Generally, the more the technical aspects of a case factor into the resolution, the more the resolution has been based on matters that are relevant (versus irrelevant) to the applicable law (e.g., Alexander 1991; Poppe and Rachlinski 2016). While litigation in general has been moving away from focusing on technical factors due to a lack of clear evaluation benchmarks (Sandefur 2015; Poppe and Rachlinski 2016), audit litigation has standards that parties can use as benchmarks in establishing expected due care (e.g., Maksymov and Nelson 2017), enabling litigators to use technical aspects of audit cases in the resolution of audit litigation potentially more than in other litigation settings (Alexander 1991; Palmrose 1997). In addition, audit guidance requires auditors to keep extensive documentation of their efforts and judgments (e.g., PCAOB 2004), making audit litigation conducive to focusing on technical aspects of a case by comparing documented work against the relevant audit standards.

On the other hand, audit concepts tend to be complex and unfamiliar to people who are inexperienced in the auditing field (Goodson et al. 2022; Gimbar and Mercer 2021), potentially reducing the role of technical aspects and increasing the role of non-technical aspects in audit case resolution, such as the effect of audit failure on investors (e.g., Kadous 2000). Moreover, many auditing concepts, such as the standard of care and materiality (Reffett 2010; Maksymov and Nelson 2017), are often vague and malleable in their nature, giving litigators the flexibility in interpreting them and potentially making use of technical aspects of a case in resolution more difficult. In summation, audit litigation has features that call for relevant research on the role of technical versus non-technical case aspects in audit litigation.

### ***The Elaboration Likelihood Model Applied to Audit Litigation***

In examining how audit litigators prepare cases and what factors they consider in trial preparation, we apply a helpful theoretical lens to guide our examination: The Elaboration Likelihood

Model (Petty and Cacioppo 1986). This model is a major theoretical framework in the persuasion literature and has many important applications in researching accounting topics as it considers how persuaders can increase the likelihood that people are being persuaded by relevant detailed facts versus potentially irrelevant cues in their decisions (Petty and Cacioppo 1986; Griffith et al. 2018). This framework is a useful lens for our study because the constructs of relevant detailed information and simple cues—the constructs of ELM’s focus (ibid.)—are closely aligned with the constructs of technical and non-technical aspects of a case (Alexander 1991; Palmrose 1997). Technical aspects are described as relevant and detailed facts that lend themselves to being evaluated against applicable law and standards (Sandefur 2015; Poppe & Rachlinski 2016). Used as lens, this framework will allow us to examine how audit litigators on each side use technical versus non-technical aspects of the case in their trial preparation process and how the differential use of case aspects could influence expected litigation outcomes.

The ELM posits that persuasion can occur along a continuum of cognitive effort level, ranging from low to high (Brinol and Petty 2012a). When people engage in relatively high-effort thinking (i.e., higher elaboration), they are more likely to carefully consider and evaluate the relevance of an argument’s details and thus identify relevant information and applicable evaluation criteria, and make their judgment based on their interpretation of how the relevant information compares with the relevant evaluation criteria. However, when people engage in relatively low-effort thinking (i.e., lower elaboration), they are less likely to scrutinize details of an argument and thus are more likely to make their judgment based on simple cues: peripheral information and evaluation criteria that are peripheral (i.e., irrelevant) to the central issues (Petty and Cacioppo 1986).

Persuaders (e.g., litigators) can influence the likelihood that people they desire to persuade (e.g., jurors) use higher versus lower elaboration by changing the two determinants of elaboration level: motivation and capacity of the people being persuaded (Brinol and Petty 2012b). Motivation refers to one’s willingness to think and process information and can be influenced by factors such as personal

relevance of the information (Petty and Cacioppo 1979) and need for cognition (Cacioppo and Petty 1982). Capacity is one's ability to think and process information and is determined by the individual's innate cognitive ability and external factors (e.g., complexity of the issues) (Petty, Wegener, and Fabrigar 1997). The likelihood that people will scrutinize technical relevant information in their decision making is higher when their motivation and capacity to process such information is higher (Brinol and Petty 2012b). Using the ELM (Petty and Brinol, 2010; Griffith et al. 2018) and audit litigation research (Maksymov et al. 2020; Frank et al. 2021; Pickerd and Piercey 2021) we develop a framework that depicts the key factors litigators try to manage and consider during trial preparation in developing their expectations of trial outcomes and subsequently settlement terms (Figure 1).

[INSERT FIGURE 1 ABOUT HERE]

Our proposed framework consists of three elements. The first element is labeled as Element 1 (Figure 1) and is based on the findings in prior research (Maksymov et al. 2020; Frank et al. 2021) and describes how some factors likely influence settlement terms outside of the trial preparation process. These factors include insurance policy limits, statues of limitations, and others. The remaining two elements are the focus of our study and describe how audit trial preparation influences settlements through their expected effect on the potential jury panel's verdict.

The first of the two trial preparation elements is labeled as Element 2 (Figure 1) and describes the factors that litigators (i.e., the persuaders) try to manage during trial preparation to influence jurors' level of elaboration: characteristics of the trial venues and potential jurors and characteristics of the case arguments. The second of the two trial preparation elements is labeled as Element 3 (Figure 1) and describes that litigators expect characteristics listed in Element 2 to affect jurors' elaboration.

In summation, our framework outlines how settlement terms are typically developed and what factors are likely to affect them. We aim to validate this framework as it would be useful to audit practitioners to devise strategies to manage engagement risk (e.g., by customizing their engagement letters to specific audit clients, by being able to assess the exposure to loss from audit litigation more

accurately, etc.), to regulators and politicians who are considering how best to resolve business litigation (see review in Kessler 2010), and to audit academics to identify areas for future research, interpret research findings, and design more accurate research models. For exposition, we organize our research questions by the two elements of focus to our study (Figure 1, elements 2 and 3, respectively):

RQ1: What characteristics, if any, of *trial venues and potential jurors* do audit litigators try to manage and how do they expect their efforts to affect the role of technical versus non-technical information in potential jurors' judgments?

RQ2: What characteristics, if any, of *case arguments* do audit litigators try to manage and how do they expect their efforts to affect the role of technical versus non-technical information in potential jurors' judgments?

### 3. Method

#### *Litigator Interviewees*

To examine our research questions, we use qualitative, semi-structured interviews of experts in audit litigation because this method enables us to obtain insights into our questions directly from the experts in the field of our study (Cohen, Krishnamoorthy, and Wright 2002; Power and Gendron 2015; Westermann, Bedard, and Earley 2015; Malsch and Salterio 2016; Hayne 2017; Maksymov et al. 2020). We conducted interviews with 61 litigators in three stages.<sup>2</sup> In the first stage (Stage 1), during 2016-2017, we conducted interviews with 22 prominent attorneys with personal, direct experience in audit litigation—9 primarily serve as PLs (identified as 1PA1 through 1PA9), 11 primarily serve as DLs (identified as 1DA1 through 1DA11), and 2 have experience on both sides (identified as 1A1 and 1A2) (see Table 1, Panel A).<sup>3</sup> On average, attorneys have 26 years of legal experience. Stage 1 of the interviews was limited to a few specific but important questions relevant to our study (Appendix A).

In the second stage (Stage 2), we examined these issues further to identify specific factors and

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<sup>2</sup> The Institutional Review Board (IRB) for Human Participants at a coauthor's university approved interview question topics prior to each interview stage. The IRBs of the other coauthors approved their reliance on that university's IRB. Per the IRB's approval, we obtained verbal consent from each interviewee to participate in this research study.

<sup>3</sup> We obtain interview data from Maksymov et al. (2020) to complete our first stage, using only attorney responses to questions that Maksymov et al. (2020) do not report.

persuasion tactics audit litigators consider. In Stage 2, we interviewed 20 audit litigators—8 attorneys selected following the same selection criteria as in the first stage and 12 trial consultants.<sup>4</sup> Table 1, Panel B, shows that of the 8 attorneys, 5 primarily serve as DLs, 2 primarily serve as PLs, and 1 has experience on both sides. Of the 12 trial consultants, 6 primarily work with DL teams and 6 work with teams on both sides. On average, attorneys have 33 years of experience while trial consultants have 25 years of experience in audit litigation.

In the third stage (Stage 3), we sought to add more audit attorneys who primarily represent plaintiffs, so we could reach saturation with respect to our research questions with a more balanced interviewee group. In Stage 3, we interviewed 17 attorneys primarily representing plaintiffs or having experience representing both plaintiffs and defendants. Table 1, Panel C, shows that of the 17 attorneys, 15 primarily serve as PLs and 2 have experience on both sides. In addition, we interviewed two expert witnesses with extensive experience working on teams representing PLs and DLs to further diversify the sources of our data in order to increase the trustworthiness and robustness of our findings (Malsch and Salterio 2016). On average, attorneys have 36 years of experience while expert witnesses have 24 years of experience in audit litigation. As a result of adding Stage 3, our sample is now more balanced, with relevant experts allowing us to reach saturation separately for DL and PL side and thereby increasing reliability of our data (*ibid.*).

Overall, our sample consists of 26 PLs, 22 DLs, and 13 litigators with experience on both sides. In all stages we sought only professionals who were recognized as experts in the field. We sought and got access only to attorneys who were law firm partners or equivalent with direct experience in legal claims against auditors; trial consultants with direct experience in legal claims against auditors, with

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<sup>4</sup> Trial consultants are legal experts who help attorneys prepare for trial in tasks such as jury research, witness preparation, and argument development. While there are no specific requirements to become a trial consultant, nearly all trial consultants are members of the American Trial Consultant Society and most hold advanced degrees. For example, the trial consultants whom we interviewed had the following as their highest educational achievements: three individuals with JD and PhD, four with PhD (all in psychology), one with JD, two with master's degrees (in speech and theater), and two with bachelor's degrees (in accounting and communications).

some regularly producing publications serving as popular guides in the trial consulting field; and expert witnesses who are highly regarded in both the field of accounting research and have extensive experience in audit litigation on both sides.

[INSERT TABLE 1 ABOUT HERE]

### ***Script Development***

All stages of our interviews entail semi-structured scripts with open-ended questions to guide rather than constrain responses (Yin 2013; Hayne 2017). This approach enables a more “complete and consistent coverage in each interview of themes under study ...minimizing researcher intrusion” (Lillis 1999, 84). We separated each script into two parts consisting of big-picture questions that help us identify and understand key issues in the setting and follow-up questions that “drill down” for deeper insights (see Appendix A, Beasley et al. 2009; Hermanson et al. 2012). Throughout the interview process, we made changes to the script, due to the additional insights gained during prior interviews (Hirst and Koonce 1996; Cohen et al. 2002; Westermann et al. 2015).

### ***Interview Process***

Prior to each interview, the litigators were contacted and provided with the primary questions from the script, so they could gather their relevant thoughts for the interview and thereby increase the likelihood of sharing rich insights. They were apprised of the confidentiality of the interview process and of their ability to review a draft of our paper for inaccuracies or identity-revealing information (Gendron, Bedard, and Gosselin. 2004; Power and Gendron 2015; Hayne 2017). In Stage 1, independent licensed court reporters were retained to transcribe the interviews live. In Stages 2 and 3, we audio-recorded each interview after obtaining the interviewee’s permission. During interviews, we minimized our words so the litigators could elaborate on their experiences, bring up examples, and “think out loud” (Patton 2002; Yin 2013; Power and Gendron 2015; Malsch and Salterio 2016). Throughout, we considered the degree to which incremental learning continued and whether we had reached saturation (Power and Gendron 2015; Malsch and Salterio 2016). We stopped the process only

after interviewees repeatedly provided the same observations (Malsch and Salterio, 2016, 7), indicating saturation.<sup>5</sup>

For our analyses, we transcribed the recordings of interviews using a professional transcription service. First, one coauthor identified themes suggested by the data and our theoretical framework. The other coauthors then reviewed and proposed immaterial adjustments to wording of themes. Two of the reviewing coauthors then coded the data into the final agreed-upon themes.<sup>6</sup> To select the quotes used in the manuscript, one coauthor identified quotes that are particularly representative and other coauthors reviewed these quotes ensuring their representativeness of interviewee responses. As recommended by Malsch and Salterio (2016), we also performed a member-checking procedure and deviant case analyses, noting no elements that alter our interpretations of the findings we report.<sup>7</sup>

#### **4. Insights from Litigator Interviews**

##### ***Characteristics of Trial Venues and Potential Jurors***

Our RQ1 examines the following question: What characteristics, if any, of *trial venues and potential jurors* do audit litigators try to manage and how do they expect their efforts to affect the role of technical versus non-technical information in potential jurors' judgments? Our interview data reveal that in preparing audit cases, litigators on each side differentially manage characteristics of the *trial*

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<sup>5</sup> Importantly, saturation for most accounting studies is typically reached at around 20 or so participants (Malsch and Salterio 2016). The high number of participants in our study (61 participants) was dictated by two factors. First, Stage 1 (22 participants) was conducted for a study with different primary objectives and thus provided only limited insights into our present study's objectives. Second, though at Stage 2 we felt like we had reached saturation for DLs, the new insights we obtained were so surprising and seemingly biased toward DLs—i.e., that PLs prefer to focus on non-technical information—that it was necessary to interview additional PLs to reach saturation within the PL participants independently with respect to this surprising finding. We thank our Editor and reviewers for encouraging us to make this important effort. Despite the high number of participants in our study, we encourage future researchers to continue following the saturation standard outlined in Malsch and Salterio (2016): interview until researchers stop seeing new substantial insights with respect to their study's research questions, rather than trying to "raise the bar" unnecessarily. We side with prior methodological work that behavioral researchers should use only as many professionals as is necessary to achieve their studies' objectives, but not more (Peecher and Solomon 2001; Libby et al. 2002).

<sup>6</sup> The coauthors used the NVivo software to code the data from each of the 61 interview transcripts to the interview questions and themes. The mean Kappa was 0.90, indicating a high level of agreement (Landis and Koch 1977). The raters resolved all disagreements, none of which were material to the conclusions of our study.

<sup>7</sup> For conciseness, we do not include the details of this analysis but discuss the relevant quotes in the paper where they provide additional nuanced insights to our results.

*venues* and *potential jurors*—DLs (PLs) try to increase the likelihood that jurors process information at higher (lower) elaboration level so that the jurors are more likely to rely on technical (non-technical) aspects of the case in making their judgments. Table 2 (Panel A) summarizes the trial venue and potential juror characteristics that most litigators identified.<sup>8</sup> Specifically, our results show that audit litigators try to manage the following characteristics that they expect to affect settlement: venue level, jury pool’s business savviness, jury pool’s sophistication, and jury pool’s hometown bias.<sup>9</sup> Table 2 (Panel A) also shows how litigators expect these factors to affect settlements and how auditors can consider incorporating these factors into their assessments of the engagement risk and subsequent determination of whether their fees, engagement letters, and continuing relationship with the client are optimal (DeFond et al. 2016).<sup>10</sup> The final column presents implications and avenues for future avenues for academic research.

[INSERT TABLE 2 ABOUT HERE]

#### *Venue Level: Federal vs. State*

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<sup>8</sup> We describe the prevalence of our findings throughout the results section consistent with Westermann et al. (2015, 870) and Dodgson et al. (2020, 96) as follows: “we use the terms ‘most’, ‘many’, and ‘a majority of’ when referring to a percentage of partner responses greater than 60 percent, ‘about half’ between 41 and 60 percent, ‘some’ between 21 and 40 percent, and ‘few’ for fewer than 20 percent.”

<sup>9</sup> Maksymov et al. (2020) report that expectation of potential trial outcomes is the key factor considered by audit litigators in negotiating settlement terms. In addition, we asked litigators how audit case trial preparation affects their expectations of settlements, if at all. Most litigators told us that they prepare for each case as if it is going to trial. Most also shared that trial preparation and, specifically, the trial preparation factors we report in our study, have a direct effect on their settlement expectations. To illustrate how jury pool characteristics matter, one litigator shared a recent stark experience where the case against auditors was settled primarily based on the jury characteristics. In this example, the jury has already been selected and the trial has started, but this example is useful because the litigator clearly discerned jury characteristics as the key factor based on which both sides settled, illustrating that litigators consider jury characteristics at all stages of litigation: “I actually had a case that settled largely because of the body language of the jurors, where we were two and a half weeks in and the jury reaction to us was unmistakably favorable and plaintiff came back and gave us a reasonable settlement demand partway through trial because they were reading the same body language we were” (2DA2).

<sup>10</sup> We discussed these results with two former Big 4 line partners with extensive audit experience as engagement partners at some of the largest international companies. They conveyed to us that they have never considered these factors in their assessment of engagement risk but mentioned a possibility that these factors are considered at the national level. Thus, we also discussed these results in detail with a former audit partner at the national office of one of the largest audit firms in the US. The partner explained that to his knowledge audit firms currently do not consider these factors in their engagement risk but would likely reconsider this practice if they knew that these factors have the potential effects we report on settlements and thus on the risk of loss from audit litigation that is part of the engagement risk.



Most litigators agree that PLs typically have some choice in selecting a venue level where to file a case against auditors—federal or state. Most litigators note that generally federal courts are a venue that is more favorable to auditors than the state courts because they have more sophisticated judges and draw from a pool of jurors that are more likely to be sophisticated and thus are more likely to use higher elaboration in processing case information. One very prominent attorney summarized this consensus concisely: “Anybody who wants to be a plaintiff in federal court, if they have a choice to be in state court, is an idiot for a lawyer” (3PA10).

Overall, most PLs believe that filing claims in a federal court is more challenging for them because federal judges are much more thorough in processing each case before letting it proceed through the court system, compared to state judges: “a federal judge is going to take a lot harder look at [a case] than the state court” (3PA15). For this reason, most litigators believe that cases that proceed through the federal court system tend to be less frivolous than cases that proceed through the state courts. A PL explained this reasoning as follows:

A defendant is more likely to succeed and a motion to dismiss in federal court than in most, if you take the average of state courts. And so, therefore, I think that the cases that survive a motion to dismiss in federal court are more likely to have been tested and probably overall have more merit than the vast body of state court cases that may not have been tested in the same way in a more rigorous motion. (3PA14)

Thus, most litigators believe that federal courts are a preferred venue for auditors. One PL summarized this perception as follows: “I think defendants are a little bit more comfortable in a federal court. There's a perception that it is more defense friendly” (3PA14). Most litigators mentioned that the key advantages of federal courts over state courts for DLs are that federal courts tend to have more sophisticated judges:

The federal judges are a bit more sophisticated ...and sometimes the [federal] courts are a bit more business friendly, a bit more accounting firm friendly. (2DC6)

Most litigators also indicated that juries in federal courts are more consistently sophisticated than juries in state courts because federal court juries are more likely to include at least some sophisticated jurors:

The federal juries tend to be drawn from a wider area and consequently, you also get a more sophisticated jury. (3PA13)

If you're an accounting firm ...you're going to have a tough time [in this county]. Lots of anti-corporate sentiment in the attitudes of the jurors [there]. But if you get the case removed to federal court, ...the jury composition is now ...two-thirds coming from the surrounding suburban counties that are much more conservative [and] professional. (2DC6)

Overall, litigators believe that federal courts give some advantage to DLs because these courts tend to have more sophisticated judges and juries who are subsequently more capable of processing technical case aspects at high elaboration level.

### *Jury Pool's Business Savviness*

In addition to trying to manage the venue's level, litigators also try to manage venue jurisdictions. This is because litigators consistently noted that trial venues in the US vary in the extent they favor plaintiffs or auditors: "There are areas of the country that are very pro-plaintiff, and there are areas of the country that are very pro-defendant" (1PA1). One of the key drivers of this variation is the prevailing characteristics of the population from which the jury would be drawn.

Plaintiffs in audit litigation are typically not limited to one venue and often have options of where to file a lawsuit because they are typically the first mover in litigation: "The plaintiff is the one that chooses the jurisdictions. They're the ones that file" (2DC1). Plaintiffs may even have options within a state: "Within a state we will try to pick the county that has the most favorable jury population" (2PA1). However, auditors can also manage the jurisdiction after the case is filed: "If plaintiff will file their lawsuit to jurisdiction, then the [auditors] could fight that jurisdiction battle and object to it, and then it's up to the judge" (2C3).

One of the key venue characteristics that litigators consider besides legal constraints of each venue is the jury pool's business savviness. Both sides are keenly aware of the fact that business savvy jury pool favors auditors: "This is specific to auditing cases... as a defendant... more favorable jurisdictions tend to be jurisdictions that are more business-oriented, ... that have higher levels of jurors who are educated, [and] ... employed at higher levels" (2DC3). A PL explained that business savvy

jurors are more likely to appreciate and process complex business concepts:

The [auditor] wants as much business, real life business experience among the jurors as possible. ...As much as a jury is supposed to be dispassionate, they cannot be other than themselves. And so it is difficult for somebody who's not in management, who's never been in management, he's always been on the line so to speak, to put themselves into the position of [an auditor]. So the defense council [will typically be] looking for and hoping for as much business, high level business experience as possible, in terms of being able to appreciate these concepts ...from the [auditors'] perspective. (3PA13)

Another litigator clarified this point further, explaining that jurors with relevant business experience can relate to the challenges that auditors face in making real-world business decisions such that jurors of this type are more motivated to examine case facts carefully to assess merits of the case:

Defending yourself as an auditor is an exercise in explaining to people why you really don't do what they think you do. ...It's not an easy defense to make. Because of all of that... as a defendant, you are hoping to have at least some jurors who have enough business, or management, or financial experience... [If] you have a management position in your job [you're] more likely to be able to relate to an auditor who... [does] not know all of the information... (2DC3)

When evaluating jury pools in jurisdictions, many audit litigators keep in mind that, in the words of one DL, “the type of person that reads every word of a contract before signing it... tends to be defense juror; [on the other hand,] people that just skim a contract [are] more likely to be plaintiff jurors” (2DC1). One of the litigators with experience on both sides of audit litigation summarized the consensus among many audit litigators we interviewed about what each side looks for in a potential jury pool of a jurisdiction: “The big things [auditors’ litigators] want [include] leadership, education, business experience, of course auditing experience... The plaintiffs are looking for the opposite” (2C1).

When a venue has a jury pool that is not business savvy, those jurors will be less motivated or capable to process technical aspects of audit cases as they will tend to use lower elaboration. At lower elaboration level jurors are more likely to be influenced by non-technical aspects such as emotion or moral arguments. Some litigators pointed out that plaintiffs’ litigators typically prefer jurors who are more likely to be influenced by emotion. As one of the litigators admitted, for plaintiffs “a trial is ... a morality play,” so plaintiffs try to be in trial venues with “jurors [who] are going to viscerally react to

the story that [PLs] are running out” (2PA2).

Overall, our interviews indicate that business savvy jurors are more motivated and capable of processing technical aspects of cases and are thus more favorable to auditors. Auditors’ defense can more effectively convey to such jurors the technical aspects of the case, so litigators are likely to expect more auditor-favorable trial outcomes, leading to lower settlements.

### *Jury Pool’s Sophistication*

In addition to business savviness, another important jurisdiction characteristic that litigators try to manage is jury pool’s sophistication. Most DLs convey that jurors tend to have multiple misperceptions about what auditors do and that these misperceptions tend to favor plaintiffs. Thus, it is important for DLs that the jurisdiction has a jury pool that is sophisticated so DLs are in a better position to educate jurors about the technical aspects of auditors’ responsibilities. Most litigators share a belief that was summarized well by one of the litigators that DLs “need to drive home [that] an audit is not a guarantee [and that] the real responsibility rests with management” and that “an accountant [can do] everything right but [still miss] a fraud” (2DA3). Even if jurors are business savvy, they still need to be educated about auditors’ specific responsibilities. This sentiment is echoed by a litigator with experience on both sides of audit litigation: “[jurors often] have no idea what the attorneys are talking about... everyday people, even middle managers in corporations don't think about [these concepts]” (2C2).

Sophisticated jury pool is particularly important to the defense because DLs focus on technical aspects of a case, such as important accounting and auditing concepts, to defend auditors. However, typical jurors do not have that knowledge and, if they are not sufficiently sophisticated, DLs is unlikely to be able to educate them about these concepts to the necessary level. Two DLs explained their concern with insufficient juror sophistication as follows, noting that unsophisticated jury is unlikely to be able to understand technical aspects of cases:

The concern with a lot of [audit litigation] cases is that... [jurors] don’t really understand

accounting. Accounting is dry and dull. [There are] cases where ...you spend a month talking to a jury about an audit failure and at the end of the day they render their verdict and you talk to them afterwards and some of them ...think GAAS is what they put in their car. (1DA3)

We're less flashy typically than plaintiffs... we're not using the splashy ...demonstratives that the plaintiff might... what's really specific to audit and accounting litigation [defense] is getting people to understand the work that accountants do. Most people are not familiar with financial reporting or auditing or accounting. So, you have a lot of educating to do and it's all pretty technical [and] you've got to get people at least passingly comfortable with those topics. (2DA2)

A particular attribute of sophisticated jury pool is higher need for cognition. Need for cognition is a person's tendency to enjoy and engage in thinking (Cacioppo and Petty 1982). One litigator who had experience with both sides of audit litigation pointed out:

We'll identify [jurors] who [have] particularly high need for cognition. They're going to be favoring the defense... People who have a high need for cognition often will then have an appreciation or ability to delegate decision-making for example, and the discretionary gray area...So, if you're on the plaintiff side, then you would know that and that would be ...a hit factor for you because you know that those people are going to hear the case filtered through that framework and then be much more favorably predisposed to auditors. (2C3)

Many PLs acknowledge that jury sophistication is particularly important for DLs, which is why DLs sometimes elect to avoid the possibility of a jury trial altogether when such an option is available.<sup>11</sup> One PL explained it particularly vividly when asked a follow up question about which side of audit litigation benefits from arbitration more, if any. This PL answered as follows:

That's a simple question to answer. The defense. There's no question about it. Because there's no jury. It's very simple. Because there's no jury that you need to educate, that they probably have eight classes of education, and you have to go through that education that you don't have to do with [sophisticated arbitrators]. (3PA13)

For this reason, DL try to assess sophistication level of the jury pool in a potential jurisdiction. As one DL noted, DLs always try to get “some general sense of whether... the jury pool is sophisticated enough to hear the evidence fairly” (2DA2). Interestingly, litigators' consideration of sophistication extends not only to a venue's jury pool but also to a venue's judge, because a judge's lack of

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<sup>11</sup> For example, some litigators explained to us that auditors can specify in their engagement letter with the audit client that the client waives the right to a jury and disputes will be resolved via arbitration. However, such clauses do not apply to third-party lawsuits, such as lawsuits brought by investors, and arbitration has downsides that prompt some auditors to not elect this option (Maksymov et al. 2020).

sophistication is likely to limit the jurors' capacity to consider merit-relevant information: "One of the things we don't want to do is get one of these complicated audit cases and be in front of a judge who mostly does matrimonial litigation or slip and fall and auto accident because they don't understand the context of the commercial transaction" (2DA1).

On the other hand, another aspect of jury sophistication is that a sophisticated juror tends to be less emotional in identifying the appropriate amount of damages. Thus, while some PLs also expressed a preference for jurisdictions where jurors are at least somewhat sophisticated, most noted that the penultimate jury pool characteristic to PLs is the willingness to go for high monetary rewards. An experienced PL summarized these differences between DLs' and PLs' strategies in jurisdiction selection as follows:

If I'm representing [an auditor], I want jurors who I think are going to be calm and cool and collected and not go crazy. Never allow an impassioned presentation to take them too far. If I'm representing a plaintiff, I would like to have people who are willing to really go for it [a high damage award]. (3PA9)

Our interviews indicate that most litigators believe sophisticated jurors are more capable of being educated so they can use higher elaboration and process technical aspects of cases and are thus more favorable to auditors. Auditors' defense can more effectively convey the technical aspects of cases, so litigators are likely to expect more auditor-favorable trial outcomes and thus lower settlements.

#### *Jury Pool's Hometown Bias*

Typically, litigators on both sides consider their side's home venue to be favorable. One litigator explained how a home venue can favor auditors: "One, costs are less if the auditors are coming out of that one office. Two, you've got some local identity in the community. ...If you're in a state where the judges are elected, you may have given to campaigns of the local judges. You may be prominent in charity work" (2DA5). Similarly, plaintiffs benefit if they can secure their side's home venue: "There's a general belief that there's a hometown favoritism. So, if we have a well-liked local business or person we're representing, we can try to get the home court advantage, put the case where

people know and like them” (2PA1).

Hometown venue likely provides even more benefits to plaintiffs than to auditors because local companies are likely to employ residents from a wide range of backgrounds and be a familiar object of local pride, as opposed to audit firms who are not as commonly known even by the local public. To illustrate the effect of how jury pool’s home bias can benefit plaintiffs, a DL recounted an experience defending an auditor against a company in the company’s hometown venue: “What we were learning was we can't really attack this company and say that they were the ones that screwed up... That was getting a lot of blowback. Why? Because the citizens, the jurors, were really so proud of this [local] company” (2DC6).

### ***Characteristics of Case Arguments***

Our RQ2 examines the following question: What characteristics, if any, of *case arguments* do audit litigators try to manage and how they expect their efforts to affect the role of technical versus non-technical information in potential jurors’ judgments?

Consistent with the findings in RQ1, our interview data supports the idea that in preparing audit cases, litigators on each side differentially manage characteristics of the *case arguments*—DLs (PLs) try to increase the likelihood that jurors process information at higher (lower) elaboration level to focus more on technical (non-technical) aspects of the case. Table 2 (Panel B) summarizes the case argument characteristics that most litigators identified, how these impact settlements, and the implications for practitioners, and academics. Specifically, our results show that audit litigators try to manage complexity and emotionality of arguments because they expect them to affect jurors’ ability to process technical and non-technical aspects of a case: higher complexity and emotionality are likely to lead to jurors’ basing their decisions more on non-technical aspects at lower elaboration level.

[INSERT TABLE 3 ABOUT HERE]

### ***Complexity***

Complexity of technical aspects of a case, such as accounting and auditing guidance, is one of

the features of audit litigation that makes audit litigation particularly difficult for jurors (Maksymov et al. 2020). Thus, litigators on both sides strive to reduce the complexity of their arguments: “Whether you represent the plaintiff or defendant, you... always keep it simple... Take complex accounting principles [and] auditing principles and ...make them simple... Treat it as facts but reduce it to the lowest common denominator” (2A1). However, our interviews indicate that since DLs need to convince jurors by explaining technical aspects of the case such as that auditors complied with the specific guidance requirements in how they handled a specific issue, DLs are particularly vulnerable to complexity of an issue. This is because by default jurors are in low elaboration mode and expect auditors to have detected every misstatement. Thus, complex arguments limit jurors’ capacity to examine technical aspects of the case in sufficient detail to discern if auditors were not negligent. Unlike PLs who can leverage jurors’ default low elaboration mode, DLs have to educate jury on the technical aspects of a case, including audit guidance requirements and the specific procedures that auditors have done. One PL explained this difference between PLs and DLs:

[As a PL,] you have to tell a story, and your guy has to be the good guy at the end of the day. And it has to be a simple story, somebody did something wrong and here's why they did it wrong instead of a procedural nuance... You look at [a case] as a plaintiff lawyer from 30,000 feet. As a defense lawyer, you want to bring it down to ground on the level and show what the little nuance the auditing company had to work with and why they did it. (3PA6)

Most litigators on both sides acknowledge the challenge to overcome jurors’ natural tendency to use lower elaboration. As one DL explained: “You will almost never hear a mock juror in deliberation to get down in the weeds...They tend to argue and decide at a much higher level than [auditors] usually want them to” (2DC5). A PL expounded on the difficulty of focusing on technical aspects of a case in front of the jury:

We don't have business courts. [So] you [have to] begin with the understanding that the jury won't understand the technicalities and secondly, it will bore them to death if you linger on technicalities. ...You're going to lay out your entire case in the opening statement, and the jurors can go to sleep after, and many of them do. I mean, they may keep their eyes open, but they're fast asleep. (3PA13)

Thus, it is likely to PLs’ advantage to paint a high-level picture in their arguments and spend



minimum time on technical aspects of the case. Two experienced plaintiffs' attorneys explained it as follows:

We're presenting the story of what somebody did that was a fraud and how these people helped hide it or perpetuate it, or whatever, whatever their role was to aid and abet that fraud. But... we're never going to be talking about the standard for more than a minute. Someone [on plaintiff's team] will say, 'GAAS, the standards, the rules that applied to this audit team in [such and such year] said you have to do this and they didn't do it.' It's got to be at that level. (3PA2)

In contrast, DLs primarily focus on technical aspects of the case such as audit guidance. One DL explained a typical defense approach to focus jurors on professional standards and the audit procedures that have been performed:

We want them to really understand, okay, I can disregard a lot of what the plaintiff wants me to believe and really just focus on the professional standards and the work that was done and treat these people fairly. (2DA2)

To overcome jurors' tendency to engage in lower elaboration to not thoroughly process technical information, DLs spend significant efforts, sometimes by simply repeating important technical concepts, to educate jurors and ensure they have the capacity to comprehend them:

Jurors don't pay attention to something until they've heard it the third time. ...If you've got a really important standard that you're trying to rely on, you want them to hear it 30 times. You want to keep on saying it, ...have it incorporated into the jury instructions, ...do everything you can to get them focused on that standard. (2DA4)

One litigator succinctly described this asymmetry between PLs and DLs in preparing arguments: “[DLs] try to get you down to the weeds, [but as a PL,] you're trying to get back to the big picture” (3PA2). Another litigator explained that the reason for the asymmetry between PLs and DLs focus is fundamentally because of how people think: “Jurors are looking for shortcuts. Cognitive heuristics. ...They're looking for ways to make sense of the information quickly, they don't have the patience or the motivation or the investment psychologically or otherwise that the lawyers do” (2DC6).

Thus, PLs prefer jurors to use lower level of elaboration and focus on the big picture because PLs believe that this is the most effective way to convince jurors and judges to favor the plaintiff:

[As a plaintiff,] it's always better to stay away from [details]. From the [plaintiff's] perspective of the best way to tell a story in court, the less expertise is involved, the less weeds, the more

overall narrative picture there is, the stronger your case is likely to be... It's... just a matter of how jurors and judges think. I mean, if they're convinced that some wrong [audit] ruling was committed here, then they can find a way to award your client some money. But if it just gets confused and lost in the details, then... there's not an overall story there that explains why [auditors] did what they did. (3PA7)

Most DLs conveyed to us that it is important for them to thoroughly explain audit guidance and accounting standards to jurors. Most PLs also noted the need for DLs to do that but view this practice as auditors' attempts to hid behind the rules to avoid responsibility. One PL explained:

I'm not a anti accounting firm [person] but they hide behind the rules a little bit. Like they'd say, 'But we did this by the book. And we didn't catch it because there was something we couldn't have seen because it was outside of doing it by the book.' So, our [PLs'] take has always been 'Your job as an auditor is broader than just following the black letter law of the rules. You do have a duty to look more at the big picture of the company and how the company is being managed and how are their internal controls being developed and implemented.' That's really how we push back against the auditors. You can't just hide behind the FASB. You can't just hide behind those one or two little rules... You've got a bigger job. (3PA14)

Our results show that complexity of accounting and auditing issues is an important consideration when audit litigators prepare their arguments. Higher complexity of the technical aspects of a case is likely to result in less favorable litigation outcome to DLs because DLs will struggle conveying these aspects to jurors. PLs on the other hand focus on non-technical aspects of a case—a strategy that makes them less vulnerable to complexity of accounting and auditing issues in a case.

### *Emotionality*

Another relevant characteristic of case arguments is the extent to which an audit failure could lead to emotionality in PLs' case arguments. The greater the emotionality that PLs can infuse into their arguments, the higher the settlement is likely to be because both PLs and DLs will anticipate how the emotionality in PLs' arguments will affect jurors. One PL explained this point that was expressed by many litigators:

The plaintiff wants the defendant and, more importantly, the defendant's lawyers to imagine how a judge or a jury is going to react to the plaintiff's presentation, because what the plaintiff really wants is a big fat settlement and not having to go through the burden of a trial. And the more you can legitimately bring, as I said before, poignancy, a sense that there's a grievous injustice that's taken place here, this cries out for relief and feel and inject the sense of passion into it without going overboard, without overstating it, the better off you are. (3PA9)

An example of a non-technical case aspect that could infuse emotionality into a case is the type of business that an audit client did. An audit failure that leads to financial damages for an organization such as a hospital, a school, a company that is admired by many people, is likely to enable PLs to infuse more emotionality into their arguments and result in a less favorable outcome for the auditor. One litigator gave the following example where PLs infused emotions into the argument because the audit client was a school:

I see cases through a lens of the little guy against somebody bigger, more powerful, more knowledge, more money. ...Generally, jurors believe that big companies do things to save money. ...I think in this case it was David and Goliath. It's my poor little [client]... Here's my nice little [school], just trying to educate working class kids. ...This is a place where they or their kids could go to. And here's this big international accounting firm that charges millions of dollars and does a lousy job. And so there's a sense of betrayal, a sense of being taken advantage of, a sense of vulnerability. (3PA4)

Another PL conveyed a general approach that PLs use to infuse emotions into arguments by bringing in victims of failed audits to whom jurors can relate:

Anytime I'm trying ...a case against an auditing firm, I'm going to bring in the people who lost money. And then what's the audit company going to do? I'm going to bring in Mrs. Smith who lost her life savings against an auditing company that makes billions of dollars a year. ...We all have emotions, and an auditing company should realize that. (3PA6)

Most DLs and some PLs conveyed that PLs enhance emotionality of their arguments by dramatizing them in front of the jury, whereas DLs tend to stay more composed. Two litigators summarized these points of view well:

With the jury, I mean, it's a show. It's a television show almost. ...The real plaintiff's lawyers, they're what I call performers. ...I don't mean that they're not legally skilled and they're not really great lawyers, but ...at the end of the day, I mean, they're dramatic for the jury... And so [as a PL] you're putting a show on for [the jury who] basically decide[s] more often than not on impression, not the actual technical part. (3A2)

[As a DL,] I don't want to be the center of attention. The plaintiff's lawyers always want to be the center of attention. They want to be flamboyant and theatrical. ...What [defense lawyers] want to do is ...to say, 'This isn't drama.' (2DA1)

Most DLs conveyed to us that this is a typical dynamic and that they typically feel better about their technical aspects of the case, such as that auditors performed all procedures as required by the

audit guidance, compared to the technical aspects of PLs' cases. As one highly accomplished DL noted, "Usually, we feel we're better on the merits, but the plaintiffs are trying to blur a lot of stuff and paint with a broad brush and hope that bias or emotion will influence the jurors ...often the plaintiffs will try to build or amplify their case on what I think of as tangential issues..." (2DA2). Overall, our results show that PLs try to focus on non-technical aspects of cases, including emotionality, so jurors process arguments with lower elaboration.

### ***Reasons for the Difference in Litigators' Management of Juror Foci***

As discussed in the above sections, a strong and surprising theme that arose in our results is that litigators have different strategies in eliciting potential jurors' focus—PLs want jurors to focus more on non-technical aspects of the case whereas DLs want jurors to focus more on technical aspects. In this section, we examine this theme further to reveal the underlying causes of the different strategies between PLs and DLs.

As most litigators on both sides indicated, the fundamental cause driving the difference in strategies is that jurors typically do not have the motivation or capacity to process technical aspects of cases at a higher elaboration level:

Jurors are looking for shortcuts. Cognitive heuristics. ...They're looking for ways to make sense of the information quickly, they don't have the patience or the motivation or the investment psychologically or otherwise [to process technical information]. (2DC6)

For this reason, PLs focus on painting a higher-level picture, as we discussed earlier, and thus primarily rely on non-technical aspects of a case to persuade jurors. Importantly, however, most litigators agree that DLs do not have that option because they have to use technical aspects of a case to explain specific audit duties and whether the work that the auditors have done complies with the relevant standards to defend auditors successfully. Successful defense of auditors is very challenging because it often involves explanation of the complex and vague standards, the engagement letter, and the audit procedures that are documented in the work papers, requiring jurors' higher elaboration to get into and understand these technical aspects of the case:

If you begin with the understanding that the jurors are not going to understand technicalities, from plaintiff's perspective, you have to paint the larger picture... [On the other hand,] the best [approach for the] defense in an audit engagement is going to be the engagement letter and the work papers. And the good engagement letter will spell out the scope of the duty. ...Then you're going to rely very heavily on the scope of the particular engagement. What [the auditor] ought to do, what [the auditor] can do or cannot do... This is the hardest thing [for defense] to explain to a jury ...It is the hardest thing [and] the defense council has [to do it]. (3PA13)

I've done a lot of cases in my life, I was a DA [defense attorney], I've done all kinds of cases. To me these [audit cases] are the hardest. They really are the hardest. A lot of times even the audit literature itself is complicated and your own experts struggle with what it precisely means. (2DA3)

In addition to jurors' default low elaboration and the complexity and vagueness of standards, jurors' misperceptions about auditors' responsibilities tend to favor PLs. Many litigators shared with us this belief. For example, a DL and a PL summarized it as follows:

There is a misapprehension in the world, even among sophisticated business people, as to the role of the auditor and what an auditor does, and there is this common misconception that an audit opinion is a clean bill of health [and that] an audit is a forensic exercise, and sorting through that is significant [effort]. (1DA7)

What a jury [typically] believes [is] that [auditors] are very precise and detail-oriented and that if you have two documents that have [an] inconsistency, that's the thing that you would expect your [auditor] to know about. (3PA4)

Importantly, while DLs' must re-educate the jury about these misconceptions, PLs' can adjust their arguments to these misconceptions. For example, a litigator experienced on both sides of audit litigation explained an approach shared by many litigators of how PLs can adjust their arguments to jurors' beliefs to use high-level non-technical arguments and avoid using technical aspects of a case:

In the [cases] where there's fraud detection [expected], your argument as a plaintiff is, 'It was so obvious, you didn't need to do real fraud detection. It was glaring in your face so that you [could] notice it. It was not an additional duty, just the normal duty of auditing, put right in your face. How could you not know?... This fraud was so big, how could you miss it? (3A1)

While PLs can use jurors' default low elaboration to their advantage, DLs typically cannot do so because in addition to the misconceptions that typical jurors have about auditors, they also lack personal experience working with auditors, making them less able to relate to auditors. One PL explained this dynamic as follows:

With auditors [jurors] tend to be stricter [than they are with other professionals]... there's a lot more just personal sympathy for the [professionals like] doctors because of the [personal] contact [with doctors]... Jurors all have doctors... Whereas auditors—they rarely have any experience with auditors. And so, it's a different kind of world [to jurors]. (2PA1)

Another PL summarized this belief held by most of the litigators we interviewed: “Accountants...are not looked upon [favorably] by jurors when somebody says they did something wrong” (3PA12).

Thus, our interviews indicate that the difference in litigators’ strategies on each side to focus on technical or non-technical aspects of a case is not their preference, but rather a dynamic dictated by jurors’ default use of low elaboration and by a unique feature of audit litigation—vague and complex standards and complex audit procedures. While PLs can adopt their arguments to low elaboration processing used by jurors, DLs have to increase the likelihood that jurors will use high elaboration so DLs can educate them about the technical aspects of the case and so that jurors can understand them.

## **Discussion and Conclusions**

Our study contributes to answering several important questions posed by recent audit litigation research (Soltes 2014; Donelson 2020; Maksymov et al. 2020; Gimbar and Mercer 2021). Our study responds to the call by Maksymov et al. (2020) for future research on how litigators develop their expectations of jury trial outcomes and use them in developing settlement terms. Our study also addresses the calls by Donelson (2020) to examine how audit litigators’ tactics differ depending on which side they represent and by Soltes (2014) for field evidence on drivers of audit litigation. Overall, our results address an important call by Gimbar and Mercer (2021) for future research to better understand factors that auditors should consider in their assessment of the risk of loss from litigation, which is an important component of the engagement risk (DeFond et al. 2016).

In pursuit of this objective, we developed a theoretical framework of the role of trial preparation process in resolution of audit litigation via settlements (Figure 1) based on the extant research literature in persuasion (Petty and Cacioppo 1986; Griffith et al. 2018) and audit litigation (Maksymov et al. 2020; Frank et al. 2021; Pickerd and Piercey 2021), as well as on our early results. Overall, our results

validate this framework. Our framework and results reveal the importance of two key factors in litigators' development of settlement terms in audit litigation: (1) trial venue and potential juror characteristics and (2) case argument characteristics. Consistent with the framework, our results suggest that litigators apply significant efforts to manage these factors to influence expected juror verdicts and the eventual settlement terms.

In addition to validating our more general framework in Figure 1, we have also discovered in the first two interview stages and validated in our third interview stage an important difference in strategies among two sides to audit litigation and have presented our validated framework in Figure 2. Specifically, DLs (PLs) try to manage the factors that affect settlements through trial to increase the likelihood of jurors processing case information at higher (lower) elaboration such that technical (non-technical) aspects of the case would play a relatively greater role in jurors' decision-making. DLs want jurors to focus more on technical aspects of the case because it allows DLs to better educate jurors of applicable laws and standards to overcome jurors' misperception about auditing. PLs want jurors to focus more on non-technical aspects of the case because it allows PLs to tell a simple story that could, for example, elicit jurors' sympathy for the plaintiffs and negative emotion toward the auditors.

Our interviews reveal that the difference in litigators' strategies does not necessarily reflect litigators' personal preferences or their concerns for justice. Rather, we find that the difference in strategies of PLs and DLs is caused by jurors' default use of low elaboration and by two unique features of audit litigation—(1) vague and complex standards and complex audit procedures and (2) jurors typical misconceptions about auditors' responsibilities being favorable to PLs. While both sides acknowledge the risk of getting too much into the “weeds” of technical case details, DLs cannot avoid doing this because they need to educate jurors on the specific accounting and auditing standards relevant to the issue and on auditors' procedures performed with respect to that issue. In addition, DLs must dispel jurors' misconceptions about auditors' responsibilities. PLs, on the other hand, report that beyond meeting the minimal requirements of the law, they can focus on high-level, non-technical

aspects of the case and stand to benefit from jurors' default low elaboration and misconceptions.

### *Implications for Audit Practice and Research*

Our results indicate that the following trial venue and potential juror characteristics present greater risk of loss from litigation to auditors (Table 2, Panel A). First, state as opposed to federal courts are less favorable to auditors because judges in state courts are less sophisticated and thus more willing to allow a weak case against auditors to proceed. Second, trial venues with jury pools that are less business savvy and less sophisticated present a higher risk to auditors. This is because jurors from such pools are less able or motivated to process case information at higher elaboration level and thus more likely to rely on non-technical aspects favored by PLs in their judgments. In addition, since most people are not well informed about what auditors do, DLs are particularly interested in being able to educate jurors about the technical aspects of cases such as nuances of auditors' responsibilities. Third, our results suggest that trial venues in or close to an audit client's headquarters present a higher risk to auditors because jurors from such venues are more likely to have positive pre-existing attitude toward the plaintiff and are thus less motivated to process case information at high elaboration level.

Further, our results indicate that high complexity and high emotionality of case arguments also presents a higher risk of loss from litigation to auditors (Table 2, Panel B). First, when the complexity of case arguments is high (e.g., financial derivatives), DLs will be at a disadvantage to successfully educate jurors about the technical aspects of the case. In such circumstances, PLs are more likely to succeed by pursuing their typical strategy of focusing on non-technical aspects of the case that jurors can process at low elaboration level. Second, when emotionality of arguments is high (e.g., large loss suffered by innocent people), auditors are also at a higher risk of loss because PLs will be more likely to succeed by using their strategy of focusing the case on non-technical aspects (e.g., alleging that auditors failed the innocent people who rely on auditors).

Since the above factors affect litigators' expectations of trial outcomes and, subsequently, settlements, they can be assessed in advance by audit firms and be incorporated into engagement risk



assessment. Auditors can then make efforts to minimize their exposure to the engagement risk by measures such as specifying in the engagement letter favorable jurisdictions where disputes will be resolved and alternative dispute resolution venues such as mediation and arbitration. Where such effects of factors cannot be mitigated (e.g., third parties suing auditors are not bound by the terms of engagement letters), auditors need to consider what fees would be appropriate given these factors or reconsider audit relationship with the client, reassess whether the engagement team is sufficiently expert to handle the issues, etc. Incorporating these considerations into assessments of engagement risk will make auditors less vulnerable to audit litigation and reduce the possibility of catastrophic outcomes that audit firms face from inadequate consideration of audit litigation risks (Peterson 2017).

Our results are also likely to be of interest to regulators, politicians, and academics who are considering how business litigation could function more efficiently and effectively (see review and discussion in Kessler 2010). For example, our study reveals how litigators on both sides can manage trial venue, jury pool, and case arguments to affect the likelihood that audit litigation cases will be resolved primarily based on technical (e.g., audit and accounting guidance) or non-technical (e.g., effect of audit failure on the local businesses) factors. Our study brings to the fore the debate on whether complex business litigation is best resolved via jury trial (Vidmar and Hans 2007). Some of the attorneys we interviewed expressed a preference that regulators and politicians reform the system so that audit litigation is resolved by specialized courts that would prevent the need and the opportunities for litigators to “shop” for favorable trial venues and for managing jury pool characteristics. Such courts would also reduce the great variability in litigation outcomes (e.g., see Maksymov et al. 2020), increase the likelihood of audit cases being resolved based on relevant factors (Alexander 1991; Palmrose 1997), and reduce or eliminate the need for auditors to consider in their assessment of engagement risk the factors we have identified in our study.

Our results also have important implications for audit research. First, our results inform future research by showing that there are important factors that can affect the risk of loss from litigation and

the role of case merits in audit litigation resolution. Archival studies can empirically test the relationship between trial venue characteristics and audit litigation outcome or incorporate them into their models examining audit litigation risk, likelihood of lawsuits, and other variables of interest to archival research. Archival research could also further examine the suggestion in our study that lawsuits processed in federal courts have stronger cases against auditors compared to cases processed in state courts. In addition, archival researchers could now control for this variable in their models to tease out fixed effects of the trial venue level (federal vs. state) from other variables of interest.

Experimental researchers could use our results and institutional insights to identify relevant variables to study in juror judgment. For example, few studies have examined the influence of jury characteristics on litigation outcomes and juror judgments. Future research can directly examine how various juror characteristics identified in our study could influence juror judgment. Future research can also study the interactive effects between jury characteristics and argument characteristics or between characteristics identified in our study and other variables of interest on juror judgments. Further, our study can inform researchers on designing experimental materials. Our findings suggest that future juror judgment studies need to carefully consider whether and what jury characteristics to control for, the amount of juror education needed in the experiment, the format of case materials, and the use of comprehension check questions in designing experiments. We summarize these and other practical and research implications in Table 2 and hope that these insights will lead to better litigation risk assessment practices by audit firms and to fruitful future research.

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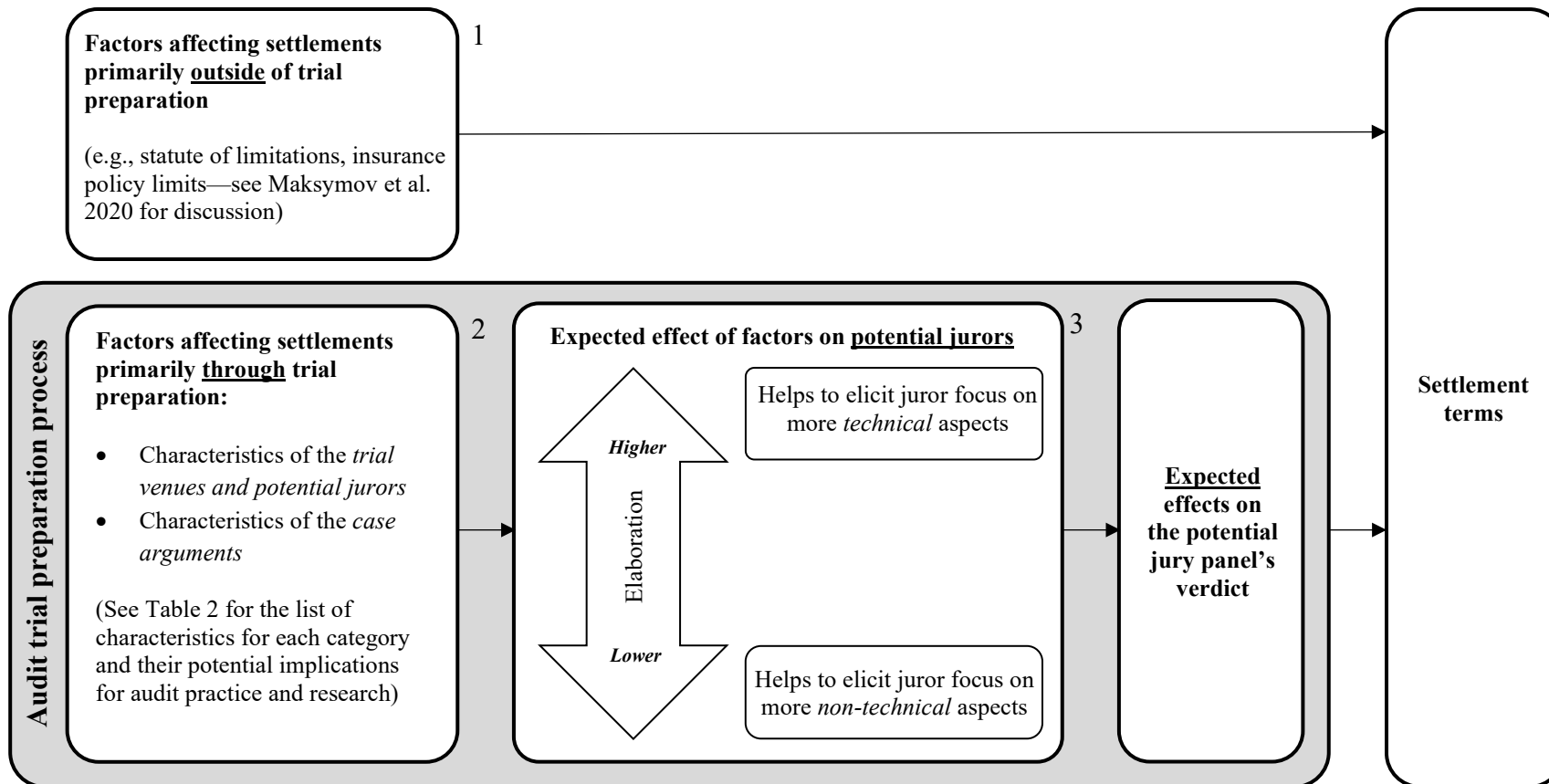
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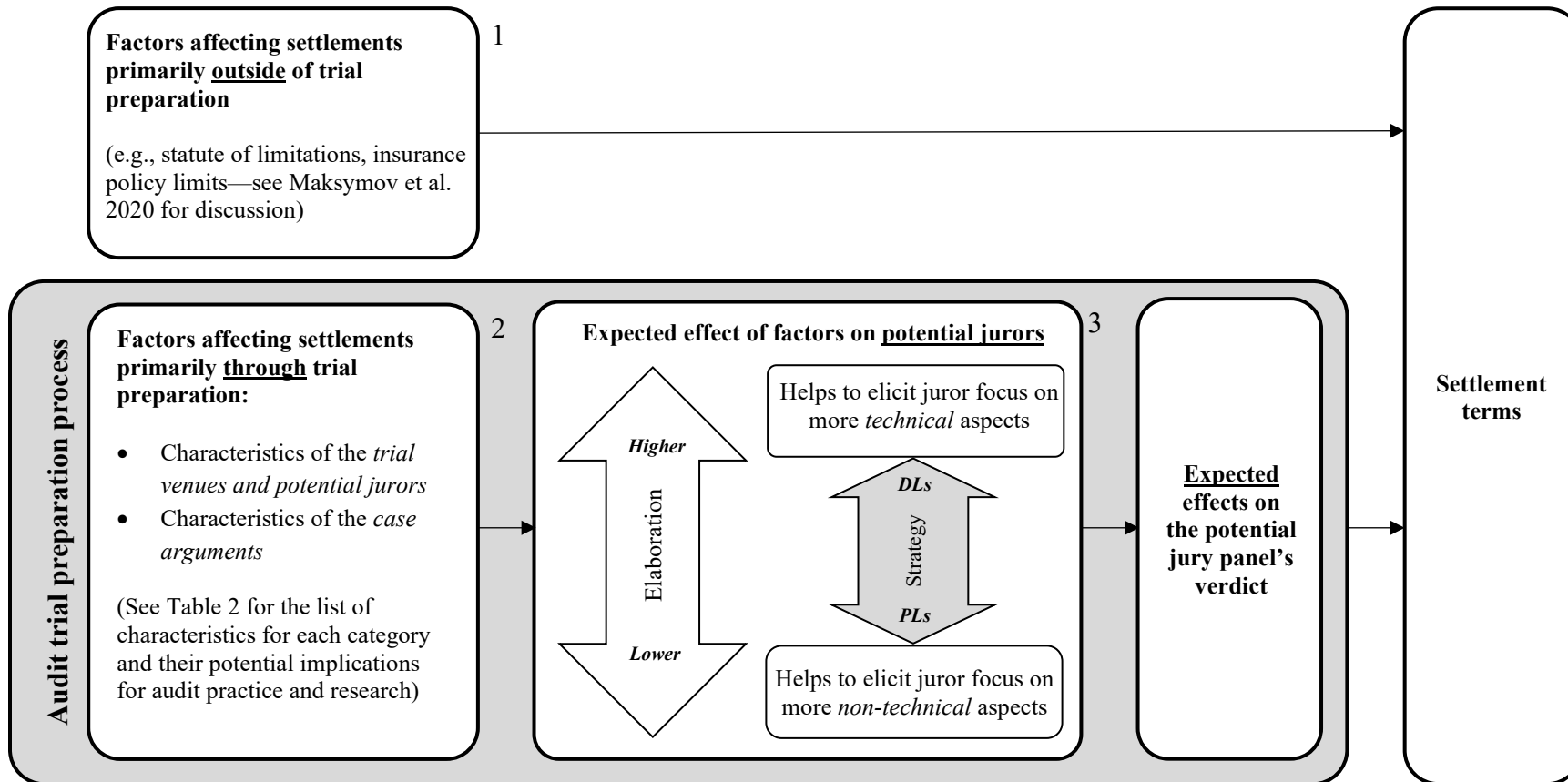
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**Figure 1 – The role of trial preparation factors in audit litigation settlements (theorized)**



The figure above depicts a *theorized* theoretical framework of the role of trial preparation process in resolution of audit litigation via settlements, developed based on the extant research literature in persuasion (Petty and Cacioppo 1986; Griffith et al. 2018) and audit litigation (Maksymov et al. 2020; Frank et al. 2021; Pickering and Piercey 2021). The framework outlines two sets of factors affecting settlement terms. The first is a set of factors depicted as Element 1 and is shown by prior literature to affect settlements primarily outside of trial preparation (e.g., statute of limitations, insurance policy limits) such as when the plaintiff considers whether to file a formal complaint. The second set of factors is depicted as Element 2 and is the focus of our study: the factors affecting settlements primarily through trial preparation: (1) characteristics of the trial venues and potential jurors and (2) characteristics of the case arguments. The framework shows that Element 1 affects settlement terms directly, while Element 2 affects settlement terms via Element 3 which depicts litigators’ use of factors to increase the likelihood that jurors will use higher or lower elaboration so jurors would focus more on technical or non-technical factors. Lastly, the framework shows that consistently with the findings in Maksymov et al. (2020), the trial preparation process affects settlement terms.

**Figure 2 – The role of trial preparation factors in audit litigation settlements (validated)**



The figure above depicts a *validated* theoretical framework of the role of trial preparation process in resolution of audit litigation via settlements, developed based on the extant research literature in persuasion (Petty and Cacioppo 1986; Griffith et al. 2018) and audit litigation (Maksymov et al. 2020; Frank et al. 2021; Pickerd and Piercey 2021). The framework outlines two sets of factors affecting settlement terms, as described in Figure 1, with the addition of a dynamic (in gray) as part of Element 3. The dynamic describes the difference in tendencies depending on the side that litigators represent. When litigators represent auditors (plaintiffs), they tend to manage factors in Element 2 so as to elicit jurors' higher (lower) elaboration. This is because higher (lower) elaboration of jurors helps DLs (PLs) persuade jurors using technical (non-technical) aspects of a case.

TABLE 1  
Litigator Demographics and Interview Length

Panel A: Stage 1 Interviews

Identifier <sup>†</sup>	Litigator Specialization	Years of Experience	Interview Length in Minutes
1PA1	Plaintiffs' attorney	44	41
1PA2	Plaintiffs' Attorney	43	32
1PA3	Plaintiffs' Attorney	37	30*
1PA4	Plaintiffs' Attorney	24	29
1PA5	Plaintiffs' Attorney	21	87
1PA6	Plaintiffs' Attorney	19	30
1PA7	Plaintiffs' Attorney	19	27
1PA8	Plaintiffs' Attorney	18	36
1PA9	Plaintiffs' Attorney	14	51
1DA1	Defendants' Attorney	41	35
1DA2	Defendants' Attorney	40	36
1DA3	Defendants' Attorney	34	30*
1DA4	Defendants' Attorney	33	35
1DA5	Defendants' Attorney	24	38
1DA6	Defendants' Attorney	22	47
1DA7	Defendants' Attorney	21	30
1DA8	Defendants' Attorney	18	40
1DA9	Defendants' Attorney	18	30*
1DA10	Defendants' Attorney	14	32
1DA11	Defendants' Attorney	12	32
1A1	Plaintiffs' & Defendants' Attorney	30	28
1A2	Plaintiffs' & Defendants' Attorney	17	32

This table presents demographic and interview information about each of the audit litigators who were interviewed for this study in Stage 1. Stage 1 interviews were conducted by phone between March of 2016 and August of 2017 with a court reporter present in the conference room to capture the conversations verbatim. Each court reporter then provided a double-spaced verbatim transcript of each interview. On average, Stage 1 interviews lasted about 38 minutes (standard deviation approximately 13 minutes). Demographic information presented in this table was obtained from the interviews as well as from the attorneys' websites.

<sup>†</sup>We construct interviewees' identifiers for reference in text as follows: the first digit "1" indicates that the interview was a Stage 1 interview; the set of characters that follows (either DA, PA, or A) indicates whether the participant was a defense attorney, plaintiff attorney, attorney for both sides; and the last digit is a unique number assigned to the interviewee in Stage 1 DA, PA, or A group.

\*The court reporter did not indicate the time when the interview ended. However, in the interviewers' recollection the interview lasted at least 30 minutes, which is conservative and consistent with the page length for this interview.

(continued on the next page)



**Panel B: Stage 2 Interviews**

<b>Identifier<sup>†</sup></b>	<b>Litigator Specialization</b>	<b>Years of Experience</b>	<b>Interview Length in Minutes</b>
2PA1	Plaintiffs' Attorney	45	43
2PA2	Plaintiffs' Attorney	38	31
2DA1	Defendants' Attorney	37	39
2DA2	Defendants' Attorney	19	47
2DA3	Defendants' Attorney	22	35
2DA4	Defendants' Attorney	26	44
2DA5	Defendants' Attorney	50	65
2A1	Plaintiffs' & Defendants' Attorney	25	32
2DC1	Defendant Trial Consultant	13	35
2DC2	Defendant Trial Consultant	21	50
2DC3	Defendant Trial Consultant	22	63
2DC4	Defendant Trial Consultant	30	46
2DC5	Defendant Trial Consultant	25	39
2DC6	Defendant Trial Consultant	27	65
2C1	Plaintiffs' & Defendants' Trial Consultant	20	45
2C2	Plaintiffs' & Defendants' Trial Consultant	22	32
2C3	Plaintiffs' & Defendants' Trial Consultant	33	63
2C4	Plaintiffs' & Defendants' Trial Consultant	20	30
2C5	Plaintiffs' & Defendants' Trial Consultant	43	40
2C6	Plaintiffs' & Defendants' Trial Consultant	25	26

This table presents demographic and interview information about each of the audit litigators who were interviewed for this study in Stage 2. We solicited attorneys and trial consultants through email from the authors' personal contact lists, from other attorneys in the study, and from attorneys' personal web pages available on their firms' websites. Stage 2 interviews were conducted by phone between December of 2018 and March of 2019 by one or two coauthors. On average, Stage 2 interviews lasted about 44 minutes (standard deviation approximately 12 minutes). Demographic information presented in this table was obtained from the interviews as well as from the attorneys' websites.

<sup>†</sup>We construct interviewees' identifiers for reference in text as follows: the first digit "2" indicates that the interview was a Stage 2 interview; the set of characters that follows (either DA, PA, A, DC, or C) indicates whether the participant was a defense attorney, plaintiff attorney, attorney for both sides, defense consultant, or consultant for both sides; and the last digit is a unique number assigned to the interviewee in Stage 2 DA, PA, A, DC, or C group.

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**Panel C: Stage 3 Interviews**

<b>Identifier<sup>†</sup></b>	<b>Litigator Specialization</b>	<b>Years of Experience</b>	<b>Interview Length in Minutes</b>
3PA1	Plaintiffs' Attorney	43	30
3PA2	Plaintiffs' Attorney	12	33
3PA3	Plaintiffs' Attorney	28	34
3PA4	Plaintiffs' Attorney	22	29
3PA5	Plaintiffs' Attorney	24	29
3PA6	Plaintiffs' Attorney	47	43
3PA7	Plaintiffs' Attorney	24	21
3PA8	Plaintiffs' Attorney	46	41
3PA9	Plaintiffs' Attorney	50	40
3PA10	Plaintiffs' Attorney	52	42
3PA11	Plaintiffs' Attorney	38	41
3PA12	Plaintiffs' Attorney	47	32
3PA13	Plaintiffs' Attorney	54	59
3PA14	Plaintiffs' Attorney	24	36
3PA15	Plaintiffs' Attorney	30	27
3A1	Plaintiffs' & Defendants' Attorney	36	29
3A2	Plaintiffs' & Defendants' Attorney	41	33
3E1	Plaintiffs' & Defendants' Expert Witness	15	21
3E2	Plaintiffs' & Defendants' Expert Witness	32	31

This table presents demographic and interview information about each of the audit litigators who were interviewed for this study in Stage 3. We solicited attorneys and trial consultants through email from the authors' personal contact lists, from other attorneys in the study, and from attorneys' personal web pages available on their firms' websites. Stage 3 interviews were conducted by phone and Zoom between January 2022 and March 2022 by one or two coauthors. On average, Stage 3 interviews lasted about 34 minutes (standard deviation approximately 8 minutes). Demographic information presented in this table was obtained from the interviews as well as from the attorneys' websites.

<sup>†</sup>We construct interviewees' identifiers for reference in text as follows: the first digit "3" indicates that the interview was a Stage 3 interview; the set of characters that follows (either DA, PA, A, or E) indicates whether the participant was a defense attorney, plaintiff attorney, attorney for both sides, expert witness for both sides; and the last digit is a unique number assigned to the interviewee in Stage 3 DA, PA, A, or E group.

TABLE 2

Panel A: Trial venue and juror population characteristics

Trial Venue And Potential Juror Characteristic	Expected Effects on Settlement Terms and Engagement Risk	Implications for Audit Practice	Implications for Audit Research
<ul style="list-style-type: none"> <li>- Venue level</li> <li>- Jury pool's business savviness</li> <li>- Jury pool's sophistication</li> <li>- Jury pool's hometown bias</li> </ul>	<p>Auditors face <i>higher risk</i> of unfavorable settlement terms when potential trial venues and potential jurors have the following characteristics:</p> <ul style="list-style-type: none"> <li>- The case is processed in a <i>state</i> (rather than federal) trial venue</li> <li>- Jury pool's business savviness is relatively <i>low</i></li> <li>- Jury pool's sophistication is relatively <i>low</i></li> <li>- Hometown bias is relatively <i>high</i></li> </ul>	<ul style="list-style-type: none"> <li>- Auditors should carefully evaluate these characteristics when deciding whether to accept/continue with an audit client or have their consulting arm pursue the client instead (Donelson et al. 2021). Auditors can also incorporate these characteristics in their assessment of the engagement risk, calculation of audit fees, reassess whether additional expertise is needed on the audit team, etc.</li> <li>- In evaluating these characteristics, auditors could involve their insurers, who have significant experience in audit litigation and are typically willing to provide free ongoing consultations to auditors on litigation risks (Frank et al. 2020)</li> <li>- Understanding how factors unrelated to audit quality can affect their exposure to loss from litigation should be helpful to auditors in recognizing the importance of professional liability insurance, as auditors</li> </ul>	<ul style="list-style-type: none"> <li>- Future juror judgment research could study how certain jury pool characteristics (e.g., business savviness, sophistication) could interact with the constructs of interest in affecting juror judgment. Future research could also consider measuring and controlling for the relevant juror characteristics in their study.</li> <li>- Future juror judgment research could consider excluding participants who have extremely favorable or unfavorable views of auditors as they are unlikely to be selected as jury in practice.</li> <li>- Future archival research can include venue characteristics in models that estimate audit litigation risk.</li> <li>- Prior archival audit litigation research studies mostly audit litigation cases tried under federal rules, whereas experimental research focuses mostly on juror judgment under state law settings. The different venue characteristics between federal court and state court can be a possible explanation for the mixed research findings in which archival research tends to show that case merits matter in audit litigation whereas experimental research tends to find legally irrelevant factors significantly influence juror judgment.</li> <li>- Federal court is usually considered more friendly to auditors than state court due to different legal doctrines adopted by the two different types of courts (Donelson et al. 2014). Our results indicate that DLs prefer federal court also because the jury pool and the judges are more sophisticated at federal court than at state court. Future research can examine whether <i>ceteris paribus</i>, settlement terms at federal court are more reflective of case merits than at state court.</li> </ul>

		<p>often forego insurance, underinsure, or do not use their insurers' expertise in managing audit risk (Frank et al. 2020).</p> <ul style="list-style-type: none"><li>- Audit profession and regulators should make investments to educate the general public to reduce lay people's misperceptions about auditing. Reducing misperceptions about auditing can make the audit liability system more efficient and thus increase social welfare.</li></ul>	
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**Panel B:** The role of case argument characteristics

<b>Case Argument Characteristic</b>	<b>Expected Effects on Settlement Terms and Engagement Risk</b>	<b>Implications for Audit Practice</b>	<b>Implications for Audit Research</b>
<ul style="list-style-type: none"> <li>- Complexity</li> <li>- Emotionality</li> </ul>	<p>Auditors face <i>higher risk</i> of unfavorable settlement terms when case arguments have the following characteristics:</p> <ul style="list-style-type: none"> <li>- The argument complexity is relatively <i>high</i></li> <li>- The argument emotionality is relatively <i>high</i></li> </ul>	<ul style="list-style-type: none"> <li>- Audit Regulators might take into consideration the difficulties of explaining complex standards to juries when developing and writing new standards.</li> <li>- Audit firms can consider whether their practitioner guidance is sufficiently clear and understandable.</li> </ul>	<ul style="list-style-type: none"> <li>- Future juror judgment research can study the interactive effects of argument characteristics (e.g., complexity) and juror characteristics (e.g., sophistication on juror judgment).</li> <li>- Future juror judgment research needs to consider whether and how much to educate jurors in the study materials, and whether the extent of education could moderate the predicted relationship between the independent variables and the dependent variables.</li> <li>- Future research is needed to study how the style of court presentation (e.g., emotionality) could impact auditor liability.</li> <li>- Juror judgment research needs to consider more carefully the role of experimental realism and mundane realism when designing experimental instruments. For example, the format of case presentation (written versus audio recording) and the format of case content (a more summarized form versus a more realistic form with opening/closing statements, expert testimonies, etc.) can influence the complexity and emotionality of the arguments, and thus may moderate the predicted relationships between the independent variables and the dependent variables.</li> <li>- Use of comprehension check questions could make certain technical or non-technical information more salient to jurors and could influence juror judgments in ways not intended by researchers.</li> </ul>

## **Appendix A: Interview Scripts**

### ***Stage 1 Interview Script***

1. What are the key factors you consider about jurors, judges, and experts in audit litigation? What are the key factors you consider about audit litigation trials?
2. What strategies in audit litigation do attorneys normally adopt to get a better settlement outcome or to win a trial?

### ***Stage 2 Interview Script***

1. Do you primarily work with defendants or plaintiffs in audit litigation?
2. How are jurisdictions in audit litigation selected?
3. In audit litigation, how do you determine what kind of jurors you want? What are the key factors you consider when developing juror selection strategy?
  - Which juror characteristics are desirable from plaintiffs' viewpoint and which are desirable from defendants' viewpoints?
4. To what extent do you use mock juries in audit litigation to predict the actual verdicts vs. assess which arguments work better?
5. In audit litigation, how do you develop the themes for courtroom presentation?
  - What are the key factors you consider in deciding upon a theme?
  - What are the specific themes in audit litigation?
  - What presentation methods do you commonly employ for audit litigation themes?
6. What are the key factors you consider in fact and expert witness preparation in audit litigation?
  - What particular forms of preparation are unique to audit litigation?
7. What makes audit litigation different from other types of business litigation?
8. Are there any questions you thought we would ask but did not? Or is there anything you would like us to know that we did not ask about?

### ***Stage 3 Interview Script***

1. Do you primarily work with defendants or plaintiffs in audit litigation? Do you usually work on federal court cases or state court cases or both?
2. How do you prepare for audit litigation cases? What are the key factors you consider during that process?
3. If a case progresses to that point, what characteristics do you prefer jurors to have and why?
4. What are the key differences, if any, in audit litigation between a federal court case and a state court case? What causes these differences, if any?
5. What could auditors do better in their work to do better in litigation?
6. How do trial preparations affect your settlement expectations, if at all?
7. Is there anything else you would like us to talk about? Is there anyone else you think we should talk to about these points?