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Adrian König

From Tariff to Award

Determinants of Court-Awarded Litigation Costs in Swiss Commercial Courts

This paper provides the first empirical analysis of court-determined litigation costs in Swiss commercial courts. Drawing on 976 published judgments from Zurich and Aargau (2011-2025), it estimates log-linear models linking court costs and party compensation to cantonal tariffs, case characteristics, and procedural indicators. Among the findings is systematic tariff compression: a 10% increase in the base tariff is associated with only 8.9% higher court costs and 8.3% higher party compensation. Procedural complexity dominates court cost deviations. An ex ante model achieves median forecast accuracy of approximately ±21% and ±26%.

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1. Introduction

[1] Litigation exposes litigants to material uncertainty and substantial costs. It is therefore unsurprising that a considerable body of legal scholarship in Switzerland[1] as well as internationally[2] has addressed the cost dimension of litigation. In other disciplines, such as finance, litigation costs have likewise been examined from several angles.[3] Despite this extensive body of litera-

1 Isaak Meier/Riccarda Schindler, Unerschwinglichkeit der Rechtsdurchsetzung – eine Verweigerung des Zugangs zum Gericht? In: Walter Fellmann/Stephan Weber (Eds.), Haftpflichtprozess 2015. 2015, 29–50; Markus Schmid, Unerschwinglichkeit der Rechtsdurchsetzung – die Fakten. In: Walter Fellmann/Stephan Weber (Eds.), Haftpflichtprozess 2015. 2015, 13–28; Lukas Müller, Kann sich der Staat hohe Gerichtskosten leisten? AJP 2016, 1738–1739; Arnold Marti, Die Kosten im heutigen Zivilprozess. Anwaltsrevue 2018, 116–123; Dominik Vock/Stefanie Fuchs, Kostenvorschuss im Zivilprozessrecht – eine neue Form der Rechtsverweigerung? ZZZ 2019/48, 285–291; Martin Hablützel, Schweizerische ZPO, eine Anleitung, wie man Rechtssuchende vom Gang zum Gericht abhält! HAVE 2019, 134–141; Ingrid Jent-Sörensen/Isaak Meier, Was dürfen Zivilgerichte kosten? Ein Plädoyer für einen Verzicht auf prohibitive Gerichtskosten und Kostenvorschüsse (Teil 1). ZZZ 2021/54, 498 – 519; Ingrid Jent-Sörensen/Isaak Meier, Was dürfen Zivilgerichte kosten? Ein Plädoyer für einen Verzicht auf prohibitive Gerichtskosten und Kostenvorschüsse (Teil 2). ZZZ 2021/55, 605–624.

2 See Steven Shavell, Suit, Settlement, and Trial: A Theoretical Analysis under Alternative Methods for the Allocation of Legal Costs. Journal of Legal Studies 1982/11/1, 55–81, who examines how different cost allocation rules, in particular the American rule (each party bears its own costs) versus the English loser-pays rule, influence the parties' decisions to sue, settle, or proceed to trial; further the so-called Jackson Report (Rupert Jackson, Review of Civil Litigation Costs: Final Report. London, 2010), which shaped the English debate on civil litigation costs; and, for a neighboring jurisdiction, Michael Adams, Der Zivilprozess als Folge strategischen Verhaltens. Zeitschrift für Rechtssoziologie 2 (1986), 212–225, who models the civil lawsuit as a strategic decision and shows how the German cost-shifting system (in which the losing party bears the full costs of both parties) affects litigation behaviour, the willingness to settle, and the frequency of lawsuits.

3 See Matteo P. Arena/Stephen P. Ferris, A survey of litigation in corporate finance. Managerial Finance 2017/43/1, 4–18, for a comprehensive review. Prior research covers the capital market effects of lawsuits and settlements (Sanjai Bhagat/James A. Brickley/Jeffrey L. Coles, The costs of inefficient bargaining and financial distress: Evidence from corporate lawsuits. Journal of Financial Economics 1994/35/2, 221–247; Amar Gande/Craig M. Lewis, Shareholder-initiated class action lawsuits: Shareholder wealth effects and industry spillovers. Journal of Financial and Quantitative Analysis 2009/44/4, 823–850), the influence of litigation risk on financial policy and corporate behaviour (Matteo P. Arena/Brandon Julio, The effects of securities class action litigation on corporate liquidity and investment policy. Journal of Financial and Quantitative Analysis 2015/50/1/2, 251 – 275), and the estimation and prediction of litigation risk itself (Jennifer Francis/Donna Philbrick/Katherine Schipper, Shareholder litigation and corporate disclosures. Journal of Accounting Research 1994/32/2, 137–164; Irene Kim/Douglas J. Skinner, Measuring securities litigation risk. Journal of Accounting and Economics 2012/53/1–2, 290–310). The literature documents both direct costs, such as settlement payments, attorney fees, and damage awards, and indirect costs, including reputational harm and the loss of business relationships (David M. Cutler/Lawrence H. Summers, The costs of conflict resolution and financial distress: Evidence from the Texaco-Pennzoil litigation. RAND Journal of Economics 1988/19/2, 157–172; Jonathan M. Karpoff/John R. Lott Jr., The reputational penalty firms bear from committing criminal fraud. Journal of Law and Economics 1993/36/2, 757–802).

ture, one aspect has received little empirical attention: the cost-setting practice of the courts.[4] For litigants, these costs are relevant because they are governed by statutory fee schedules but remain subject to judicial discretion.[5] They thus constitute a cost component that is partially predictable, but not fully determined ex ante. More broadly, the issue is also significant because it directly affects access to justice.

[2] In Switzerland, as in many other jurisdictions, litigation costs determined by the court (hereinafter: «court-determined litigation costs») consist of two components: court costs (Art. 95(1)(a) CPC[6]), i.e., the charges for judicial activity, and party compensation (Art. 95(1)(b) CPC), i.e., the losing party's obligation to reimburse the prevailing party's representation costs. Under the «loser-pays» principle of Art. 106(1) CPC, the unsuccessful party bears these costs in proportion to its degree of loss. At the same time, Switzerland combines procedural uniformity with cantonal heterogeneity: since 2011, the unified Code of Civil Procedure has standardized the procedural framework, the categories of recoverable costs, and the general rules governing cost allocation (cf. Art. 95 et seq. CPC). Yet the cantons retain authority over fee schedules (Art. 96 CPC). Statutory benchmarks therefore differ across cantons, while actual awards remain shaped by judicial assessment in the individual case.

[3] While still operating under different cantonal tariff regimes, the so-called «Commercial Courts» concentrate disputes within a comparatively consistent procedural environment relative to the «regular» cantonal courts. They function as the first and only cantonal instance (Art. 6(1) CPC). In addition, apart from the cantonal exceptions provided for in Art. 5 CPC, the requirements for commercial disputes are regulated uniformly under federal law in Art. 6(2) CPC. This combination of a unified procedural framework with substantial cantonal heterogeneity in tariff autonomy and court organization makes the commercial courts a particularly suitable field for an initial empirical analysis in Switzerland.

[4] Against this background, this paper examines what drives court-determined litigation costs at Swiss commercial courts and to what extent they can be explained by the cantonal base tariff as well as by observable case and procedural characteristics. The analysis adopts an explanatory ex post perspective. Because not all relevant cost drivers are observable at the time of filing, the analysis also takes an ex ante perspective, asking how well court-determined litigation costs can be predicted using information available at the outset of proceedings. The observation period spans January 1, 2011 to December 31, 2025. The sample comprises all published judgments of the commercial courts of Zurich, Aargau, and Bern during this period. The regression analysis focuses on ordinary proceedings and excludes summary proceedings and cases terminated by

4 See, among the few related empirical contributions, Christian Helmers/Yassine Lefouili/Brian J. Love/Luke McDonagh, The effect of fee shifting on litigation: Evidence from a policy innovation in intermediate cost shifting. American Law and Economics Review 2021/23/1, 56–99, on the effects of a capped fee-shifting regime on litigation behaviour in England and Wales.

5 From a corporate perspective, it matters additionally because firms must provision for expected litigation costs (cf. IAS 37, IFRS Foundation, IAS 37 Provisions, Contingent Liabilities and Contingent Assets. IFRS Accounting Standards; ASC 450–20, Financial Accounting Standards Board, Accounting Standards Codification, Topic 450: Contingencies, Subtopic 20: Loss Contingencies. FASB; FER 23, Swiss GAAP FER Foundation, FER 23 Rückstellungen. In: Swiss GAAP FER: Fachempfehlungen zur Rechnungslegung. 2023), and accurate provisioning requires an understanding of how actual costs diverge from statutory benchmarks. Expected cost exposure also shapes the settlement-versus-trial decision and may affect litigation insurance pricing and legal risk assessment in credit analysis.

6 Swiss Civil Procedure Code (CPC) of 19 December 2008 (SR 272).

court settlement. Due to the limited number of published judgments, Bern is included only in the descriptive analysis. Value-added tax awarded on litigation costs is likewise not examined.

[5] The empirical framework combines cantonal tariff benchmarks with observable variables capturing case characteristics and procedural trajectory. For the Zurich judgments, part of the data extraction is supported by an LLM-based process. The empirical analysis relies on regression models that estimate the conditional association of observable factors with each cost component and quantify the residual variance remaining after controlling for the base tariff as well as relevant case and procedural characteristics. Throughout the paper, the term «determinants» is used in a descriptive and associative sense. Accordingly, the analysis documents conditional correlates of deviations from the statutory tariff, but does not seek to identify causal effects.

[6] The results show that the cantonal base tariff provides a useful starting point for estimating court-determined litigation costs, but that actual awards deviate from it in economically meaningful ways. Courts do not apply the tariff proportionally. Instead, they systematically compress costs at higher values in dispute. A 10% increase in the base tariff is associated with only approximately 8.9% higher actual court costs and 8.3% higher party compensation.[7]

[7] The most important source of cost variation beyond the tariff is the procedural trajectory of the case. Adding procedural complexity indicators to the model increases explained variance by 26 percentage points for court costs, representing the single largest gain across all model specifications. Three procedural factors stand out. A second exchange of written submissions, in which the parties file a reply and a rejoinder in addition to the initial claim and defence, is associated with approximately 65% higher court costs relative to the base tariff. At the sample median value in dispute of CHF 200'000 (base tariff approximately CHF 12'700), this corresponds to an increase of roughly CHF 8'300. Settlement hearings that do not result in settlement are associated with approximately 16% higher court costs, and expert reports with approximately 13% higher costs.

[8] For party compensation, the pattern differs. Here, the base tariff and the canton explain most of the variation, whereas procedural indicators contribute comparatively little additional explanatory power. Canton effects are pronounced. After controlling for each canton's own tariff, Aargau awards systematically higher party compensation relative to its tariff than Zurich across nearly the entire observed range. Individual judge fixed effects add less than 0.5 percentage points to explained variance once procedural characteristics are taken into account, although judges may still influence costs through the procedural channels already captured by the model.

[9] Even in the full model, approximately 47% of the variance in court costs and 52% of the variance in party compensation remain unexplained. This residual dispersion may partly reflect judicial discretion, but it also captures unobserved case heterogeneity and measurement limitations.

[10] The remainder of the paper is structured as follows. Section 2 sets out the legal framework. Section 3 describes the data. Section 4 presents the methodology. Section 5 reports the results. Section 6 adds the ex ante perspective. Section 7 discusses the interpretation of the findings and the limitations of the analysis. Section 8 concludes.

7 The compression finding for court costs is robust across all specifications, including the exclusion of structurally distinct copyright (URG) cases. For party compensation, by contrast, the result is substantially driven by URG cases and should be read as indicative rather than as established evidence (see Section 7.1).

2. Legal Framework

[11] This section outlines the legal foundations relevant to the present study. It is deliberately not intended as an exhaustive treatment. For a more detailed discussion, the reader is referred to the corresponding literature.

2.1. Institutional Foundations

[12] Switzerland is a federal state composed of 26 cantons. They are sovereign insofar as their sovereignty is not limited by the Federal Constitution (Art. 3 FC[8]; cf. Art. 42 FC). By enacting the CPC, the Confederation made exhaustive use of its legislative competence in the field of civil procedure pursuant to Art. 122 FC. Since then, civil proceedings have been governed, in principle, by a uniform federal procedural framework. However, the authority to determine litigation costs remains with the cantons (Art. 96 CPC), as does court organization (Art. 122(2) FC; Art. 3 CPC).

[13] Commercial courts (Art. 6 CPC) are specialized courts for commercial disputes, and their panels include expert judges drawn from commercially relevant fields.[9] They are also known for comparatively high settlement rates and for deciding cases relatively quickly.[10] Whether a dispute qualifies as commercial is determined by the criteria set out in Art. 6(2) CPC. Broadly speaking, such disputes are private-law disputes with a functional connection to a business activity (cf. Art. 6(2)(a)-(d) CPC).[11] Although federal law generally requires the cantons to provide for two cantonal instances (Art. 75(2) FSCA;[12] Art. 308 et seq. CPC), commercial courts constitute an exception. They decide as the sole cantonal instance (Art. 6(1) CPC). This departure from the double-instance principle is permitted under Art. 75(2)(b) FSCA and is justified by the expert competence of the commercial courts as well as the acceleration principle, which is of particular importance in commercial disputes.[13]

2.2. Court-Determined Litigation Costs and Applicable Tariff Regimes

2.2.1. General Rules

[14] Court-determined litigation costs in Switzerland consist of two components: court costs (Art. 95(1)(a) CPC) and party compensation (Art. 95(1)(b) CPC). Under cantonal tariff regimes, the calculation of both components is typically based on the value in dispute, that is, the monetary value at stake in the litigation (cf. Art. 91 CPC).

8 Federal Constitution of the Swiss Confederation (FC) of 18 April 1999 (SR 101).

9 Dominik Vock/Viktor Aepli, Art. 6 ZPO. In: Karl Spühler/Luca Tenchio/Dominik Infanger (Eds.), Basler Kommentar, Schweizerische Zivilprozessordnung, 4th ed. Basel 2024 (cit. BSK ZPO-Vock/Aepli), Art. 6 para. 3 et seq. Adrian Staehelin/Daniel Staehelin/Pascal Grolimund/Dario Ammann/Olivier Mosimann/Lukas Bopp, Zivilprozessrecht. 4th ed. Zürich 2024, § 6 para. 9.

10 BSK ZPO-Vock/Aepli (Fn. 9), Art. 6 para. 3.

11 BSK ZPO-Vock/Aepli (Fn. 9), Art. 6 para. 8; Staehelin et al. (Fn. 9), § 6 para. 10.

12 Federal Supreme Court Act of 17 June 2005 (SR 173.110).

13 BSK ZPO-Vock/Aepli (Fn. 9), Art. 6 para. 1; Staehelin et al. (Fn. 9), § 6 para. 7.

[15] Court costs primarily comprise the decision fee, which is a lump-sum charge for the proceedings as a whole (Art. 95(2)(a)-(e) CPC).[14] Their assessment is shaped by a fundamental constitutional tension. On the one hand, court fees are intended to contribute to covering the costs of adjudication. On the other hand, they must not unduly impede access to justice. In practice, the fees charged often do not cover the actual administrative costs of the courts, while nevertheless constituting a substantial financial burden for litigants.[15]

[16] Party compensation primarily covers the costs of legal representation (Art. 95(3)(b) CPC; Art. 68(2)(a) CPC). Within the scope of their tariff-setting authority, the cantons are also free to provide for lump-sum schedules for this component.[16] An award of party compensation requires a corresponding request by the party concerned.[17] The fee charged by an attorney to the client and the amount of party compensation awarded by the court do not generally coincide, since the latter is determined by cantonal tariffs rather than by the attorney's actual fee arrangement.[18] If the successful party is not represented by counsel, no compensation is generally awarded absent exceptional effort.[19]

[17] Court-determined litigation costs are imposed on the unsuccessful party under the loser-pays principle (Art. 106(1) CPC).[20] If neither party prevails entirely, the costs are apportioned according to the outcome of the proceedings (Art. 106(2) CPC). In determining the respective shares of defeat, the court retains discretion and may, for example, disregard only minor defeat.[21] For court costs, the extent of defeat is relevant only to the allocation of the total fee between the parties, not to the amount of the total fee itself. By contrast, in the case of party compensation, the parties' respective shares of success are set off against one another in practice, so that an entitlement to party compensation generally arises only where a party succeeds by more than 50%.[22] Accordingly, the extent of success is relevant not only to the allocation, but also to the amount of party compensation ultimately awarded.

14 David Hofmann/Andreas Baeckert, Art. 91, 95, 106 ZPO. In: Karl Spühler/Luca Tenchio/Dominik Infanger (Eds.), Basler Kommentar, Schweizerische Zivilprozessordnung, 4th ed. Basel 2024 (cit. BSK ZPO-Hofmann/Baeckert); Staehelin et al. (Fn. 9), § 16 para. 1 et seq.

15 BSK ZPO-Hofmann/Baeckert (Fn. 14), Art. 95 para. 14 et seq., 18 et seq. Staehelin et al. (Fn. 9), § 16 para. 8 et seq.

16 BSK ZPO-Hofmann/Baeckert (Fn. 14), Art. 95 para. 54. Under federal law, party compensation is not designed as a lump sum, unlike court costs. However, many cantons have exercised their tariff-setting authority under Art. 96 CPC to introduce lump-sum schedules for party compensation as well; Staehelin et al. (Fn. 9), § 16 para. 17.

17 BSK ZPO-Hofmann/Baeckert (Fn. 14), Art. 95 para. 39 f. Staehelin et al. (Fn. 9), § 16 para. 40.

18 BSK ZPO-Hofmann/Baeckert (Fn. 14), Art. 95 para. 62; Staehelin et al. (Fn. 9), § 16 para. 17.

19 BSK ZPO-Hofmann/Baeckert (Fn. 14), Art. 95 para. 68 et seq. Staehelin et al. (Fn. 9), § 16 para. 20.

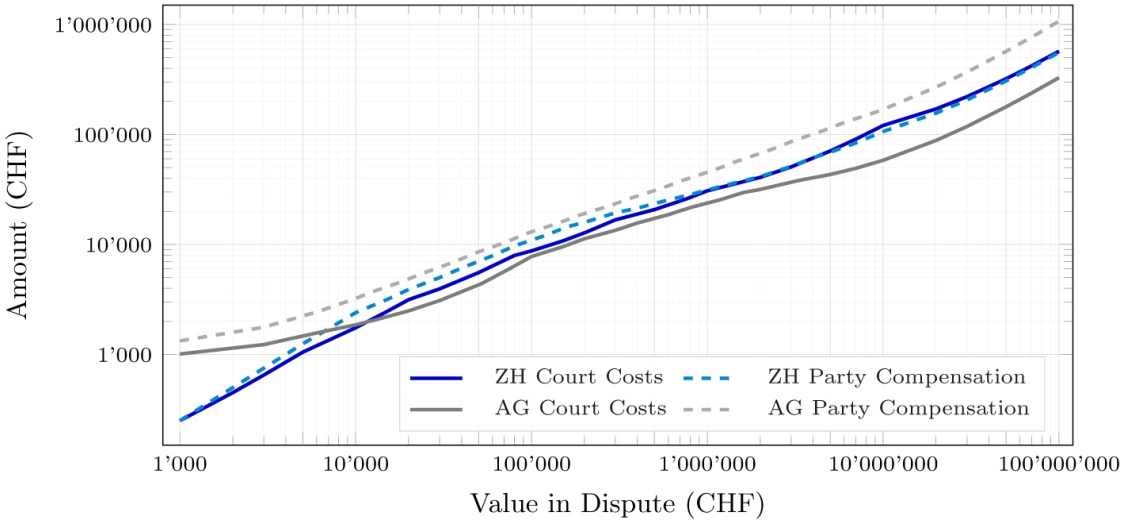
20 Helmers et al. (Fn. 4); BSK ZPO-Hofmann/Baeckert (Fn. 14); Staehelin et al. (Fn. 9), § 16 para. 43.

21 BSK ZPO-Hofmann/Baeckert (Fn. 14), Art. 106 para. 4; Staehelin et al. (Fn. 9), § 16 para. 43.

22 BSK ZPO-Hofmann/Baeckert (Fn. 14), Art. 106 para. 8.

2.2.2. Cantonal Tariffs of Aargau and Zurich

[18] Because the regression analysis applied in the present study focuses on the commercial courts of Zurich and Aargau,[23] the tariff regimes of these two cantons are set out in full below. Both cantons use piecewise-linear fee schedules in which the base tariff increases with the value in dispute at a declining marginal rate. The resulting tariff functions are strictly increasing and concave, so that the base tariff as a proportion of the value in dispute decreases as the value in dispute rises. Figure 1 illustrates the concave progression of both tariff components for both cantons. The declining marginal rate is clearly visible. While the base tariffs increase in absolute terms across the entire range of values in dispute, they do so at a diminishing rate, so that the tariff burden relative to the value in dispute falls as the stakes increase. The overall shape is comparable across cantons, though the absolute tariff levels and band thresholds differ.



Source: GebV OG-ZH (LS 211.11); AnwGebV-ZH (LS 215.3); GebührD-AG (SAR 662.110); Anwaltstarif-AG (SAR 291.150); own calculations.

Figure 1: Base tariff progression by value in dispute, Zurich and Aargau.

2.2.2.1. Zurich

[19] For Zurich, the court cost schedule is governed by §§ 2–4 GebV OG-ZH[24]. The party compensation schedule follows from §§ 2–5 AnwGebV-ZH[25]. Both schedules specify a base amount for each value-in-dispute band and a marginal rate for the amount exceeding the lower threshold. The resulting base tariffs for court costs and party compensation are reported in Table 1.

23 As mentioned in the introduction, the Commercial Court of Bern is included only in the descriptive analysis, as the number of published judgments is too small for regression analysis.

24 Gebührenverordnung des Obergerichts (GebV OG-ZH) of the Canton of Zurich of 8 September 2010 (LS 211.11).

25 Verordnung über die Anwaltsgebühren (AnwGebV-ZH) of the Canton of Zurich of 8 September 2010 (LS 215.3).

Court Costs			Party Compensation		
Value-in-dispute range (CHF)	**Base (CHF)**	**Rate**	**Value-in-dispute range (CHF)**	**Base (CHF)**	**Rate**
up to 1'000	–	25% (min. 150)	up to 5'000	–	25% (min. 100)
over 1'000 to 5'000	250	20%	over 5'000 to 10'000	1'250	23%
over 5'000 to 20'000	1'050	14%	over 10'000 to 20'000	2'400	15%
over 20'000 to 80'000	3'150	8%	over 20'000 to 40'000	3'900	11%
over 80'000 to 300'000	7'950	4%	over 40'000 to 80'000	6'100	9%
over 300'000 to 1m	16'750	2%	over 80'000 to 160'000	9'700	6%
over 1m to 10m	30'750	1%	over 160'000 to 300'000	14'500	3.5%
over 10m	120'750	0.5%	over 300'000 to 600'000	19'400	2%
			over 600'000 to 1m	25'400	1.5%
			over 1m to 4m	31'400	1%
			over 4m to 10m	61'400	0.75%
			over 10m	106'400	0.5%

Source: GebV OG-ZH (LS 211.11); AnwGebV-ZH (LS 215.3).

Table 1: Base fee schedule, Zurich.

[20] The base tariff does not represent a fixed amount. Under § 4(2) GebV OG-ZH, the court may reduce the base fee or increase it by up to one third, and in exceptional cases up to double, taking into account the time expenditure of the court and the difficulty of the case. For disputes involving recurring obligations within the meaning of Art. 92 CPC, the base fee is generally reduced (§ 4(3) GebV OG-ZH). Where none of the parties is domiciled in Switzerland and the subject matter does not concern Swiss real property, the fee may be increased up to double (§ 11 GebV OG-ZH). For party compensation, an analogous adjustment mechanism applies under § 4(2) AnwGebV-ZH. The base fee may be increased or reduced by up to one third depending on the responsibility, time expenditure, and difficulty of the case. In addition, surcharges for additional hearings and written submissions may be imposed, each up to half of the base fee, with total surcharges generally capped at the base fee (§ 11(2)-(3) AnwGebV-ZH). If the proceedings are resolved by settlement, withdrawal, or acknowledgment following instruction, the fee is reduced to between one quarter and one half (§ 11(4) AnwGebV-ZH). The foregoing illustration is not exhaustive. For the complete rules, reference is made to the cantonal legislation.

2.2.2.2. Aargau

[21] For Aargau, the court cost schedule is governed by the GebührD-AG[26]. The party compensation schedule follows from the Anwaltstarif-AG[27]. The structure is analogous. Each band specifies a base amount and a marginal rate.

26 Gebührendekret (GebührD-AG) of the Canton of Aargau of 19 September 2023 (SAR 662.110).

27 Dekret über die Entschädigung der Anwälte (Anwaltstarif-AG) of the Canton of Aargau of 10 November 1987 (SAR 291.150).

Court Costs			Party Compensation		
Value-in-dispute range (CHF)	**Base (CHF)**	**Rate**	**Value-in-dispute range (CHF)**	**Base (CHF)**	**Rate**
up to 6'500	900	11.0%	up to 6'160	1'110	22.0%
6'501 to 13'000	1'160	7.0%	over 6'160 to 12'300	1'230	20.0%
13'001 to 52'000	1'290	6.0%	over 12'300 to 24'600	1'850	15.0%
52'001 to 100'000	770	7.0%	over 24'600 to 49'300	2'590	12.0%
100'001 to 200'000	4'270	3.5%	over 49'300 to 98'600	4'070	9.0%
200'001 to 400'000	6'870	2.2%	over 98'600 to 184'800	6'530	6.4%
400'001 to 800'000	9'670	1.5%	over 184'800 to 369'600	10'230	4.4%
800'001 to 1'600'000	13'670	1.0%	over 369'600 to 739'200	14'300	3.3%
1'600'001 to 3'300'000	21'670	0.5%	over 739'200 to 1'478'400	20'240	2.5%
over 3'300'000	28'270	0.3%	over 1'478'400 to 3'080'000	29'040	1.9%
			over 3'080'000 to 6'160'000	44'440	1.4%
			over 6'160'000	69'080	1.0%

Source: GebührD-AG (SAR 662.110); Anwaltstarif-AG (SAR 291.150).

Table 2: Base fee schedule, Aargau.

[22] The Aargau tariff regime also provides for adjustments to the base fee. Under § 5(1) GebührD-AG, the court assesses the fee within the prescribed range on the basis of the costs incurred and the significance of the matter. In extraordinarily cost-intensive cases or where a party engages in frivolous or dilatory conduct, the fee may be set at up to double the prescribed maximum (§ 5(2) GebührD-AG). Conversely, in cases with extraordinarily low costs, the fee may be set below the minimum or waived entirely (§ 5(3) GebührD-AG). For party compensation, the base fee covers instruction, case study, legal research, correspondence, one written submission, and attendance at one hearing (§ 6(1) Anwaltstarif-AG). Where the proceedings are not fully conducted, the compensation is reduced proportionally (§ 6(2) Anwaltstarif-AG). Additional written submissions and hearings increase the base compensation by 5–30% each (§ 6(3) Anwaltstarif-AG). In cases requiring extraordinary expenditure, the compensation may be increased by up to 50% (§ 7(1) Anwaltstarif-AG). Where the proceedings require only minor expenditure, the compensation may be reduced by up to 50% (§ 7(2) Anwaltstarif-AG). The foregoing illustration is not exhaustive. For the complete rules, reference is made to the cantonal legislation.

2.3. Overview of Proceedings before Commercial Courts

[23] Swiss civil procedure consists of a conciliation phase, which precedes judicial proceedings (Art. 197 et seq. CPC), and three types of judicial proceedings: ordinary (Art. 219 et seq. CPC), simplified (Art. 243 et seq. CPC), and summary proceedings (Art. 248 et seq. CPC). These procedural forms differ regarding the value in dispute, the complexity of the case, and the degree of protection required by the parties (cf. Art. 219 et seq. CPC; cf. Art. 248 et seq. CPC). Before commercial courts, the relevant procedural forms are ordinary proceedings and summary proceedings. The present study excludes summary proceedings because they differ from ordinary proceedings in several respects, including their cost structure, typical duration, procedural effort, and, in part, the applicable tariff rules.

[24] Simplified proceedings are explicitly excluded before commercial courts (Art. 243(3) CPC). Moreover, the principle applies that the type of proceedings takes precedence over subject-matter

jurisdiction.[28] If a dispute falls within the scope of simplified proceedings on account of the value in dispute or the subject matter, it is excluded from the jurisdiction of the commercial court from the outset (cf. Art. 6(2)(b) and (d) CPC). An exception applies where the commercial court of the relevant canton constitutes the sole cantonal instance for disputes pursuant to Art. 5(1) CPC. In the canton of Zurich, the commercial court is the sole cantonal instance for disputes under Art. 5(1)(a)-(e) and (h) CPC (§ 44(a) GOG-ZH[29]).[30] The commercial court of Aargau bases its subject-matter jurisdiction in such cases on Art. 5(1)(a) CPC in conjunction with § 12(1)(a) EG ZPO-AG[31].[32]

[25] For the purposes of the present study, the aim was to identify objective procedural effort indicators through a range of variables. To this end, an overview of the key stages of ordinary civil proceedings is necessary. Ordinary proceedings are commenced by the filing of the statement of claim (Art. 220 CPC).[33] Once the claim has been filed, the defendant is granted a time limit within which to respond (Art. 222 CPC). If the defendant fails to do so, a default judgment may be rendered in its absence (Art. 223 CPC). The defendant is generally well advised to contest all claims asserted in the statement of claim (Art. 221 CPC; Art. 222(2) CPC), because, under Swiss procedural law, denials must be substantiated with sufficient specificity in order to satisfy the burden of contestation.[34] Unsubstantiated denials leave the claimant's factual allegations uncontested and therefore not subject to proof. This creates the practical risk that the claimant's allegations will be treated as established by the court.

[26] Following the statement of defence, the court may either schedule an instruction hearing (Art. 226 CPC) or proceed directly to the main hearing (Art. 228 et seq. CPC). In complex cases, the court may order a second exchange of written submissions (Art. 225 CPC).[35] In such a second exchange, the claimant files a reply (*Replik*) and the defendant files a rejoinder (*Duplik*). Where the rejoinder contains allegations that must be contested, this may in practice compel the claimant to respond in comparable detail.

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28 BSK ZPO-Vock/Aepli (Fn. 9), Art. 6 para. 12; Staehelin et al. (Fn. 9), § 6 para. 12.

29 Gesetz über die Gerichts- und Behördenorganisation im Zivil- und Strafprozess (GOG-ZH) of the Canton of Zurich of 10 May 2010 (LS 211.1).

30 Under § 44(a) GOG-ZH, the Commercial Court of the Canton of Zurich has jurisdiction as the sole cantonal instance for disputes pursuant to Art. 5(1)(a)-(e) and (h) CPC. With the exception of lit. (d) (Federal Act on Unfair Competition of 19 December 1986 (UCA; SR 241), which requires a minimum value in dispute of CHF 30'000 unless the Confederation exercises its right of action), none of these categories is subject to a federal minimum value in dispute. Consequently, even minor claims may be brought before the commercial court. In practice, this primarily concerns intellectual property claims (lit. (a)), but also antitrust (lit. (b)), company name (lit. (c)), nuclear liability (lit. (e)), and financial market (lit. (h)) disputes. In addition, the single judge of the commercial court (§ 45 GOG-ZH) has jurisdiction over special audit proceedings pursuant to Art. 5(1)(g) CPC (special auditors pursuant to Art. 697c-697hbis of the Code of Obligations of 30 March 1911 (CO; SR 220)), as well as over protection in clear cases and provisional measures within the jurisdiction of the commercial court. In all these cases, simplified proceedings are excluded pursuant to Art. 243(3) CPC. Ordinary or summary proceedings apply.

31 Einführungsgesetz zur Schweizerischen Zivilprozessordnung (EG ZPO-AG) of the Canton of Aargau of 23 March 2010 (SAR 221.200).

32 Under § 12(1)(a) EG ZPO-AG, the Commercial Court of the Canton of Aargau has jurisdiction as the sole cantonal instance for disputes pursuant to Art. 5(1)(a)-(e), (g), and (h) CPC. The catalogue largely mirrors that of Zurich, with the same exception for lit. (d) (UCA). A notable difference is that lit. (g) (special audit proceedings) is assigned directly to the panel of the commercial court, whereas in Zurich the single judge has jurisdiction over these proceedings. Simplified proceedings are also excluded in all these cases pursuant to Art. 243(3) CPC.

33 Staehelin et al. (Fn. 9), § 21 para. 2.

34 Daniel Willisegger, Art. 222 ZPO. In: Kommentar zur Schweizerischen Zivilprozessordnung (ZPO). 4th ed. 2024 (cit. ZPO Komm.-Willisegger); Staehelin et al. (Fn. 9), § 21 para. 3.

35 Staehelin et al. (Fn. 9), § 21 para. 6.

[27] In addition, there exists an unconditional right to reply as an aspect of the right to be heard[36] (Art. 29(2) FC; Art. 6(1) ECHR[37]). Even outside a court-ordered second exchange, it may therefore occur that the parties submit further written filings on their own initiative.

[28] Swiss procedural law also permits the defendant to file a counterclaim together with the statement of defence, provided that the counterclaim may be adjudicated in the same proceedings under the applicable procedural rules (Art. 224 CPC). Where a counterclaim is filed, the written exchange expands. Because the counterclaim is introduced together with the statement of defence, it lags one procedural step behind the main claim. If the court orders a second exchange of written submissions (Art. 225 CPC), the parties combine their submissions on both claims: the claimant's reply addresses the main claim and simultaneously responds to the counterclaim, while the defendant's rejoinder addresses the main claim and simultaneously replies on the counterclaim. This leaves the counterclaim cycle incomplete, as the claimant has not yet had the opportunity to respond to the defendant's reply on the counterclaim. The court may therefore grant the claimant a further submission, the rejoinder on the counterclaim (*Widerklageduplik*), to close the exchange.[38]

3. Data

[29] The empirical basis comprises all judgments published between January 1, 2011 and December 31, 2025 on the official publication platforms of the commercial courts of Zurich, Aargau, and Bern. St. Gallen had to be excluded because its published judgments contain extensive editorial redactions, leaving too few of the required variables extractable. The judgments were downloaded directly from the official court websites.[39] To contextualize the published judgments, the annual accountability reports of the cantonal high courts are used.[40] Commercial courts are organizationally affiliated with these high courts and are typically reported with separate case statistics.[41] Publication practices vary considerably across cantons, both in the scope of reported data and in the volume of published judgments. Although the overall publication rate has increased since the introduction of the unified CPC in 2011, it remains heterogeneous across cantons and within the individual courts.

36 Staehelin et al. (Fn. 9), § 10 para. 70.

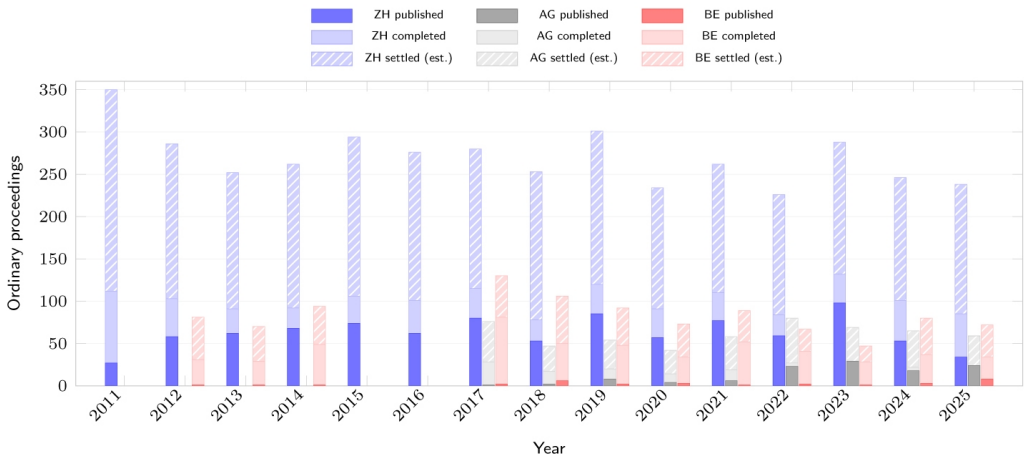
37 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (SR 0.101).

38 Staehelin et al. (Fn. 9), § 21 para. 6. See, e.g., HG ZH HG190075, as of 31 August 2021, B.; HG AG HOR.2018.13, as of 7 May 2019, paras. 7–9.

39 See for Zurich https://www.gerichte-zh.ch/entscheide/entscheide-suchen.html; for Aargau https://www.ag.ch/de/themen/recht-justiz/gesetze-entscheide/agve; for Bern https://www.zsg.justice.be.ch/de/start dienstleistungen/rechtsprechung.html. All internet references hereinafter reflect the status as of 3 April 2026.

40 See for Zurich https://www.gerichte-zh.ch/organisation/obergericht/rechenschaftsbericht.html; for Aargau https://www.ag.ch/de/ueber-uns/gerichte-kanton-aargau/zahlen-fakten; for Bern https://www.justice.be.ch/de/start/ueber-uns/taetigkeitsberichte.html.

41 For Zurich, a structural break in the reporting format occurred in 2020. Several relevant data points have since been available only in the online supplement to the annual report.



Source: Annual accountability reports of the cantonal high courts of Zurich, Aargau, and Bern; own data collection.

Figure 2: Ordinary proceedings and publication volume by commercial court, 2011–2025.

[30] The sample comprises 934 published judgments in ordinary proceedings for Zurich, 115 for Aargau, and 31 for Bern. After excluding summary proceedings and accounting for ordinary proceedings not resolved by settlement,[42] the Zurich sample covers an estimated 61.4% of the relevant population. For Aargau, the estimated rate is approximately 60.5% and for Bern approximately 6.0%. These coverage rates are approximations, as they depend on assumptions about settlement rates that are themselves based on incomplete data.

[31] For Aargau, several limitations apply. The publicly available reports do not distinguish between ordinary and summary proceedings. This breakdown was obtained on request from the court. No relevant judgments were published from 2011 to 2016. As Figure 2 illustrates, publication began in subsequent years and has increased since the early 2020s. The settlement rate is not reported. According to the president of the Aargau commercial court, it is approximately 70%. The annual reports for 2014 to 2019 contain only qualitative estimates ranging from «over 60%» to «roughly two-thirds.» For purposes of defining the relevant population, a settlement rate of 63% is assumed for 2011 to 2019, derived from the qualitative estimates in the annual reports for that period. For 2020 to 2025, a rate of 66.7% is assumed, based on the recent estimate provided by the court president. Both figures are conservative relative to the reported upper bounds. For Bern, no judgments were found on the publication platform for the reporting years 2011, 2015, and 2016.

42 Cases resolved by judicial settlement are excluded because, although judicial settlements have the same legal effect as judgments (Art. 241(2) CPC), the court dismisses the case (Art. 241(3) CPC) and the parties generally determine costs themselves (Art. 109(1) CPC). Accordingly, under normal circumstances, the court sets neither court fees nor party compensation.

	Ordinary completed			Settled (est.)			Unsettled (est.)			Captured		
Year	ZH	AG	BE	ZH	AG	BE	ZH	AG	BE	ZH	AG	BE
2011	350	-	-	238	-	-	112	-	-	27	-	-
2012	286	-	81	183	-	50	103	-	31	58	-	1
2013	252	-	70	161	-	41	91	-	29	62	-	1
2014	262	-	94	170	-	45	92	-	49	68	-	1
2015	294	-	-	188	-	-	106	-	-	74	-	-
2016	277	-	-	175	-	-	102	-	-	62	-	-
2017	280	76	130	165	48	49	115	28	81	80	1	2
2018	253	47	106	175	30	56	78	17	50	53	2	6
2019	301	54	92	181	34	44	120	20	48	85	8	2
2020	234	42	73	143	28	39	91	14	34	57	4	3
2021	262	58	89	152	39	37	110	19	52	77	6	1
2022	226	80	67	142	53	26	84	27	41	59	23	2
2023	288	69	47	156	46	19	132	23	28	98	29	1
2024	246	65	80	145	43	43	101	22	37	53	18	3
2025	238	59	72	153	39	38	85	20	34	34	24	8
Total	4 049	550	1 001	2 527	360	487	1 522	190	514	947	115	31

«Captured» shows gross counts before deduplication. The net sample after excluding duplicates is 934 (ZH), 115 (AG), and 31 (BE); *Source:* Annual accountability reports of the cantonal high courts of Zurich, Aargau, and Bern; own calculations.

Table 3: Case disposition statistics for the commercial courts of Zurich, Aargau, and Bern.

[32] The coverage rates imply that approximately 40% of ordinary, non-settled proceedings remain unpublished and therefore unobserved. The published judgments need not be a random draw from the full population. Court representatives have noted that cases requiring extensive redaction for business confidentiality reasons are less likely to be published.[43] This selection bias may skew the observed sample toward procedurally simpler and therefore less costly cases, so that the estimated cost levels and the coefficients on procedural complexity indicators may understate the true population-level values. The results should therefore be interpreted as conditional on the observed sample of published judgments.[44]

[33] As noted in the introduction, Bern is retained only for descriptive comparison. After excluding summary proceedings and non-comparable observations,[45] the regression analysis is restricted to Zurich and Aargau, where the tariff schedules permit mechanically comparable baseline calculations and where the sample sizes are sufficient for multivariate analysis.

3.1. Sample Construction

[34] Starting from 1'080 downloaded judgments, the sample is narrowed through substantive and technical exclusions. Bern is excluded from the regression stage because, as noted in the introduction, the number of usable observations is too small. Additional exclusions cover non-

43 This information is based on oral communication with the media department of the High Court of the Canton of Zurich.

44 See further Section 7.

45 Including summary proceedings, 3'538 decisions were collected for Zurich, 296 for Aargau, and 54 for Bern. In Zurich and Aargau, an initial distinction between ordinary and summary proceedings could be made on the basis of the file names («HG» versus «HE»; «HOR» versus «HSU»), whereas the Bern judgments had to be classified manually.

pecuniary disputes, cases without observable cost amounts, and cases in which key variables such as filing date or value in dispute cannot be determined from the published judgment.

Description	ZH	AG	Total	Remaining
Starting population (all downloaded judgments)	934	115	1 080	-
Exclusion of Bern (broader tariff discretion bands limit baseline comparability; n=31 too small for regression)	0	0	31	1 049
Substantive exclusions				
Procedural orders, non-entry decisions, interim/partial judgments without cost ruling	33	12	45	1 004
Non-pecuniary disputes (no quantifiable value in dispute)	12	0	12	992
Redacted/anonymized cost amounts (dependent variable not observable)	2	0	2	990
Technical exclusions (missing regression variables)				
Filing date not determinable (remand/continuation cases)	8	1	9	981
Value in dispute not determinable	5	0	5	976
Total exclusions	60	13	73	-
Court cost regression sample	874	102	-	976
Party compensation regression sample	802	96	-	898
Difference (PC not awarded / no application filed)	72	6	-	78

Source: Own calculations.

Table 4: Sample construction and cleaning steps.

[35] The final regression sample contains 976 observations for court costs and 898 for party compensation. The difference of 78 cases arises primarily from proceedings in which no quantified party compensation was awarded because no corresponding claim was filed or no amount was set in the operative part of the judgment («Urteilsdispositiv»).

3.2. Data Retrieval: A Prompt-Engineering Approach

[36] This section describes how the structured data underlying the empirical analysis was obtained from the published judgments. Different data collection procedures were used for the three commercial courts.[46] The judgments of the Aargau and Bern commercial courts were coded entirely manually. Owing to the large number of decisions, an LLM-assisted data collection procedure, recently discussed and applied in the machine learning literature, was used for the Zurich judgments.[47]

46 See Appendix 1 for an overview.

47 Methodology based on John Dagdelen/Alexander Dunn/Sanghoon Lee/Nicholas Walker/Andrew S. Rosen/Gerbrand Ceder/Kristin A. Persson/Anubhav Jain, Structured information extraction from scientific text with large language models, in: Nature Communications 2024/15, 1–12; Nhan Dao/Luis Quesada/Syed Monem Hassan/Mikel Iturrioz Campo/Samuel Johnson/Suvro Ghose/Raul San Jose Estepar/Aaron Waxman/George Washko/Farbod N. Rahaghi, Generative artificial intelligence for automated data extraction from unstructured medical text, in: JAMIA Open 8.5, ooaf097 2025; Matt Murton/Elisabeth Boulton/Samuel Cross/Amber Khan/Sanjay Kumar/Gabriella Magri/Caitlin Marris/Duncan Slater/Emily Worthington/Emma Lunn, Harnessing

3.2.1. Extraction Workflow

[37] The LLM-based extraction method used here follows a structured prompt-engineering workflow. First, the variables to be extracted are defined and paired with clear extraction rules and a uniform output format. A manually coded reference dataset, the so-called «golden set,» is then created from a randomized subset of the data. On this basis, the LLM is iteratively calibrated to extract the desired information as accurately and consistently as possible. Throughout this process, the model outputs are continuously compared against the manually coded reference values. Identified errors or mismatches are used to refine the prompts, the output schemas, and, where necessary, the validation logic, before the optimized setup is applied to data not previously used during development.

[38] For the purposes of the present study, a manually coded reference dataset of 130 judgments[48] was created, and the automated extraction results were iteratively compared against it. Coding rules, output schemas, and prompts were refined incrementally to improve extraction accuracy. The procedure is described in greater detail as follows.[49]

3.2.2. Pipeline Architecture

[39] The extraction pipeline is the technical infrastructure that processes each judgment. Because court judgments vary in length and complexity, a modular design was adopted. The process, structure, and its built-in safeguards against extraction errors are described as follows.

[40] All judgments were first assigned a random number after download. The first 130 judgments in the randomized sequence were manually coded using the predefined variables in order to create the required golden set. The extraction pipeline was designed in modular form[50], as initial tests showed that uniform end-to-end runs were highly error-prone and that more extensive extraction requests repeatedly failed. The overall information contained in a judgment was therefore divided across several sub-models, each capturing a distinct block of variables. A spe-

large-language models for efficient data extraction in systematic reviews: The role of prompt engineering, in: Cochrane Evidence Synthesis and Methods 2025/3/6.

48 The size of the manually coded reference dataset was chosen as a pragmatic design decision. Although the available literature does not prescribe a uniform sample size, recent studies consistently combine a comparatively small development subset for iterative prompt and schema refinement with a separate set of previously unseen cases for validation. Dao et al. (Fn. 47), drawing on Thomas Y. C. Tam/Sonish Sivarajkumar/Sumit Kapoor/Alisa V. Stolyar/Katelyn Polanska/Karleigh R. McCarthy/Hunter Osterhoudt/Xizhi Wu/Shyam Visweswaran/Sunyang Fu/Piyush Mathur/Giovanni E. Cacciamani/Cong Sun/Yifan Peng/Yanshan Wang, A framework for human evaluation of large language models in healthcare derived from literature review, in: npj Digital Medicine 2024/7 No 258, refer to an order of magnitude of roughly 100 to 130 cases for LLM applications. Dagdelen et al. (Fn. 47) show that structured extraction tasks can already be calibrated on relatively small annotated sets and report annotation regimes in the range of 100 to 500 text passages. Murton et al. (Fn. 47) likewise separate iterative prompt development from subsequent testing on unseen data. Against this background, a golden set of 130 judgments, of which an initial subset was used for prompt calibration and the remainder reserved for validation, appears methodologically well founded, as it balances annotation feasibility with the need for heterogeneous development examples and an independent basis for performance assessment.

49 The reader should note that this is a relatively novel methodology which, to the author's knowledge, has so far been applied in the legal context primarily by large corporations to contract documents and similar forms of unstructured legal information. A dedicated scientific contribution by the author and several colleagues, focusing on the methodology illustrated here, is currently in preparation.

50 The initial calibration rounds used OpenAI's GPT-4o model. However, GPT-4o exhibited recurring difficulties with longer documents and repeatedly produced obvious extraction errors despite successive prompt adjustments. The pipeline was therefore migrated early on to OpenAI's GPT-5.1, which resolved these issues and was used for all subsequent extractions.

cialized prompt was developed for each module, containing a task description, variable-specific extraction rules, a prescribed output format, and an associated Pydantic schema defining field types, admissible values, defaults, and optional fields. A global system prompt specified overarching rules for source fidelity, uncertainty handling, output completeness, and error management. The pipeline further employs zone-based page selection to prevent model truncation on long judgments. The context window provided to the model is restricted to those text passages that are likely relevant for the respective extraction task. Judgments are first parsed page by page. Heuristic search rules then identify the pages to be submitted for each extraction module.

[41] The pipeline includes several technical safeguards. Structurally unsuitable documents, such as pure court orders or bare conclusions without extractable content, trigger an early abort. Retry mechanisms handle incomplete model responses. Persistent failures fall back to a JSON-mode alternative. Post-extraction, certain fields undergo deterministic cleaning. Every output is validated against the corresponding Pydantic schema. After initial testing, rule-based pre-checks were added for error-prone variables. For selected procedural proxy variables, keyword scans are run before the model call, and their results are injected into the prompt as targeted hints. Additional disambiguation rules apply to party information, covering legal form, domicile, and NOGA[51] classification.[52]

3.2.3. Calibration and Validation

[42] Calibration refers to the iterative process by which the extraction rules are adjusted until the automated outputs match the manually coded reference values as closely as possible. Validation then measures the accuracy of the final extraction across all evaluable variables. Together, these steps determine the reliability of the dataset used in the subsequent analysis.

[43] Validation and optimization followed an iterative procedure with increasing sample sizes. The extraction was first developed and calibrated on the first 30 judgments of the golden set. In early test phases, only one judgment was submitted per API call. Extraction results were then compared, and mismatches systematically investigated. Systematic extraction errors led to adjustments in the coding logic, interpretive borderline cases prompted refinements in the prompt structure, and ambiguities in party information required additional disambiguation rules. As stability increased, the batch size was gradually raised from 2 to 5, then to 10, and finally to 30. Over 47 iteration cycles, the extraction logic was progressively refined. Because the full golden set served both as the calibration basis and as the final validation sample, the reported accuracy figures are not based on a strictly untouched holdout. Although only a subset of 30 cases was actively used during early calibration rounds and the remaining cases entered validation incrementally, the pipeline was refined with reference to the same 130 judgments that serve as the final test. The reported accuracy may therefore represent an upper bound on out-of-sample extraction quality.[53]

51 NOGA stands for «Nomenclature Générale des Activités Économiques» (General Classification of Economic Activities), the standard industry classification of the Swiss Federal Statistical Office. For further details, see Section 4.

52 For comprehensive information on all variables, see Section 4.

53 This limitation is revisited in Section 7.

[44] After completing the calibration phase, all judgments were processed via the batch API.[54] In this final run, validation was extended to the full 130-judgment golden set. Across all 33 evaluable variables (pure control fields excluded), the overall accuracy is 99.45%. For the key regression inputs, court costs, party compensation, trial dates, and legal subject all achieve 100% accuracy. Value in dispute achieves 99.2% (one mismatch from an ambiguous partial claim withdrawal). The 24 mismatches are concentrated in variables with higher interpretive ambiguity, such as procedural indicators and legal form classifications. Of the 4'333 compared fields, 4'309 were correctly extracted. Of the 24 mismatches, 15 (63%) represent genuine extraction errors and 9 (37%) are ambiguous borderline cases where both the manual and the automated classification appear defensible. Twenty-three of 33 evaluated variables achieve 100%.[55]

3.2.4. Secondary Claim Extraction

[45] A separate extraction step was required for the legal subject classification. After the extraction, it was found that a substantial share of Zurich cases carried the generic legal subject «Forderung.» For all 565 Zurich judgments with this subject, a secondary LLM-based extraction of the specific underlying legal relationship was performed.

[46] The golden set was reduced to the 81 pure «Forderung» cases. In 16 iterative calibration rounds, the extraction rules were refined.[56] The final accuracy on the golden set is 92.6% (75 of 81 cases correct). Of the six mismatches, three reflect cases where the specificity rule did not apply consistently, two are genuine misclassifications, and one is a recurring edge case. All mismatches were nonetheless usable for the subsequent grouping step, since the various claim subcategories required downstream consolidation into broader groups.

4. Methodology

[47] This section describes the variables, the baseline tariff computation, and the regression design used to estimate the determinants of court-awarded litigation costs.

4.1. Variables

[48] A set of variables was collected. In this regard, it had to be ensured that the variables captured general information from the judgments, relevant cost components, and proxies for procedural effort in sufficient breadth, that they were suitable for the subsequent regression models,

54 A batch API allows multiple requests to be submitted together as a single job rather than one at a time. The provider processes the entire batch asynchronously and returns all results once the job is complete, which reduces per-request costs and is well suited to large-scale, non-interactive extraction tasks. The total costs for all extractions, including the additional rounds described in Section 3.2.4, amount to approximately USD 130. These costs comprise both batch API and individual API requests.

55 See Appendix 1. It should be noted that more variables were initially extracted than were ultimately required for the regression analysis. Accordingly, not all 33 evaluated variables were included in the regression models.

56 See Appendix 1.

and that they were consistent with the information actually available in the judgments. The variables and their groupings are described below.[57]

4.1.1. Dependent Variables and Baseline Tariffs

[49] The dependent variables are the quantities the analysis seeks to explain. In the present context, the analysis focuses on two dependent variables: court costs (CourtCosti) and party compensation (PartyCompi). CourtCosti denotes the court cost set in the operative part of judgment («Urteilsdispositiv») i, denominated in Swiss francs. PartyCompi denotes the party compensation awarded in the operative part of judgment («Urteilsdispositiv») i, likewise denominated in Swiss francs. Both variables are retained in nominal terms.

[50] In all cantons, both court costs and party compensation are governed by statutory fee schedules that use the value in dispute as the primary input.[58] In Zurich and Aargau, these schedules take the form of piecewise-linear tariff functions that permit the mechanical computation of a baseline amount for each cost component. Since the regression analysis, as noted in the introduction, is limited to Zurich and Aargau, the baseline measures used in the econometric analysis are derived from the tariff regimes of these two cantons. In all cantons, party compensation is awarded as a lump sum, and the applicable schedules authorize upward or downward adjustments of the baseline depending on effort, difficulty, or other case-specific circumstances.

[51] For each judgment i, a mechanically implied baseline tariff is computed for both cost components:

$$Baseline_i^{CC} = f^{CC}(DisputeValue_i, Regime_i), \tag{1}$$

$$Baseline_i^{PC} = f^{PC}(DisputeValue_i, Regime_i). \tag{2}$$

[52] DisputeValuei denotes the value in dispute as determined in the judgment, and Regimei captures the fee schedule in force at the date of judgment. Both fCC and fPC are piecewise-linear functions determined by the fee schedules.[59] They are strictly increasing in DisputeValue and concave, meaning that the marginal tariff rate declines stepwise across value-in-dispute bands. As a result, the baseline tariff declines as a share of the value in dispute as DisputeValue increases. This property is central to the interpretation of the regression results, because baseline elasticities below one reflect this built-in compression. The resulting baselines serve as the reference point for the actual costs set by the court.

4.1.2. Case Characteristics

[53] Case characteristics record the factual features of each dispute and of the parties involved. These variables serve as explanatory factors in the regression analysis. They allow the model to test whether, and to what extent, attributes are systematically associated with higher or lower costs.

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57 See Appendix 1 for full definitions. As noted in Fn. 55, more variables were initially extracted than were ultimately required for the regression analysis. The tables in the appendix therefore tend to contain more variables than are described here.

58 See Section 2.2.2.

59 See Section 2.2.2 for complete tariff tables.

[54] Case characteristics include case identifier (*CaseID*), trial start and end dates (*TrialStartDate*; *TrialEndDate*), the number of parties (*NPlaintiffs* / *NDefendants*), and the number of attorneys retained for representation (*PlaintiffsAttorneys* / *DefendantsAttorneys*). For the lead plaintiff and lead defendant, additional attributes are recorded: Swiss domicile (*DomicileCHPlaintiff* / *DomicileCHDefendant*), which can affect the applicable court cost schedule (cf. § 11 GebV OG-ZH), legal form (*PlaintiffLF* / *DefendantLF*), and industry classification (*NOGAPlaintiff* / *NOGADefendant*) based on the Swiss Federal Statistical Office's NOGA[60] categorization.[61]

[55] The *LegalSubject* is also recorded as a case characteristic. It refers to the subject designated by the court itself in the case caption of the judgment in the form of a brief description indicating the legal issue primarily concerned. As already noted in Section 3.2.4, it became apparent after reviewing the data that a predominant share of the sample was classified under the generic *LegalSubject* «Forderung». A Forderung, as a claim under the law of obligations, may arise from a wide range of private-law relationships and is therefore rather generic. Subcategories were accordingly constructed for the purposes of the regression analysis.[62]

4.1.3. Court-Side Characteristics

[56] Court-side characteristics identify the deciding court and its composition. Their inclusion allows the analysis to examine whether cost-setting varies systematically across courts and, within courts, across individual judges.

[57] The court-side characteristic variables used in the present study identify the court (DAG, see Section 5), the panel composition by recording the judges (*JudgeN*) and the court clerk. The *PresidingJudge* is flagged separately to enable the estimation of judge effects (*JudgeFE*, see Section 5).

4.1.4. Cost Allocation

[58] The cost allocation variable captures the outcome of the proceedings as expressed in the apportionment of costs between the parties. Because Swiss procedural law ties the allocation of litigation costs to the extent to which each party prevails, this variable reflects the degree of success or defeat and is therefore closely linked to the cost decision itself.

[59] In the present study, this is captured by the variable *PlaintiffLossShare*, which indicates the proportion to which the plaintiff was unsuccessful in the proceedings (0 = complete success; 1 = complete defeat).

4.1.5. Procedural Complexity Indicators

[60] The procedural complexity indicators measure the scope and intensity of the proceedings through observable procedural steps. They are included because the applicable fee schedules expressly permit the court to adjust the baseline tariff in light of the difficulty and effort involved in the case.

[61] The construction of the procedural complexity indicators was complicated by the structure of the court judgments. Although judgments within a given court generally follow a uniform

60 Swiss Federal Statistical Office, NOGA 2008: General Classification of Economic Activities. Neuchâtel, 2008. www.bfs. admin.ch/bfs/en/home/statistics/industry-services/nomenclatures/ noga.html.

61 See Appendix 1.

62 See Tables 6 and 7 for the detailed mapping.

format, the level of detail with which the procedural history is recorded varies across cases. Some judgments describe the parties' submissions with great precision, occasionally even recording the number of pages of each individual filing.[63] Others refer only to the principal procedural steps and written submissions. To ensure comparability across all judgments from the courts examined, the analysis therefore focuses on procedural events that are systematically reflected in the procedural history across all cases, that is, the principal procedural steps as described in Section 2.3.

[62] The filing of a statement of *Defence* is captured as the first procedural complexity variable. From the perspective of procedural effort, preparing the defence regularly requires work relatively comparable to that involved in preparing the statement of claim, as the defendant must respond to the allegations advanced by the claimant with sufficient specificity.[64]

[63] A second exchange of written submissions is captured by the variable *SecondExchange*. This stage indicates a heightened degree of procedural complexity and is already treated in the legislative materials as characteristic of more demanding proceedings.[65] It is modelled as a single variable because, in the vast majority of cases, a reply is followed by a rejoinder.

[64] The variable *AdditionalFilings* captures further substantial written submissions filed by the parties beyond the ordinary sequence of claim, defence, and second exchange. Such filings are expected to increase procedural effort.

[65] Counterclaims are also likely to increase both workload and complexity because they expand the subject matter of the dispute and the corresponding burden of procedural response. This dimension is captured by the variable *Counterclaim*. The variable *CounterclaimSecondExchange* indicates cases in which the counterclaim likewise gave rise to a second exchange of submissions, thereby further increasing procedural effort.

[66] Finally, *ExpertReport* and *SettlementHearing* record whether at least one expert report was introduced and whether at least one court-ordered settlement hearing took place.

[67] All procedural complexity indicators are specified as binary variables. For robustness purposes, *Duration* is additionally included as a measure of the length of the proceedings in days, and *NPages* as a measure of the length of the judgment in pages.

4.2. Regression Design

[68] The regression design specifies how the actual costs set by the court are related to the statutory base tariff and to the observable characteristics of the case. Its purpose is to quantify the extent to which deviations from the tariff can be explained by measurable factors and to identify which of these factors are most strongly associated with higher or lower costs.

4.2.1. Model Specification

[69] The model specification defines the functional form used to relate the court's cost decision to the statutory base tariff and to the observable characteristics of each case.

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63 E.g. judgments HG ZH HG120187, as of 19 March 2015, C. 5; HG ZH HG170238, as of 6 August 2020, C. 4.1; HG BE HG2014_42, as of 14 November 2018, C. 43.3.

64 Cf. Staehelin et al. (Fn. 9) regarding the rather high standard of substantiation required for written submissions under Swiss procedural law.

65 Swiss Federal Council, Botschaft zur Schweizerischen Zivilprozessordnung (ZPO) vom 28. Juni 2006. BBl 2006 7221. 2006.

[70] Court costs and party compensation are estimated separately, as they are governed by different fee schedules and partly driven by different factors. The estimation proceeds in six nested models that sequentially add variable blocks. The general equation, containing all terms present in the full specification, takes the following log-linear form. The log-log specification is motivated by the pronounced right-skewness of both cost components and the baseline, which makes a logarithmic transformation useful to stabilize variance and reduce the influence of extreme observations, as well as by the concavity of the tariff functions fCC and fPC, under which the implied baseline elasticity may be below one. In this setting, the coefficient on ln(Baseline) directly captures that elasticity.

$$\ln(Cost_i) = \beta_0 + \beta_1 \times \ln(Baseline_i) + \beta_2 \times D_{\mathrm{AG},i} + \gamma' X_i + \alpha_t + \mu_j + \varepsilon_i \tag{3}$$

[71] Costi denotes the actual costs awarded in judgment i. Baseline$_i$ is the mechanically implied base tariff. DAG,i is the canton dummy (Aargau=1, Zurich=0). Xi is a vector of explanatory variables. t denotes year fixed effects. j denotes judge indicators. 0 is the intercept. ' is the coefficient vector on the explanatory variables. i is the error term.

[72] Equation (3) describes the full model (6). Models (1) through (5) are nested subsets that sequentially add variable blocks. The main specification employs a deviation model.[66] The dependent variable is transformed to ln(Costi/Baseline$_i$), which measures the proportional deviation from the base tariff. Algebraically, this follows from moving ln(Baseline$_i$) to the left-hand side of Equation (3). ln(Baseline$_i$) remains as a regressor on the right-hand side. In the deviation model, a coefficient of zero on ln(Baseline$_i$) indicates that the tariff is a proportional anchor. A negative coefficient indicates that courts deviate more strongly downward at higher values in dispute. In the supplementary level equation with ln(Costi) as the dependent variable, the corresponding benchmark is a coefficient of one on ln(Baseline$_i$). All terms are described below.

Variable block	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
ln(Baseline)	×	×	×	×	×	×
D_AG, D_AG × ln(Baseline)		×	×	×	×	×
Year FE (α_t)		×	×	×	×	×
Case characteristics (X_i)			×	×	×	×
Process complexity indicators				×	×	×
Plaintiff loss share					×[a]	×[a]
Judge indicators (μ_j)						×
Observable at filing	Yes	Approx.	Approx.	No	No	No

[a] PC equation only; *Source:* Own illustration.

Table 5: Model sequence and variable blocks.

66 Methodologically drawing on Srinivasan P. Kothari/Jerold B. Warner, Measuring long-horizon security price performance. Journal of Financial Economics 1997/43/3, 301–339.

4.2.2. Nested Model Structure

[73] The estimation proceeds through six nested models that sequentially add blocks of explanatory variables. This incremental approach allows one to observe how each additional group of variables contributes to explaining the variation in court-awarded costs and how the coefficients on previously included variables change as new controls are introduced.

[74] The canton effects (Model (2)) capture potential systematic cost differences between Zurich and Aargau that go beyond the tariff differences incorporated in the baseline. The canton dummy DAG,i (Aargau=1, Zurich=0) measures the average cost difference. Because the Zurich and Aargau fee schedules differ not only in level but also in their marginal rate structure,[67] the model includes an interaction between DAG and ln(Baseline) to allow for canton-specific baseline elasticities. This tests whether the relationship between the tariff and the court's deviation from it varies across jurisdictions. Both terms yield the estimated total canton effect, which varies with the level of the base tariff.

[75] The case characteristics (Model (3)) include the log number of plaintiffs and defendants, binary indicators for Swiss domicile of the lead plaintiff and lead defendant (equal to one if domiciled in Switzerland), and binary indicators for legal subject. The raw legal subject categories from the judgments and the subcategories identified in the secondary claim extraction were consolidated into nine regression groups.[68]

67 See Section 2.2.2.

68 See Tables 6 and 7 for the detailed mapping.

Group	Raw Category	N	Description
Claims_Construction	werkvertrag	98	Classical works contract (Art. 363 OR)
Claims_Construction	architektur_und_werkvertrag	15	Combined architecture and works contract
Claims_Construction	totalunternehmervertrag	10	Turnkey construction contract
Claims_Construction	bauhandwerkspfandrecht	10	Construction lien claims (Art. 837 ZGB)
Claims_Construction	subunternehmervertrag	9	Subcontractor works contract
Claims_Construction	planer_und_bauleitungsvertrag	3	Planning and construction management
Claims_Construction	generalplanervertrag	2	General planning contract
	Subtotal	**147**	*Construction and works contracts (19.2%)*
Claims_Trade	kaufvertrag	58	Sales contract (Art. 184 OR)
Claims_Trade	aktienkaufvertrag	15	Share purchase agreement
Claims_Trade	liefervertrag	8	Supply/delivery contract
Claims_Trade	leasingvertrag	6	Leasing contract
Claims_Trade	unternehmenskaufvertrag	5	Business acquisition (share/asset deal)
Claims_Trade	kauf_und_werkvertrag	5	Mixed purchase and works contract
Claims_Trade	frachtvertrag	5	Freight/carriage contract (Art. 440 OR)
Claims_Trade	speditionsvertrag	3	Forwarding contract
Claims_Trade	*5 further categories*	-	1 case each (Grundstückkauf, Kauf+Miete, Kauf+Service, Factoring, etc.)
	Subtotal	**110**	*Purchase and trade contracts (14.3%)*
Claims_FinInsurance	haftpflichtversicherungsvertrag	46	Liability insurance contract
Claims_FinInsurance	konto_und_depotvertrag	34	Bank account and custody agreement
Claims_FinInsurance	versicherungsvertrag	28	General insurance contract (VVG)
Claims_FinInsurance	vermoegensverwaltungsvertrag	21	Asset management contract
Claims_FinInsurance	anlageberatungsvertrag	11	Investment advisory contract
Claims_FinInsurance	darlehensvertrag	11	Loan agreement (Art. 312 OR)
Claims_FinInsurance	kreditvermittlungsvertrag	6	Credit brokerage contract
Claims_FinInsurance	lebensversicherungsvertrag	5	Life insurance contract
Claims_FinInsurance	versicherungsmaklervertrag	5	Insurance brokerage contract
Claims_FinInsurance	*11 further categories*	-	1-3 cases each (Kreditvertrag, Krypto, Kontokorrent, Bauwesenversicherung, Garantie, etc.)
	Subtotal	**184**	*Financial and insurance contracts (24.0%)*

(continued on next page)

(continued)

Group	Raw Category	N	Description
Claims_Services (Ref.)	mietvertrag	39	Lease/rental contract (Art. 253 OR)
Claims_Services (Ref.)	beratungsvertrag	30	Consulting/advisory contract
Claims_Services (Ref.)	vermittlungsvertrag	18	Brokerage/intermediation contract
Claims_Services (Ref.)	kooperationsvertrag	11	Cooperation/joint venture agreement
Claims_Services (Ref.)	auftragsvertrag	6	General mandate contract (Art. 394 OR)
Claims_Services (Ref.)	maklervertrag	5	Broker contract (Art. 412 OR)
Claims_Services (Ref.)	reservationsvereinbarung	4	Reservation agreement
Claims_Services (Ref.)	personalverleihvertrag	4	Staff leasing contract
Claims_Services (Ref.)	*15 further categories*	-	1-2 cases each (Bewirtschaftung, Agentur, Treuhand, Franchise, etc.)
	Subtotal	**134**	*Service, mandate and lease contracts (17.5%)*
Claims_CorpLiability	aktienrechtliche_verantwortlichkeit	26	Board liability (Art. 754 OR)
Claims_CorpLiability	ausservertragliche_haftung	16	Tort/delict liability (Art. 41 OR)
Claims_CorpLiability	herausgabe	4	Restitution/surrender claims
Claims_CorpLiability	etc (unclassifiable)	4	Claim type not determinable from judgment
Claims_CorpLiability	aberkennung	3	Debt contestation (Art. 83 SchKG)
Claims_CorpLiability	feststellung	3	Declaratory claims
Claims_CorpLiability	vorsorgliche_massnahmen	3	Interim measures (Art. 261 ZPO)
Claims_CorpLiability	*14 further categories*	-	1-2 cases each (Genugtuung, Persönlichkeitsverletzung, einfache Gesellschaft, etc.)
	Subtotal	**79**	*Corporate liability, tort and procedural (10.3%)*
Claims_URG	forderung_urg	117	Copyright/URG disputes (predominantly collecting society claims)
	Subtotal	**117**	*Copyright/URG claims (100%)*
IP	*Original IP cases from LegalSubject*	–	Patent, trademark, design, unfair competition disputes
IP	lizenzvertrag (from Forderung)	7	Licence agreement (IP-related)
IP	uwg, marke_name_firma, domain	3	UCA, trademark, domain transfer
Corporate	*Original corporate cases from LegalSubject*	–	Corporate law disputes (Anfechtung, Auflösung, etc.)
Miscellaneous	*Remaining from original Sonstiges*	–	All disputes not assignable to above categories

Source: Own classification.

Table 6: Legal subject groupings, detailed mapping.

Regression Dummy	Content	N	Share
Claims_Construction	Works, architecture, turnkey, subcontractor, construction lien	147	15.0%
Claims_Trade	Purchase, supply, delivery, freight, leasing, factoring	110	11.3%
Claims_FinInsurance	Bank accounts, asset management, insurance, loans, credit	184	18.9%
Claims_Services (Ref.)	Lease, consulting, brokerage, mandate, cooperation, staffing	134	13.7%
Claims_CorpLiability	Board liability, tort, declaratory, interim measures, procedural	79	8.1%
Claims_URG	Copyright/URG disputes (predominantly collecting society claims)	117	12.0%
IP	Patent, trademark, design, licence, unfair competition	–	–
Corporate	Corporate law disputes (non-claim)	–	–
Miscellaneous	Residual category	–	–

Source: Own classification.

Table 7: Regression dummy variables from legal subject groupings.

[76] Within the claims category, which accounts for approximately 79% of the sample, six thematic groups are distinguished: ClaimsConstruction (construction and works contracts, N=147), ClaimsTrade (sales and commercial law, N=110), ClaimsFinInsurance (finance and insurance, N=184), ClaimsServices (services, agency, and lease, N=134), ClaimsCorpLiability (corporate liability, tort, and procedural, N=79), and ClaimsURG (copyright claims under the Swiss Copyright Act, N=117). ClaimsServices serves as the reference category because it has the most heterogeneous composition and lies closest to the sample median. The three remaining categories cover non-claim disputes: IP (intellectual property and competition law, N=116), Corporate (corporate law disputes, such as challenges to shareholder resolutions, N=42), and Miscellaneous (all other disputes, N=47). All eight non-reference groups enter the regression as binary indicators.

[77] Models (1) through (3) can be read as a pre-procedural baseline specification that includes only variables typically observable before the procedural trajectory unfolds. Models (4) through (6) extend this baseline with realized procedural characteristics and should therefore be interpreted as descriptive decompositions conditional on the observed procedural path.

[78] The procedural complexity indicators (Model (4)) comprise seven binary variables capturing the key stages of the proceedings. At least some of these variables, such as the second exchange of written submissions and the scheduling of settlement hearings, depend on the court's case management. The coefficients on the procedural indicators should therefore be read as conditional associations rather than causal effects.

[79] The plaintiff loss share (Model (5)) indicates the proportion to which the plaintiff was unsuccessful in the proceedings (0 = full success, 1 = full loss). In the case of court costs, the share of defeat determines only the allocation of the fee between the parties, not its amount. By contrast, in the case of party compensation, it affects, through the set-off of the respective shares of success, whether and to what extent an entitlement to compensation arises, and is therefore also relevant for the amount effectively awarded. The court determines the share of defeat in the same decision in which it rules on the cost consequences. The variable therefore has the character of an outcome-proximate quantity determined jointly with the cost decision.

[80] Year fixed effects are based on the judgment year. Because cantonal fee schedules did not change during the 2011 to 2025 observation period, they capture time trends in judicial cost-setting practice.[69]

[81] Judge indicators (Model (6)) capture differences across judges in cost-setting. The inclusion of judge indicators is motivated by a well-established finding in the empirical literature: the identity of the deciding judge can systematically influence case outcomes.[70] By including a separate indicator for each judge, the model absorbs all time-invariant, unobserved characteristics of a judge, such as individual attitudes toward fee-setting, strictness, or legal philosophy, that may systematically affect the costs awarded. A minimum caseload threshold per judge is imposed to ensure that the individual judge estimates are based on a sufficient number of observations,

69 The temporal pattern of the year fixed effects is examined in Section 5.

70 Orley Ashenfelter/Theodore Eisenberg/Stewart J. Schwab, Politics and the judiciary: The influence of judicial background on case outcomes. International Review of Law and Economics 1995/15/3, 247–259; Theodore Eisenberg/Talia Fisher/Issachar Rosen-Zvi, Does the judge matter? Exploiting random assignment on a court of last resort to assess judge and case selection effects. Journal of Empirical Legal Studies 2012/9/2, 246–290.

as judge indicators estimated from very few cases can produce unreliable results.[71] Thus, only judges with at least 15 cases for Zurich and at least 10 for Aargau are modelled individually. Judges with fewer cases are pooled into a residual category. The most frequent judge serves as the reference. Strictly speaking, these are grouped judge dummies.[72]

4.2.3. Estimation

[82] This subsection describes the estimation method and the treatment of standard errors. The choice of estimator and the inference strategy are guided by the structure of the data.

[83] All models are estimated by ordinary least squares (OLS). Because the variance of the error term is unlikely to be constant across observations, given the wide range of values in dispute and the heterogeneous nature of the cases, standard errors are computed using the heteroskedasticity-consistent covariance matrix estimator HC1.[73] This ensures that the reported standard errors and test statistics remain valid even if the error variance differs across observations.

[84] A further concern arises from the fact that cases decided by the same judge may share unobserved characteristics, leading to correlated residuals within judge clusters. Standard robust standard errors do not account for this within-cluster correlation and may therefore understate the true uncertainty of the estimates. Because the number of judge clusters is small, particularly for Aargau, conventional cluster-robust standard errors may themselves be unreliable. To address both the within-judge residual correlation and the small-cluster problem, wild cluster bootstrap standard errors (999 replications, Rademacher weights) are computed at the presiding-judge level.[74]

5. Results

[85] This section presents the empirical findings. Section 5.1 describes the sample and the distributional properties of the key variables. Section 5.2 reports the regression results for court costs and party compensation. Section 5.3 presents robustness checks and sensitivity analyses.

5.1. Descriptive Results

[86] This subsection describes the sample composition, the distributional properties of the key variables, and the bivariate relationships among the regressors.

71 Brigham R. Frandsen/Lars J. Lefgren/Emily C. Leslie, Judging judge fixed effects. American Economic Review 2023/113/1, 253–277.

72 Frandsen/Lefgren/Leslie (Fn. 71); Eisenberg/Fisher/Rosen-Zvi (Fn. 70); Ashenfelter/Eisenberg/Schwab (Fn. 70).

73 Halbert White, A heteroskedasticity-consistent covariance matrix estimator and a direct test for heteroskedasticity. Econometrica 1980/48/4, 817–838.

74 Colin A. Cameron/Douglas L. Miller, A practitioner's guide to cluster-robust inference. Journal of Human Resources 2015/50/2, 317–372.

5.1.1. Key Statistics

[87] The regression sample comprises 976 observations for court costs and 898 for party compensation. The difference of 78 cases arises primarily from proceedings in which no quantified party compensation was awarded.

Variable	N	Mean	Std. Dev.	Minimum	P25	Median	P75	Maximum
Dependent and key variables								
Court costs (CHF)	976	41'675	132'133	300	5'000	13'500	36'000	3'000'000
Party compensation (CHF)	898	53'640	250'292	100	7'428	16'704	40'688	4'506'400
Baseline CC (CHF)	976	41'518	179'816	150	5'641	12'708	31'125	4'567'162
Baseline PC (CHF)	898	38'161	129'740	100	7'799	15'983	32'306	2'982'080
Value in dispute (CHF)	976	4'717'600	35'378'628	26	53'850	200'000	1'044'596	899'282'495
ln(CC/Baseline)	976	0.10	0.48	−3.82	−0.02	0.01	0.32	2.22
ln(PC/Baseline)	898	0.21	0.81	−5.13	−0.05	0.22	0.40	2.71
ln(Baseline CC)	976	9.31	1.76	5.01	8.64	9.45	10.35	15.33
ln(Baseline PC)	898	9.39	1.84	4.61	8.96	9.68	10.38	14.91
CC / DV (%)	976	49.14	224.05	0.01	3.02	6.09	10.00	3'452.77
PC / DV (%)	898	83.04	325.05	0.01	3.36	8.36	15.25	3'515.87
(CC + PC) / DV (%)	898	135.77	549.50	0.81	6.75	14.75	24.86	6'968.64
Continuous regressors								
ln(Plaintiffs)	976	0.09	0.32	0.00	0.00	0.00	0.00	3.61
ln(Defendants)	976	0.08	0.30	0.00	0.00	0.00	0.00	3.00
Domicile plaintiff (CH)	976	0.82	0.38	0.00	1.00	1.00	1.00	1.00
Domicile defendant (CH)	976	0.87	0.33	0.00	1.00	1.00	1.00	1.00
Plaintiff loss share	976	0.44	0.46	0.00	0.00	0.20	1.00	1.00
Claim type dummies (ref: Services)								
D_Claims_Construction	976	0.15	0.36	0.00	0.00	0.00	0.00	1.00
D_Claims_Trade	976	0.11	0.32	0.00	0.00	0.00	0.00	1.00
D_Claims_FinInsurance	976	0.19	0.39	0.00	0.00	0.00	0.00	1.00
D_Claims_CorpLiability	976	0.08	0.27	0.00	0.00	0.00	0.00	1.00
D_Claims_URG	976	0.12	0.32	0.00	0.00	0.00	0.00	1.00
D_IP	976	0.12	0.32	0.00	0.00	0.00	0.00	1.00
D_Corporate	976	0.04	0.20	0.00	0.00	0.00	0.00	1.00
D_Miscellaneous	976	0.05	0.21	0.00	0.00	0.00	0.00	1.00
Process complexity indicators								
Defence filed	976	0.70	0.46	0.00	0.00	1.00	1.00	1.00
Second exchange	976	0.67	0.47	0.00	0.00	1.00	1.00	1.00
Counterclaim filed	976	0.09	0.28	0.00	0.00	0.00	0.00	1.00
Counterclaim 2nd exchange	976	0.08	0.27	0.00	0.00	0.00	0.00	1.00
Additional filings	976	0.56	0.50	0.00	0.00	1.00	1.00	1.00
Settlement hearing	976	0.47	0.50	0.00	0.00	0.00	1.00	1.00
Expert report	976	0.07	0.26	0.00	0.00	0.00	0.00	1.00
Canton and other descriptives								
D_AG (Aargau)	976	0.10	0.31	0.00	0.00	0.00	0.00	1.00
Duration (days)	976	699.73	631.47	26.00	201.75	644.00	923.00	7'256.00
Judgment pages	974	35.20	34.31	5.00	12.00	24.00	46.00	281.00

Source: Own calculations.

Table 8: Descriptive statistics of regression variables (N=976).

[88] Mean court costs are approximately CHF 42'000 with a median of CHF 13'500. Mean party compensation in the regression sample (N=898) is approximately CHF 54'000 with a median of CHF 16'700. Both distributions are strongly right-skewed. Values in dispute range from CHF 26 to approximately CHF 899 million, with a median of CHF 200'000. Approximately 10.5% of observations are from the Aargau commercial court.

[89] The dependent variable for court costs, ln(Court costs/Baseline), has a mean of 0.097 and a standard deviation of 0.482. The median is close to zero (0.01), indicating that actual court costs are on average close to the base tariff. The analogous variable for party compensation, ln(Party compensation/Baseline), has a mean of 0.211 and a standard deviation of 0.810. Judicial discretion thus appears to be exercised more broadly for party compensation.

[90] At the median, court costs amount to approximately 6.1% and party compensation to approximately 8.4% of the value in dispute. The median total burden from court costs and party compensation is approximately 14.8% of the value in dispute. This value is the median of the case-level ratio (CC+PC)/DV and differs from the sum of the individual medians (6.1%+8.4% = 14.5%) because, in non-normal distributions, the median of a sum does not equal the sum of the medians.

5.1.2. Case and Party Characteristics

[91] The following paragraphs describe the composition of the parties and the distribution of case-level and procedural characteristics in the regression sample.

[92] Among plaintiffs, stock corporations are the most frequent legal form (41.5%), followed by foreign legal forms (13.9%) and natural persons (13.7%). Cooperatives appear almost exclusively as plaintiffs (12.1% versus 0.4% on the defendant side). This asymmetry is largely driven by copyright (URG) cases, where collective rights management organizations, organized as cooperatives, frequently act as plaintiffs.[75] On the defendant side, stock corporations (59.7%) and limited liability companies (13.2%) dominate.

[93] Approximately 95.5% of plaintiffs are represented by counsel, while over one-third of defendants (35.0%) appear without an attorney. This finding is also driven by URG cases, where a defence is filed in only 17.1% of cases and defendants frequently remain absent from the proceedings. At the median, each party retains one attorney. On the plaintiff side, 37.2% retain more than one attorney, compared with 25% on the defendant side. Approximately 82% of first plaintiffs and 87% of first defendants are domiciled in Switzerland.

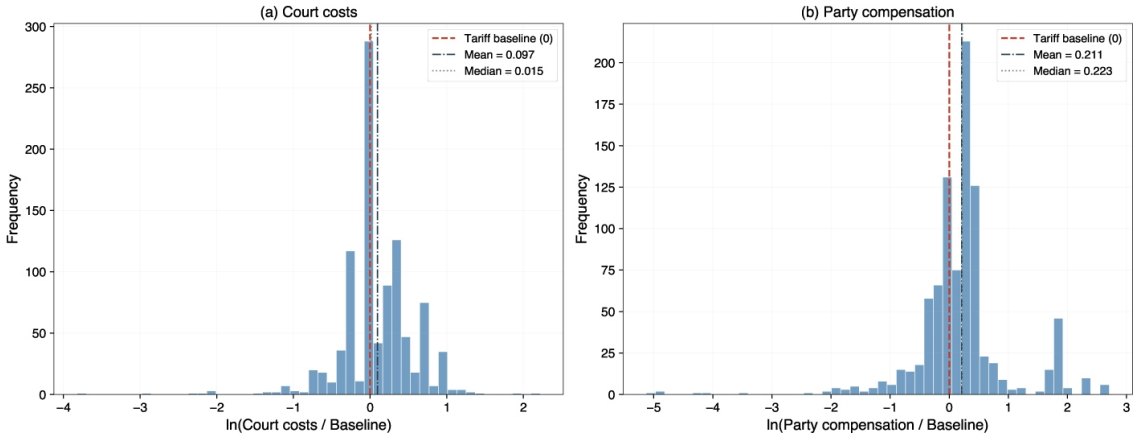
[94] The legal subject is a «Forderung» in approximately 79% of cases (divided into six thematic subgroups), an IP case in 12%, a corporate case in 4%, and a miscellaneous dispute in 5%.

[95] Among the procedural indicators, a defence was filed in 70% of cases. A second exchange of written submissions occurred in 67%, settlement hearings in 47%, and expert reports in 7%.

[96] Cases with expert reports differ markedly from the remainder of the sample. Their median duration is 1'208 days (versus 610), the median *PlaintiffLossShare* is 0.693 (versus 0.200), and the rates of a second exchange (94.4% versus 64.6%) and settlement hearings (70.8% versus 44.5%) are substantially higher.

[97] All procedural percentages refer to the full sample (N=976). The mean plaintiff loss share is 0.44. Mean duration is 700 days, mean judgment length in pages is 35.

75 E.g. HG ZH HG220135, as of 2 March 2023; HG ZH HG220007, as of 31 May 2023; HG ZH HG170054, as of 12 January 2018; HG AG HOR.2022.4, as of 8 April 2022; HG AG HOR.2023.46, as of 24 November 2023.



Source: Own calculations.

Figure 3: Distribution of ln(Court costs/Baseline) (N=976) and ln(Party compensation/Baseline) (N=898).

[98] As shown in Figure 3, both distributions are left-skewed (skewness: -1.15 for CC, -0.81 for PC) and leptokurtic (kurtosis: 8.15 and 8.40, respectively), indicating concentration near the base tariff at zero with occasional strong negative deviations. The reference line at zero marks the base tariff. Values above indicate that the court set costs above the base fee. Values below indicate costs below it.

5.1.3. Cross-Court and Cross-Group Comparison

[99] This subsection compares key descriptive statistics across the three commercial courts and across legal subject groups.

Variable	ZH ($n = 874$)	AG ($n = 102$)	BE ($n = 24$)
Court costs (CHF)	15'600	4'290	10'925
Party compensation (CHF)	17'500	10'591	17'666
Value in dispute (CHF)	232'636	60'160	100'000
Duration (days)	685	250	423
Judgment pages	26	17	17
Plaintiff loss share	0.250	0.000	0.030

Source: Own calculations.

Table 9: Median comparison of key variables across commercial courts.

[100] Median court costs in Bern (CHF 10'925) fall between Zurich (CHF 15'600) and Aargau (CHF 4'290). For party compensation, Bern (CHF 17'666) is nearly on par with Zurich (CHF 17'500) and well above Aargau (CHF 10'591). Median values in dispute are lower in Bern (CHF 100'000) than in Zurich (approximately CHF 233'000) but higher than in Aargau (approximately CHF 60'000). Median duration in Bern is 423 days, between Zurich (685 days) and Aargau (250 days).

[101] The case composition in Bern is distinctive. IP cases account for approximately 31% of the Bern sample, compared with approximately 11% in Zurich. The defence rate is 88%, higher than

in Zurich and Aargau (approximately 70% each), which supports the conjecture that the lower defence rate in the other cantons is partly attributable to URG cases. Settlement hearings occur much less frequently in Bern (12% versus 47% in Zurich). These compositional and procedural differences constrain the comparability of cost measures across courts. The Bern figures are further subject to considerable uncertainty given the small sample size (n=24).

Group	N_{CC}	N_{PC}	Med. DV (CHF)	Med. CC (CHF)	Med. PC (CHF)	Med. Dur. (d)	Def. rate	2nd exch.	Expert
Claims Services (Ref.)	134	124	172'808	11'900	17'000	612	65.7%	64.2%	2.2%
Claims Construction	147	138	292'679	17'000	17'500	834	81.0%	80.3%	11.6%
Claims Trade	110	99	100'952	8'000	13'800	370	54.5%	50.9%	8.2%
Claims Fin/Insurance	184	170	1'096'800	36'000	36'350	868	92.4%	89.7%	16.3%
Claims Corp. Liability	79	72	392'977	18'000	25'374	709	82.3%	81.0%	6.3%
Claims URG	117	114	300	400	650	118	17.1%	17.1%	0.0%
IP	116	106	250'000	13'875	16'250	644	73.3%	69.0%	2.6%
Corporate	42	28	193'676	12'250	14'000	436	85.7%	59.5%	7.1%
Miscellaneous	47	47	200'000	15'000	21'000	610	83.0%	80.9%	4.3%

Source: Own calculations.

Table 10: Descriptive statistics by legal subject group.

[102] Heterogeneity across legal-subject groups is substantial. URG cases, with a median value in dispute of CHF 300 and a median duration of 118 days, have a fundamentally different profile than Claims Fin/Insurance cases (median value in dispute approximately CHF 1.1 million, duration 868 days). The defence rate ranges from 17.1% (URG) to 92.4% (Fin/Insurance). Expert reports are most common in Fin/Insurance cases (16.3%) and never occur in URG cases. The Corporate category shows the largest gap between the CC and PC samples (42 versus 28), suggesting that approximately one-third of corporate cases do not result in a quantified party compensation award.

5.1.4. Bivariate Correlations

[103] Before turning to the multivariate analysis, this subsection examines the pairwise correlations among the regressors.

[104] The most notable correlation is between Defence and Second Exchange (r=0.907), indicating that nearly all cases with a second exchange also have a defence filed. Other notable correlations exist between Duration and Pages (r=0.622), Defence and Settlement Hearing (r=0.602), and the baseline and Defence (r=0.492).[76]

	ln(BL)	ln(Pl)	ln(Def)	Dom Pl	Dom Def	Def.	2nd Ex.	Settl.	Expert	Pl Loss	D_AG	Dur.	Pages
ln(Baseline CC)	1.000												
ln(Plaintiffs)	0.126	1.000											
ln(Defendants)	0.222	0.132	1.000										
Domicile Pl.	−0.290	−0.066	0.019	1.000									
Domicile Def.	−0.155	0.046	−0.099	0.091	1.000								
Defence	0.492	0.111	0.111	−0.156	0.035	1.000							
Second Exchange	0.454	0.098	0.118	−0.148	0.022	0.907	1.000						
Settlement Hrg.	0.387	−0.016	0.079	−0.112	0.014	0.602	0.595	1.000					
Expert Report	0.149	0.109	0.036	−0.013	0.072	0.168	0.165	0.137	1.000				
Plaintiff Loss	0.448	0.018	0.158	−0.146	0.002	0.494	0.481	0.368	0.114	1.000			
D_AG	−0.143	−0.055	−0.033	0.068	0.088	−0.089	−0.079	−0.160	−0.044	−0.093	1.000		
Duration	0.467	0.164	0.187	−0.170	−0.069	0.497	0.499	0.428	0.361	0.307	−0.195	1.000	
Pages	0.447	0.159	0.265	−0.130	0.016	0.443	0.467	0.402	0.299	0.289	−0.127	0.622	1.000

Source: Own calculations.

Table 11: Pearson correlation matrix of regression variables (N=976).

[105] Defence and Second Exchange exhibit moderately elevated VIF values (CC: 6.99 and 6.54; PC: 7.84 and 7.30), as do the mechanically related Counterclaim and Counterclaim × Second Exchange variables (CC: 6.53–6.58; PC: 7.69–7.74), all consistent with their high bivariate correlations but within the commonly accepted threshold of 10. All remaining individual regressors have VIF values well below 5.[77]

[76] The high correlation between Defence and Second Exchange (suggesting multicollinearity) is addressed in the interpretation and limitations. Variance inflation factors (VIF) for all regressors are reported in Appendix 3.

[77] See Appendix 3 for the full table.

5.2. Regression Results

[106] This subsection presents the regression estimates for court costs and party compensation. The full model is built up sequentially, adding variable blocks one at a time, to isolate the incremental contribution of each group of predictors.

	Model (1)		Model (2)		Model (3)		Model (4)		Model (5)		Model (6)	
	CC	PC	CC	PC	CC	PC	CC	PC	CC	PC	CC	PC
Intercept	0.920***	2.399***	1.105***	2.601***	0.698**	1.355***	0.805***	1.438***	0.805***	1.505***	0.927***	1.888***
	(0.109)	(0.135)	(0.163)	(0.317)	(0.292)	(0.423)	(0.242)	(0.393)	(0.242)	(0.397)	(0.284)	(0.393)
ln(Baseline)	−0.088***	−0.233***	−0.096***	−0.256***	−0.055**	−0.122***	−0.112***	−0.165***	−0.112***	−0.172***	−0.111***	−0.170***
	(0.012)	(0.015)	(0.012)	(0.014)	(0.026)	(0.029)	(0.024)	(0.030)	(0.024)	(0.030)	(0.024)	(0.030)
D_AG			−0.526	−3.812***	−1.152	−4.855***	−0.790	−4.638***	−0.790	−4.618***	−0.518	−3.414***
			(0.478)	(0.260)	(0.723)	(0.724)	(0.630)	(0.536)	(0.630)	(0.538)	(0.492)	(0.405)
D_AG × ln(BL)			0.017	0.377***	0.097	0.483***	0.058	0.464***	0.058	0.463***	0.057	0.463***
			(0.058)	(0.029)	(0.088)	(0.081)	(0.076)	(0.059)	(0.076)	(0.060)	(0.076)	(0.059)
ln(Plaintiffs)					0.062	−0.161	0.059*	−0.136	0.059*	−0.124	0.052	−0.130
					(0.045)	(0.099)	(0.033)	(0.099)	(0.033)	(0.100)	(0.033)	(0.099)
ln(Defendants)					0.102*	0.208*	0.084	0.178	0.084	0.163	0.092	0.176
					(0.062)	(0.111)	(0.055)	(0.111)	(0.055)	(0.112)	(0.056)	(0.108)
Domicile plaintiff					−0.120***	−0.165***	−0.088**	−0.133**	−0.088**	−0.133**	−0.086**	−0.129**
					(0.045)	(0.059)	(0.036)	(0.055)	(0.036)	(0.055)	(0.036)	(0.059)
Domicile defendant					−0.013	0.005	−0.081**	−0.029	−0.081**	−0.028	−0.079**	−0.022
					(0.043)	(0.064)	(0.038)	(0.062)	(0.038)	(0.062)	(0.038)	(0.063)
D_Construction					0.161***	−0.160*	0.033	−0.201**	0.033	−0.210**	0.037	−0.208**
					(0.043)	(0.082)	(0.033)	(0.087)	(0.033)	(0.086)	(0.033)	(0.087)
D_Trade					−0.031	−0.045	0.011	0.012	0.011	0.013	0.007	0.004
					(0.053)	(0.060)	(0.037)	(0.053)	(0.037)	(0.053)	(0.037)	(0.054)
D_FinInsurance					0.179***	−0.049	0.057	−0.105	0.057	−0.126*	0.068*	−0.120
					(0.044)	(0.077)	(0.036)	(0.071)	(0.036)	(0.073)	(0.037)	(0.074)
D_CorpLiability					0.025	−0.007	−0.004	−0.052	−0.004	−0.057	−0.006	−0.064
					(0.063)	(0.083)	(0.051)	(0.080)	(0.051)	(0.080)	(0.051)	(0.084)
D_URG					0.521***	1.001***	0.587***	1.061***	0.587***	1.039***	0.592***	1.058***
					(0.124)	(0.171)	(0.100)	(0.150)	(0.100)	(0.152)	(0.099)	(0.150)
D_IP					0.062	−0.082	0.071*	−0.086	0.071*	−0.077	0.069*	−0.079
					(0.045)	(0.059)	(0.037)	(0.057)	(0.037)	(0.057)	(0.037)	(0.058)
D_Corporate					−0.313**	0.064	−0.221**	−0.037	−0.221**	−0.046	−0.227**	−0.045
					(0.144)	(0.086)	(0.102)	(0.092)	(0.102)	(0.091)	(0.102)	(0.087)
D_Miscellaneous					0.077	−0.067	0.020	−0.134*	0.020	−0.159**	0.029	−0.159*
					(0.053)	(0.082)	(0.046)	(0.079)	(0.046)	(0.080)	(0.047)	(0.082)
Defence filed							−0.094	0.009	−0.094	−0.009	−0.088	−0.004
							(0.113)	(0.187)	(0.113)	(0.186)	(0.112)	(0.188)
Second exchange							0.509***	0.361**	0.509***	0.331*	0.504***	0.319*
							(0.108)	(0.173)	(0.108)	(0.172)	(0.108)	(0.174)
Counterclaim filed							−0.154	−0.136	−0.154	−0.150	−0.159	−0.173
							(0.175)	(0.209)	(0.175)	(0.210)	(0.175)	(0.212)
Countercl. 2nd exch.							0.388**	0.153	0.388**	0.170	0.395**	0.192
							(0.175)	(0.217)	(0.175)	(0.218)	(0.175)	(0.222)
Additional filings							0.054	0.139***	0.054	0.142***	0.051	0.147***
							(0.033)	(0.052)	(0.033)	(0.052)	(0.032)	(0.054)
Settlement hearing							0.149***	0.024	0.149***	0.017	0.150***	0.023
							(0.031)	(0.056)	(0.031)	(0.056)	(0.031)	(0.057)
Expert report							0.110*	−0.308**	0.110*	−0.310**	0.123**	−0.319**
							(0.058)	(0.143)	(0.058)	(0.142)	(0.058)	(0.145)
Plaintiff loss share										0.120***		0.122***
										(0.043)		(0.044)
Year FE	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Judge FE	No	No	No	No	No	No	No	No	No	No	Yes	Yes
N	976	898	976	898	976	898	976	898	976	898	976	898
Adj. R^2	0.104	0.279	0.168	0.345	0.267	0.421	0.529	0.473	0.529	0.475	0.534	0.476
F-statistic	53.55	255.71	12.47	34.74	20.21	47.00	34.45	54.99	34.45	53.42	35.62	45.73

***p<0.01, **p<0.05, *p<0.10. HC1 robust standard errors in parentheses. Dependent variable: ln(Cost/Baseline); *Source*: Own calculations.

Table 12: Court cost and party compensation regression results, Models (1)-(6).

5.2.1. Court Costs

[107] In Model (1), the coefficient on the baseline term is negative and significant (-0.088, p<0.001). The adjusted R2 is 0.104. The base tariff alone explains approximately 10% of the variance in the cost deviation.

[108] Model (2) adds DAG, the interaction term with the baseline, and year fixed effects. The adjusted R2 rises to 0.168. DAG is negative (-0.526) but not significant (p=0.27). The interaction term is also not significant (0.017, p=0.77).

[109] Model (3) adds case characteristics. The adjusted R2 rises to 0.267. Swiss domicile of the lead plaintiff is significantly negative (-0.120, p<0.01). Among the legal subject dummies, DURG has the largest coefficient (+0.521, p<0.001), followed by DFinInsurance (+0.179, p<0.001) and DConstruction (+0.161, p<0.001). DCorporate is significantly negative (-0.313, p<0.05). The remaining claim-type dummies are not individually significant.

[110] Model (4) adds procedural complexity indicators. The adjusted R2 jumps from 0.267 to 0.529, a 26-percentage-point increase that represents the largest explanatory gain across all model steps. The coefficient on the baseline strengthens to -0.112 (p<0.001), suggesting a suppression effect discussed below. The second exchange has the strongest effect, followed by counterclaim with second exchange, settlement hearing, and expert report. Defence, counterclaim filed, and additional filings are not significant. DFinInsurance and DConstruction, both highly significant in Model (3), lose significance once procedural indicators are included. This suggests that the claim-type effects observed in Model (3) are largely mediated by differences in procedural complexity across case types.

[111] Model (5) is identical to Model (4) for court costs, as the plaintiff loss share is included only in the party compensation equation by design.

[112] The full Model (6) adds judge fixed effects and raises the adjusted R2 marginally to 0.534. In the log-linear deviation model, a coefficient on a binary indicator corresponds to a proportional effect of (exp()-1)Œ100% on the cost-to-baseline ratio.

[113] In Model (6), the coefficient on the baseline is -0.111 (p<0.001). The second exchange remains the strongest procedural predictor (+0.504, p<0.001), corresponding to approximately 65.5% higher court costs relative to the tariff baseline. Counterclaim with second exchange (+0.395, p<0.05; approximately 48.5%), settlement hearing (+0.150, p<0.001; approximately 16.2%), and expert report (+0.123, p<0.05; approximately 13.1%) also carry economically meaningful magnitudes. URG cases deviate most strongly from the baseline (+0.592, p<0.001; approximately 80.8% higher court costs). Defence, counterclaim filed, and additional filings remain insignificant.

5.2.2. Party Compensation

[114] For party compensation, the coefficient on the baseline in Model (1) is -0.233 (p<0.001), more negative than for court costs. The adjusted R2 is 0.279.

[115] Model (2) shows a strongly negative canton dummy DAG (-3.812, p<0.001) and a positive interaction term (+0.377, p<0.001). The adjusted R2 rises to 0.345.

[116] After adding case characteristics in Model (3), the adjusted R2 reaches 0.421. The URG claims dummy is the strongest individual coefficient (+1.001, p<0.001). DAG strengthens to -4.855 and remains highly significant.

[117] Model (4) adds procedural complexity indicators. The explanatory gain is markedly smaller for party compensation (approximately 5 percentage points to adjusted R2 0.473) than for court costs (26 percentage points), indicating that procedural complexity plays a less prominent role.

[118] Model (5) adds the plaintiff loss share (+0.120, $p<0.01$; adjusted R2: 0.475).

[119] In the full Model (6) (adjusted R2: 0.476), the coefficient on the baseline is -0.170 ($p<0.001$). DAG is -3.414 ($p<0.001$), the interaction term +0.463 ($p<0.001$). The second exchange corresponds to approximately 37.6% higher party compensation, while an expert report is associated with approximately 27.3% *lower* compensation, a sign reversal relative to court costs discussed in Section 7. Additional filings, significant only for party compensation (+0.147, $p<0.01$; approximately 15.8%), suggest that additional party submissions primarily affect the compensation component. URG cases deviate most strongly from the tariff (+1.058, $p<0.001$; approximately 188% above the baseline).

[120] Model (6) serves as the preferred specification for both dependent variables. The economic magnitudes reported above underscore that procedural complexity indicators and legal-subject characteristics are associated with economically substantial cost differences beyond the base tariff. Full coefficient estimates for all six models are reported in Table 12.

5.2.3. Variance Decomposition and Model Fit

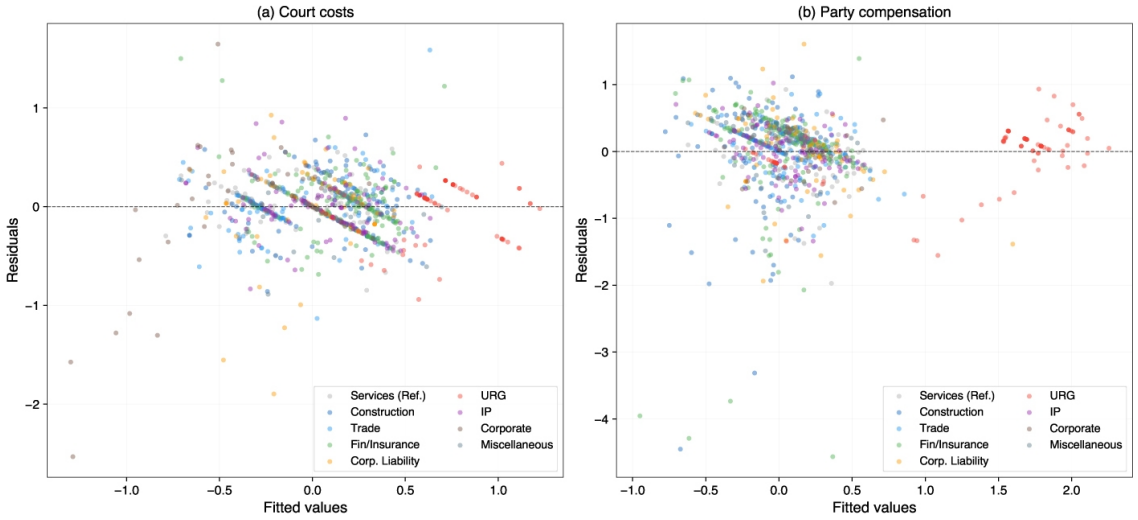
[121] This subsection quantifies the incremental explanatory contribution of each variable block and examines the residual structure of the preferred specification.

[122] A sequential decomposition of the adjusted R2 highlights the relative contribution of each variable block.[78]

[123] For court costs, ln(Baseline) alone explains 10.4% of the variation in Model (1). The canton, interaction term, and year fixed effects add 6.4 percentage points in Model (2). Case characteristics contribute a further 10.0 percentage points in Model (3). By far the largest incremental gain comes from the procedural indicators in Model (4), which add 26.1 percentage points. Judge fixed effects in Model (6) contribute only 0.5 percentage points.

[124] For party compensation, the ordering differs. ln(Baseline) already explains 27.9% in Model (1), canton and year effects add 6.7 percentage points, case characteristics 7.6 percentage points, and procedural indicators only 5.1 percentage points. The asymmetry in the procedural-indicator contribution between the two models is notable: procedural complexity is a much stronger driver of court cost deviations than of party compensation deviations, consistent with the observation that court costs more directly reflect judicial effort whereas party compensation is primarily tariff-based. The substantially lower explanatory power for party compensation, and its strong dependence on the URG group, indicate that the party compensation model captures a more heterogeneous and fragile relationship than the court cost model.

78 Contributions are computed from unrounded adjusted R2 values. Due to rounding of adjusted R2 to three decimal places in the regression table, back-calculation from the table may yield different increments.



Source: Own calculations.

Figure 4: Fitted versus residuals, court cost (N=976) and party compensation model (6) (N=898).

[125] Figure 4 plots fitted values against residuals for both models. In the court cost model (Panel a, unadjusted R2=0.555), residuals are broadly symmetric around zero with negative outliers at low fitted values. In the party compensation model (Panel b, unadjusted R2=0.503), residual dispersion is larger, particularly at low and high fitted values, suggesting moderate heteroskedasticity. The use of HC1-robust standard errors in all specifications addresses this pattern. The color coding by legal subject group shows that URG cases (low fitted values) and Fin/Insurance cases (high fitted values) dominate the tails of the distribution.

5.3. Robustness Checks

[126] Five robustness checks are conducted to assess the stability of the main results. ln(Duration) and ln(Pages) are introduced as supplementary workload proxies, but because both are outcome variables, they enter only as sensitivity controls rather than core regressors.[79] A level equation with ln(Cost) as the dependent variable tests whether the coefficient on ln(Baseline) differs significantly from one. The sample is further restricted to the common period 2017–2025 to ensure a symmetric cantonal comparison, while separate canton regressions examine whether the pooled relationships are stable within each jurisdiction. In addition, *PlaintiffLossShare* is included in the court cost equation to assess whether the share of defeat affects the cost level beyond its role in cost allocation.

79 Joshua D. Angrist/Jörn-Steffen Pischke, Mostly Harmless Econometrics: An Empiricist's Companion, Princeton 2009.

5.3.1. Alternative Specifications

	R1: +Dur. +Pages		R2: Level eqn.		R3: 2017-2025		R5: PlLoss
	CC	PC	CC	PC	CC	PC	CC
Intercept	−0.260 (0.245)	1.683*** (0.583)	0.927*** (0.284)	1.888*** (0.393)	0.571*** (0.207)	1.746*** (0.318)	0.904*** (0.282)
ln(Baseline)	−0.163*** (0.022)	−0.162*** (0.030)	0.889*** (0.024)	0.830*** (0.030)	−0.100*** (0.023)	−0.206*** (0.034)	−0.108*** (0.023)
D_AG	−0.400 (0.419)	−3.422*** (0.420)	−0.518 (0.492)	−3.414*** (0.405)	−0.555 (0.504)	−3.382*** (0.389)	−0.521 (0.491)
D_AG × ln(BL)	0.047 (0.065)	0.467*** (0.061)	0.057 (0.076)	0.463*** (0.059)	0.063 (0.078)	0.461*** (0.057)	0.058 (0.076)
ln(Plaintiffs)	0.011 (0.032)	−0.128 (0.099)	0.052 (0.033)	−0.130 (0.099)	0.057 (0.047)	0.069 (0.068)	0.047 (0.034)
ln(Defendants)	0.013 (0.049)	0.191* (0.111)	0.092 (0.056)	0.176 (0.108)	0.103 (0.064)	0.318*** (0.088)	0.098* (0.056)
Domicile plaintiff	−0.070** (0.030)	−0.124** (0.060)	−0.086** (0.036)	−0.129** (0.059)	−0.073* (0.042)	−0.135** (0.063)	−0.087** (0.036)
Domicile defendant	−0.053 (0.033)	−0.007 (0.065)	−0.079** (0.038)	−0.022 (0.063)	−0.048 (0.049)	−0.043 (0.054)	−0.078** (0.038)
D_Construction	−0.026 (0.029)	−0.196** (0.089)	0.037 (0.033)	−0.208** (0.087)	0.085** (0.040)	−0.109 (0.083)	0.041 (0.033)
D_Trade	0.019 (0.035)	0.005 (0.053)	0.007 (0.037)	0.004 (0.054)	0.027 (0.050)	−0.003 (0.061)	0.008 (0.037)
D_FinInsurance	0.000 (0.031)	−0.112 (0.072)	0.068* (0.037)	−0.120 (0.074)	0.106** (0.046)	−0.056 (0.091)	0.075** (0.037)
D_CorpLiability	−0.009 (0.049)	−0.067 (0.084)	−0.006 (0.051)	−0.064 (0.084)	0.014 (0.067)	−0.001 (0.094)	−0.002 (0.051)
D_URG	0.551*** (0.087)	1.102*** (0.155)	0.592*** (0.099)	1.058*** (0.150)	0.622*** (0.103)	0.880*** (0.165)	0.596*** (0.099)
D_IP	0.004 (0.031)	−0.074 (0.060)	0.069* (0.037)	−0.079 (0.058)	0.123*** (0.044)	−0.123* (0.068)	0.065* (0.037)
D_Corporate	−0.136* (0.081)	−0.055 (0.088)	−0.227** (0.102)	−0.045 (0.087)	−0.082 (0.114)	0.001 (0.091)	−0.217** (0.101)
D_Miscellaneous	0.036 (0.041)	−0.153* (0.083)	0.029 (0.047)	−0.159* (0.082)	0.023 (0.066)	−0.234** (0.118)	0.039 (0.046)
Defence filed	−0.154* (0.086)	−0.009 (0.179)	−0.088 (0.112)	−0.004 (0.188)	0.002 (0.125)	−0.025 (0.234)	−0.081 (0.112)
Second exchange	0.225*** (0.079)	0.327* (0.196)	0.504*** (0.108)	0.319* (0.174)	0.357*** (0.120)	0.274 (0.220)	0.513*** (0.109)
Counterclaim filed	−0.129 (0.145)	−0.178 (0.216)	−0.159 (0.175)	−0.173 (0.212)	−0.200 (0.272)	−0.039 (0.336)	−0.155 (0.175)
Countercl. 2nd exch.	0.263* (0.146)	0.209 (0.226)	0.395** (0.175)	0.192 (0.222)	0.467* (0.269)	0.085 (0.338)	0.390** (0.175)
Additional filings	−0.015 (0.026)	0.154*** (0.057)	0.051 (0.032)	0.147*** (0.054)	0.036 (0.042)	0.138** (0.064)	0.050 (0.032)
Settlement hearing	0.041 (0.027)	0.025 (0.062)	0.150*** (0.031)	0.023 (0.057)	0.115*** (0.036)	0.028 (0.067)	0.152*** (0.031)
Expert report	−0.028 (0.051)	−0.321** (0.131)	0.123** (0.058)	−0.319** (0.145)	0.139 (0.089)	−0.424 (0.262)	0.124** (0.058)
Plaintiff loss share		0.117*** (0.045)		0.122*** (0.044)		0.121** (0.052)	−0.049 (0.031)
ln(Duration)	0.238*** (0.035)	0.051 (0.071)					
ln(Pages)	0.194*** (0.026)	−0.073 (0.058)					
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
N	974	896	976	898	663	617	976
Adj. R^2	0.652	0.477	0.961	0.860	0.536	0.570	0.534
F-statistic	44.58	46.15	1709.11	741.93	33.55	76.47	34.78

***p<0.01, **p<0.05, *p<0.10. HC1 robust standard errors in parentheses. R1-R3, R5: deviation model. R2: level equation with ln(Cost) as dependent variable; *Source:* Own calculations.

Table 13: Robustness analyses for court costs and party compensation.

[127] The first robustness analysis (R1) augments the full model with ln(Duration) and ln(Pages). For court costs, the adjusted R2 rises from 0.534 to 0.652 (+0.118). Both variables are significantly positive (ln(Duration) = +0.238, p<0.001; ln(Pages) = +0.194, p<0.001). For party compensation, the explanatory gain is negligible (adjusted R2 from 0.476 to 0.477).

[128] The level equation (R2), which uses ln(Cost) rather than ln(Cost/Baseline) as the dependent variable, yields a coefficient on the baseline of 0.889 (p<0.001) for court costs and 0.830 (p<0.001) for party compensation. Both values are significantly below one.

[129] Restricting the sample to the overlapping time window 2017 to 2025 (R3) yields adjusted R2 values of 0.536 (court costs, n=663) and 0.570 (party compensation, n=617). The coefficient patterns remain stable. The separate canton regressions (R4) show adjusted R2 values for Zurich of 0.554 (court costs, n=874) and 0.489 (party compensation, n=802). For Aargau the values are 0.518 (court costs, n=102) and 0.531 (party compensation, n=96). The coefficient on the baseline in the separate Aargau party compensation regression is positive (+0.095,

p<0.10), directionally consistent with the implied Aargau baseline elasticity in the pooled model (-0.170+0.463=+0.293), though smaller in magnitude.

5.3.2. Inference and Sensitivity

	Zurich		Aargau	
	CC	PC	CC	PC
Intercept	0.846*** (0.300)	1.480*** (0.449)	−0.322 (0.336)	−1.304** (0.533)
ln(Baseline)	−0.101*** (0.025)	−0.127*** (0.037)	−0.093** (0.047)	0.095* (0.054)
ln(Plaintiffs)	0.044 (0.034)	−0.139 (0.102)	0.184 (0.216)	−0.093 (0.234)
ln(Defendants)	0.113** (0.053)	0.150 (0.109)	−0.403*** (0.129)	0.388* (0.218)
Domicile plaintiff	−0.084** (0.034)	−0.126** (0.060)	−0.029 (0.195)	0.170 (0.166)
Domicile defendant	−0.115*** (0.033)	−0.037 (0.063)	0.728*** (0.206)	0.393 (0.310)
D_Construction	0.044 (0.034)	−0.237*** (0.092)	0.015 (0.141)	−0.094 (0.137)
D_Trade	−0.001 (0.040)	−0.011 (0.056)	−0.035 (0.120)	−0.017 (0.136)
D_FinInsurance	0.074** (0.037)	−0.145* (0.074)	−0.259 (0.287)	0.239 (0.231)
D_CorpLiability	0.026 (0.050)	−0.046 (0.089)	−0.044 (0.137)	−0.042 (0.134)
D_URG	0.673*** (0.104)	1.307*** (0.187)	0.336** (0.155)	0.212 (0.181)
D_IP	0.073* (0.038)	−0.080 (0.060)	0.252 (0.180)	0.199 (0.196)
D_Corporate	−0.313*** (0.109)	−0.087 (0.095)	0.119 (0.377)	0.438 (0.298)
D_Miscellaneous	0.037 (0.043)	−0.150* (0.084)	−0.057 (0.202)	−0.009 (0.189)
Defence filed	−0.079 (0.116)	0.019 (0.206)	0.211 (0.199)	0.469* (0.253)
Second exchange	0.480*** (0.110)	0.299 (0.189)	0.439** (0.207)	−0.024 (0.251)
Counterclaim filed	−0.229 (0.180)	−0.247 (0.220)	−0.308 (0.389)	0.302 (0.315)
Countercl. 2nd exch.	0.460** (0.181)	0.244 (0.230)	0.652 (0.535)	0.324 (0.495)
Additional filings	0.052* (0.031)	0.128** (0.059)	−0.108 (0.097)	0.018 (0.088)
Settlement hearing	0.154*** (0.032)	0.004 (0.061)	0.192 (0.125)	0.220** (0.106)
Expert report	0.148*** (0.053)	−0.306** (0.152)	−0.421* (0.245)	−0.033 (0.281)
Plaintiff loss share		0.132*** (0.047)		−0.194 (0.129)
Year FE	Yes	Yes	Yes	Yes
Judge FE	Yes	Yes	No	No
N	874	802	102	96
Adj. R^2	0.554	0.489	0.518	0.531
F-statistic	39.11	54.10	14.02	10.66

***p<0.01, **p<0.05, *p<0.10. HC1 robust standard errors in parentheses; *Source*: Own calculations.

Table 14: Separate canton regressions for court costs and party compensation.

[130] Including the plaintiff loss share in the court cost equation (R5) yields a coefficient of -0.049 (p=0.11). The variable is not significant for court costs, supporting the specification decision to include it only in the party compensation equation. The wild cluster bootstrap at the judge level (999 replications, Rademacher weights) confirms the core HC1 inference results. Of 47 variables (23 CC, 24 PC), 11 change significance level, with ten changes in the direction of tightening (higher significance under bootstrap). The central coefficients, the canton dummy, the baseline

effect, DClaims_URG, Second Exchange (CC), Settlement Hearing (CC), Additional Filings (PC), and Plaintiff Loss Share, remain significant at the 1% level. The only variable that loses significance under bootstrap is DIP for court costs (HC1: p=0.062; bootstrap: p=0.134). Conversely, Additional Filings for court costs (HC1: p=0.115; bootstrap: p=0.002) and DClaims_FinInsurance for party compensation (HC1: p=0.103; bootstrap: p=0.022) gain significance. That HC1 tends to over- or under-reject with only 11 judge clusters is expected;[80] see Appendix 2 for the full comparison of HC1 and bootstrap p-values.

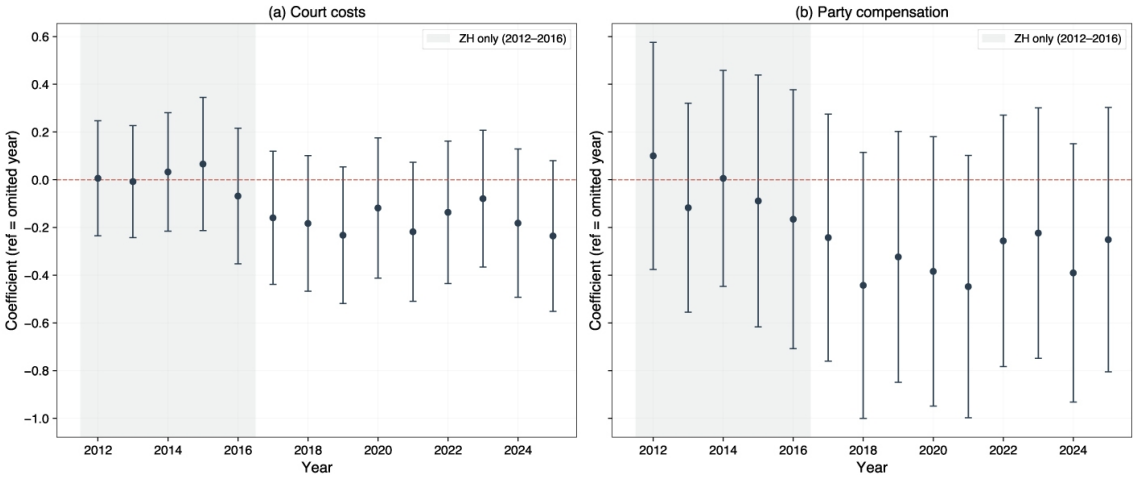
[131] To test whether the main results are driven by the structurally distinct URG cases, Model (6) is re-estimated excluding the 117 URG observations for court costs and 114 for party compensation. For court costs (n=859), the baseline coefficient changes from -0.111 to -0.078 ($p<0.01$), and the procedural indicators retain their significance pattern: Second Exchange (+0.544, $p<0.001$), Settlement Hearing (+0.128, $p<0.001$), and Expert Report (+0.125, $p<0.05$). The adjusted R2 decreases from 0.534 to 0.438, reflecting the loss of the strong URG group effect. For party compensation (n=784), the exclusion has a more pronounced effect: the baseline coefficient decreases from -0.170 to -0.053 and loses significance (p=0.107), and the adjusted R2 drops substantially from 0.476 to 0.087. This confirms that URG cases, with their very low values in dispute and large positive tariff deviations, are a material driver of the party compensation model's explanatory power. The level equation without URG yields a baseline elasticity of 0.922 for court costs and 0.948 for party compensation, both still below one, confirming the compression finding albeit at a reduced magnitude compared to the full sample (0.889 and 0.830, respectively). For court costs, the main results are robust to the exclusion of URG cases. For party compensation, the results are substantially dependent on the inclusion of URG cases.

[132] Excluding the top 1% of observations by value in dispute (10 cases with values in dispute above CHF 89.4 million for court costs; 9 cases above CHF 61.3 million for party compensation) yields a coefficient of -0.081 ($p<0.001$) for court costs and -0.183 ($p<0.001$) for party compensation. The adjusted R2 remains at 0.552 (court costs) and 0.490 (party compensation), both marginally higher than full-sample values. The procedural indicators retain their significance patterns. The coefficient patterns are robust to excluding extreme-value cases.

5.3.3. Temporal Stability

[133] This subsection examines whether the cost-setting patterns exhibit systematic temporal trends over the observation period.

80 Cameron/Miller (Fn. 74).



Source: Own calculations.

Figure 5: Year fixed effects with 95% confidence intervals, Model (6) (N=976 CC, N=898 PC). Shaded area marks years 2012–2016 (Zurich observations only).

[134] The estimated year fixed effects are displayed in Figure 5. Year fixed effects for 2012–2016 are identified exclusively from Zurich, as Aargau cases only enter the sample from 2017. For court costs, the coefficients are small and statistically insignificant throughout. They range from -0.236 (2025) to +0.066 (2015), and all 95% confidence intervals include zero. The point estimates suggest a mild downward drift after 2016, but even the largest negative coefficient (2025) does not reach conventional significance. For party compensation, the pattern is qualitatively similar but noisier. Coefficients range from -0.448 (2021) to +0.100 (2012), with wider confidence intervals reflecting the smaller sample and greater residual variation. Again, no individual year coefficient is statistically significant at the 5% level. The overall pattern for both models is one of broad temporal stability rather than a monotone trend.

6. Ex Ante Perspective

[135] For practical litigation budgeting, a key question arising from the preceding analysis is how well the direct cost exposure from commercial court litigation can be estimated at the time of filing.[81] This section complements the ex post analysis with a budgeting and planning perspective, asking how well court-determined litigation costs can be estimated using only information available at the time of filing. Section 6.1 describes the model specification and the qualifications that apply to its interpretation. Section 6.2 presents the results. Section 6.3 compares the predictive power of the ex ante model with the full specification and discusses practical implications for cost budgeting.

81 The author acknowledges that the regression formulas presented in this paper may not be immediately accessible to all legal practitioners. To facilitate practical application, a spreadsheet tool has been developed that estimates litigation costs before Swiss commercial courts on the basis of the applicable cantonal fee schedules and the empirical findings of this study. The tool incorporates the ex ante model and is available free of charge at www.adriankoenig.ch under «Downloads.» The author assumes no liability for its use.

6.1. Specification and Qualifications

[136] This subsection defines the ex ante model and sets out the assumptions and qualifications that apply to its interpretation.

[137] The model relies on variables that are known or closely approximable at the outset of proceedings: the value in dispute, the canton of the competent commercial court, the number of parties, their domicile, and the legal subject. These correspond to the variables in Models (1) through (3) of the main analysis. The following qualifications apply to the ex ante interpretation. The value in dispute used in the model is the value as determined in the judgment.[82] The legal subject is extracted from the judgment caption but is assigned by the court upon receipt of the statement of claim and remains unchanged throughout the proceedings. It therefore closely approximates the information available at the time of filing. The year fixed effects are based on the judgment year, not the filing year. At the time of filing, a party does not know in which year the judgment will be rendered. Because the year fixed effects are individually insignificant throughout the observation period (see Section 5), their contribution to the in-sample fit is negligible, and the results are not materially affected by this approximation.

[138] The procedural complexity indicators are not known ex ante, as the procedural trajectory unfolds during the proceedings and case management rests with the court. The question is therefore how much of the cost variation can be explained using only the information available at the time of filing.

[139] The ex ante specification takes the following form:

$$\ln(Cost_i) = \beta_0 + \beta_1 \ln(Baseline_i) + \beta_2 D_{\mathrm{AG},i} + \beta_3 D_{\mathrm{AG},i} \times \ln(Baseline_i) + \alpha_t + \gamma' Z_i + \varepsilon_i \qquad (4)$$

[140] Zi denotes the vector of case characteristics typically known or closely approximable at the time of filing (number of parties, domicile, legal subject) and the year fixed effects. The year fixed effects are based on the judgment year and therefore represent an approximation rather than a strictly ex ante observable quantity (see qualifications above). The equation corresponds to the level form of Equation (3), restricted to the variables of Models (1) through (3).

6.2. Results

[141] This subsection presents the estimation results of the ex ante model and discusses the interpretation of its in-sample fit.

[142] The cantonal tariff dominates the forecast. Case characteristics refine it. In the level equation (Equation (4)), the baseline alone explains approximately 92.5% of court cost variance and 80.8% of party compensation variance. This high in-sample fit is partly mechanical, as both the baseline and actual costs are driven by the value in dispute. The cantonal tariff is nonetheless the dominant predictor. Adding canton effects, year fixed effects, and case characteristics yields the full ex ante model with an in-sample adjusted R2 of 0.939 for court costs (N=976) and

[82] This typically corresponds to the value claimed at filing. Where the claim was reduced or modified, the judgment-based value may diverge from the filing-stage value.

0.846 for party compensation (N=898). The tariff elasticity is 0.945 for court costs and 0.879 for party compensation, both significantly below one (CC: $p<0.05$; PC: $p<0.001$). This confirms the compression finding from the deviation model. For court costs, adding canton effects and case characteristics raises the adjusted R2 by only 1.4 percentage points (from 0.925 to 0.939). For party compensation, the gain is 3.8 percentage points (from 0.808 to 0.846). Party compensation is thus more heterogeneous and more strongly dependent on case characteristics such as legal subject.

[143] The high in-sample fit of 0.939 warrants qualification. It arises largely because the base tariff is a deterministic function of the value in dispute, so the level regression primarily captures the cross-sectional dispersion in values in dispute rather than the court's exercise of discretion. This is why the main analysis uses the deviation model, which partials out this mechanical component and reveals that approximately half of the residual cost variation remains unexplained.[83] The in-sample R2 therefore represents an upper bound on the model's true forecast precision for new cases, because in-sample fit benefits from estimating coefficients on the same observations used for evaluation.[84]

[144] URG claims have the largest coefficient in the level equation, +0.521 for court costs (approximately 68% above the standard tariff) and +1.001 for party compensation (approximately 172% above the base tariff). Swiss domicile of the plaintiff is significantly negative for both cost components (-0.120 for court costs, -0.165 for party compensation). IP cases are not significant for either court costs (+0.062) or party compensation (-0.082). In practical terms, the base tariff provides a first estimate that can be refined by case characteristics such as legal subject and party domicile.

6.3. Predictive Power and Practical Implications

[145] This subsection compares the predictive power of the ex ante model with the full specification and discusses practical implications for litigation cost budgeting.

[146] Comparing the predictive power of the ex ante model (Equation (4)) with the full Model (6) of the level equation, which also includes procedural indicators, plaintiff loss share, and judge fixed effects, reveals a moderate information gain over the course of proceedings. For court costs, the adjusted R2 rises from 0.939 to 0.961 (+2.2 percentage points). For party compensation, it rises from 0.846 to 0.860 (+1.5 percentage points). In the level equation, where the baseline already absorbs most of the variation, the incremental explanatory content of the procedural variables is modest. This stands in apparent contrast to the deviation model, where the jump from Model (3) to Model (6) is approximately 27 percentage points for court costs. The difference is explained by the fact that the deviation model partials out the tariff variation and thus measures the importance of the remaining variables relative to the residual variance. In the deviation framework, procedural indicators are the strongest explanatory factor for the cost deviation. In the level framework, the tariff dominates, and procedural indicators provide only a fine-tuning adjustment. Based on the median absolute prediction error, a predicted court cost of CHF 15'000

83 See Section 7.

84 To assess whether the ex ante model generalizes beyond the estimation sample, out-of-sample validation would be required, for example through a temporal holdout sample that trains the model on earlier judgments and tests it on later ones, or through rolling-origin cross-validation. Such validation was not performed in this study.

falls within a band of approximately CHF 11'850 to CHF 18'150 (±21.0%) in half of all cases. For party compensation, this band is somewhat wider at ±25.8%. The difference in forecast uncertainty between the two cost components is also visible in the prediction example: the 90% interval for court costs spans approximately CHF 19'600 (CHF 6'800 to CHF 26'400), while that for party compensation spans approximately CHF 38'800 (CHF 5'900 to CHF 44'700), roughly double.

[147] For practical cost budgeting, this means that the ex ante model achieves high in-sample fit for court costs using information available at the outset of proceedings. Whether this in-sample fit translates into reliable predictions for new cases remains to be tested (see qualifications above). Party compensation, by contrast, carries considerably wider prediction intervals and requires more generous reserves.

[148] For litigants provisioning for litigation costs under accounting standards that require best-estimate recognition,[85] the ex ante model provides an empirically grounded reference point. The wider prediction intervals for party compensation suggest that this cost component warrants a larger contingency buffer.

7. Discussion

[149] This section interprets the main findings and places them in context. It addresses tariff compression (Section 7.1), the role of procedural complexity (Section 7.2), canton and judge effects (Section 7.3), additional findings (Section 7.4), the scope of unexplained variance (Section 7.5), and the limitations of the analysis (Section 7.6).

7.1. Tariff compression

[150] At higher values in dispute, actual costs increase less than proportionally relative to the tariff benchmark. The negative coefficient on the baseline term in Model (6) is -0.111 for court costs and -0.170 for party compensation, both highly significant ($p<0.001$). In the level equation (R2), the coefficient on the baseline is 0.889 for court costs and 0.830 for party compensation, again both significantly below one.

[151] Because the level equation does not share the mechanical structure of the deviation model, in which the baseline appears both in the denominator of the dependent variable and as a regressor, it independently corroborates the compression result. This reduces the concern that the finding is an artifact of the ratio specification or of measurement error in the baseline.

[152] Substantively, the coefficient of -0.111 implies a tariff elasticity of approximately 0.89. A 10% increase in the base tariff is associated with only an 8.9% increase in actual court costs. For a simple case in the reference categories (Zurich, services law, no second exchange, no settlement hearing) at the 75th percentile of the amount-in-dispute distribution (approximately CHF 1 million; base tariff approximately CHF 31'000), Model (6) predicts court costs of approximately 80% of the base tariff, corresponding to a discount of approximately CHF 6'200. At average procedu-

[85] Cf. IAS 37, IFRS Foundation (Fn. 5); ASC 450–20, Financial Accounting Standards Board (Fn. 5); FER 23, Swiss GAAP FER Foundation (Fn. 5).

ral complexity, this discount is smaller because the positive effects of the second exchange and settlement hearing partially offset the negative baseline coefficient. After controlling for legal subject and procedural characteristics, the data are consistent with an overall pattern of underproportional cost increases relative to the tariff benchmark, and this pattern is more pronounced for party compensation than for court costs.

[153] The compression effect is, however, heterogeneous across case types, as the Simpson's Paradox analysis below shows. Still, the baseline coefficient remains negative and significant throughout the model sequence, indicating that the pattern is robust. In practical terms, a litigant with a CHF 10 million claim faces court-determined costs that are proportionally lower relative to the tariff than a litigant with a CHF 100'000 claim. This nonlinearity may therefore matter for litigation budgeting, reserve calculations, and the settlement calculus across different claim sizes.

[154] The court cost result is robust, whereas the party compensation result is substantially less stable. For court costs, the compression finding persists across specifications, including the exclusion of URG cases and extreme values in dispute. For party compensation, by contrast, the result is markedly more fragile. Once URG cases are excluded, the adjusted R2 falls from 0.476 to 0.087 and the baseline coefficient becomes insignificant. This indicates that the compression finding for party compensation is driven to a large extent by the structural peculiarity of URG cases rather than by a general pattern across all case types. The party compensation results should therefore be read as exploratory evidence, whereas court costs provide the more reliable empirical basis for the main conclusions.

[155] The negative overall association between tariff and deviation is largely a composition effect across legal subjects rather than a uniform within-group pattern. In the full sample, the coefficient on the baseline in Model (1) is -0.088 ($p<0.001$). Estimated separately by legal subject group, however, the coefficient changes sign in several cases. Within the ClaimsServices group, it is +0.125 ($p<0.001$), whereas within the URG group it is -0.253 ($p<0.001$). In most other claims groups, the coefficient is positive or close to zero: ClaimsConstruction +0.133, ClaimsTrade +0.083, ClaimsFinInsurance +0.031, and ClaimsCorpLiability +0.008. For party compensation, the same pattern appears. The overall coefficient is -0.233, but within ClaimsServices it is +0.130 ($p=0.001$).

[156] This is an instance of Simpson's Paradox, that is, the phenomenon that a trend present in individual subgroups reverses or disappears when the subgroups are aggregated. The paradox arises here because the legal-subject groups occupy very different positions in the baseline distribution. URG cases combine extremely low values in dispute (median CHF 300) with large positive tariff deviations (median +100% for court costs). By contrast, ClaimsServices cases have much higher values in dispute (median CHF 172'808) and deviations close to zero (median +0.3%). The negative overall association is therefore driven primarily by between-group variation. Groups with lower baselines systematically exhibit higher deviations. Within ClaimsServices, the association is slightly positive.

[157] Once legal subject is controlled for, the composition effect is addressed and the compression finding remains intact. From Model (3) onward, the specification includes legal-subject dummies (eight dummies for nine groups, with ClaimsServices as the reference category), thereby partialling out the composition effect. The baseline coefficient changes accordingly across the model sequence. It is -0.088 in Model (1), -0.055 in Model (3), and -0.111 in the full Model (6). The level equation independently confirms this compression (see above). Residual analysis by legal-

subject group further indicates that Model (6) adequately captures the group effects. Residuals are centered around zero across all nine groups and show no visible heteroskedasticity.

[158] The data do not identify the specific mechanism behind the residual compression beyond the tariff. Several explanations are consistent with the observed pattern. The degressive tariff structure[86] reflects a proportionality rationale rooted in access-to-justice considerations.[87] Courts exercising discretion within this framework may apply the same proportionality norm, adjusting costs downward more frequently or more strongly when the base tariff yields a high absolute amount. Moreover, if the judicial effort required to adjudicate a case does not scale proportionally with the value in dispute, as the degressive tariff structure itself implies, the base tariff at higher values in dispute may increasingly exceed the court's assessment of the effort involved. These explanations are not mutually exclusive, and the descriptive design of the study does not permit a test among them.

7.2. Procedural complexity

[159] Procedural complexity matters strongly for court costs, but much less for party compensation. For court costs, adding the procedural indicators in Model (4) increases the adjusted R2 by 26 percentage points (from 0.267 to 0.529), representing the single largest gain across all model specifications. For party compensation, the corresponding gain is only approximately 5 percentage points (from 0.421 to 0.473).

7.2.1. Court Costs

[160] Among the individual procedural indicators, the second exchange of written submissions has the largest coefficient for court costs (+0.504, $p<0.001$). Although case management formally rests with the court, a second exchange is typically ordered when complexity is elevated, and the results show that it is conditionally associated with materially higher costs. Settlement hearing (+0.150, $p<0.001$) and expert report (+0.123, $p<0.05$) are also significant for court costs. Defence itself is not significant in any model. This suggests that defendant participation alone is not what drives higher costs once other features are held constant. At the same time, Defence and Second Exchange are highly correlated ($r=0.907$), so the insignificance of Defence may partly reflect multicollinearity rather than irrelevance. A second exchange presupposes a prior defence, and both variables largely co-vary.

[161] The settlement-hearing coefficient for court costs should be interpreted cautiously. Because the sample excludes settled cases, the observed settlement hearings are hearings in which a court-initiated settlement attempt took place but did not lead to settlement. Their positive association with court costs may therefore partly reflect that these are especially contentious or complex cases, rather than a direct cost effect of the hearing itself. Moreover, no formal surcharge mechanism for settlement hearings exists in the court cost tariffs. The coefficient therefore captures the court's exercise of discretion within the tariff framework.

86 See Section 2.2.2.

87 See Section 2.

[162] Alternative workload proxies confirm the same pattern. In robustness check R1, Duration and Pages are both highly significant for court costs and raise the adjusted R2 from 0.534 to 0.652. For party compensation, neither variable adds significant explanatory power. This is consistent with the view that party compensation is primarily assessed on the basis of the value in dispute and submitted cost statements, and therefore depends less directly on judicial effort than court costs.

7.2.2. Party Compensation

[163] For party compensation, the drivers differ. Settlement hearing is not significant (+0.023), and the second exchange is only marginally significant (+0.319, $p<0.10$). By contrast, additional filings are significantly positive for party compensation (+0.147, $p<0.01$) but not for court costs (+0.051, not significant). Party compensation therefore appears to be driven less by procedural complexity and more by the base tariff, the canton, and the litigation outcome.

[164] The insignificance of the settlement-hearing coefficient for party compensation requires qualification. In Zurich, it is established practice to add a surcharge of approximately 15% to party compensation for settlement hearings.[88] A bivariate specification confirms this. Regressing the log deviation on only the baseline and the settlement-hearing indicator yields a coefficient of +0.157 ($p<0.01$) for Zurich, closely matching the expected value of ln(1.15)0.14.[89] The effect vanishes, however, once the second-exchange indicator enters the model. This is because 97% of settlement-hearing cases in Zurich also involve a second exchange of written submissions, whereas only 43% of non-settlement-hearing cases do.[90] Under § 11(2) AnwGebV-ZH, the base fee may be increased by up to one third for additional procedural steps such as the second exchange, and the court adds a further surcharge of approximately 15% for the settlement hearing.[91] Because these surcharges nearly always co-occur, the regression cannot separate them, and the combined effect is absorbed by the second-exchange indicator.

7.2.3. Expert Reports

[165] Expert reports affect the two cost components in opposite directions. The coefficient is significantly positive for court costs (+0.123) but significantly negative for party compensation (-0.319). This pattern is consistent with several, potentially overlapping mechanisms. One possibility is a substitution effect, whereby part of the fact-finding and argumentative effort shifts from counsel to the court-appointed expert once an expert report is commissioned. In that case, the expert's cost is reflected in court costs, while part of the attorney effort is displaced, reducing party compensation.

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88 E.g. HG ZH HG170043, as of 20 December 2017, C. 5.3; HG ZH HG080251, as of 20 November 2018, C. 15; HG ZH HG190024, as of 12 May 2021, C. 4.3; HG ZH HG190158, as of 22 June 2021; HG ZH HG210073, as of 2 March 2023, C. 7.3.1; HG ZH HG210062, as of 13 March 2023, C. 9; HG ZH HG210124, as of 18 September 2023, C. 6.3.1; HG ZH HG220206, as of 11 June 2024; HG ZH HG230002, as of 12 November 2024, C. III; HG ZH HG190052, as of 24 March 2025, C. 3.3.

89 Specification: $\ln(\text{PCi}/\text{Baseline}_i) = 0 + 1 \ln(\text{Baseline}_i) + 2 \text{DSH},i + i$, estimated on the Zurich subsample (N=802).

90 Of the 404 Zurich PE-sample observations with a settlement hearing, 392 also have a second exchange. Only 12 cases have a settlement hearing without a second exchange.

91 See Fn. 88.

[166] The pattern may also be related to litigation outcomes. Expert evidence may increase the likelihood of more balanced decisions in which neither party prevails entirely, thereby reducing the net party compensation award through an offset of the parties' respective shares of success. This interpretation would descriptively be consistent with the data. The median *PlaintiffLossShare* is 0.693 in cases with expert reports, compared with 0.200 in cases without them. A further possibility is that expert reports facilitate earlier resolution by providing sufficiently persuasive evidence to narrow the dispute and reduce the need for further adversarial proceedings, which would in turn lower the attorney effort reflected in party compensation. Because settled cases are excluded from the sample by design,[92] this channel cannot be tested directly in the observed data. Although cases with expert reports display a longer median duration (1'208 versus 610 days), this likely reflects the time required for the expert assessment itself rather than contradicting the possibility that expert evidence shortens the subsequent adversarial phase.

[167] These interpretations remain tentative, and disentangling the underlying channels would require case-level analysis of the interaction between expert evidence, litigation outcomes, and the structure of party compensation claims.

7.3. Canton and judge effects

7.3.1. Canton Effects

[168] Canton effects are negligible for court costs but substantial for party compensation. Because the deviation model measures deviations relative to each canton's own tariff, the estimated Aargau effect must be interpreted as a relative deviation from the respective cantonal tariff, not as an absolute cost difference. In the pooled model, the Aargau effect consists of the canton dummy DAG and its interaction with the baseline, so its magnitude varies with the base tariff. For court costs, there is no statistically meaningful difference between Zurich and Aargau after controls. Neither the canton dummy (DAG=-0.518, p=0.29) nor the interaction term is significant. The separate canton regressions (R4) support the same conclusion. The baseline coefficient is -0.101 ($p<0.001$) in Zurich and -0.093 ($p<0.05$) in Aargau. Substantively, the two cantons therefore do not appear to differ in court cost setting once case characteristics, legal subject, and procedural indicators are taken into account.

[169] For party compensation, Aargau deviates more strongly upward from its tariff than Zurich across virtually the entire observed range. The total effect is -3.414+0.463Œln(Baseline), with a zero crossing at 7.37, corresponding to a baseline of approximately CHF 1'600. Since this threshold lies well below the observed baselines (P25: CHF 7'800), the estimated Aargau effect is positive for almost all observations. At the median party-compensation baseline (CHF 15'983), the estimated effect is +1.07 log points. The separate canton regressions (R4) confirm this pattern. The pooled model implies a positive Aargau baseline elasticity (-0.170+0.463=+0.293), and the separate Aargau regression yields a directionally consistent estimate (+0.095, $p<0.10$), while the Zurich estimate is negative (-0.127).

[170] The difference in magnitude should nevertheless be interpreted cautiously. With only n=96 observations, statistical power is limited, and the Aargau coefficient reaches only marginal signif-

92 See Section 3.

icance. In addition, the tariff structures for party compensation differ between the two cantons in ways that may contribute to this divergence. The Zurich regulation generally caps cumulative surcharges for additional procedural steps at the level of the base fee (§ 11(3) AnwGebV-ZH), which limits upward deviations particularly for procedurally intensive high-value cases. The Aargau regulation provides percentage-based surcharges for each additional brief or hearing (§ 6(3) Anwaltstarif-AG), without an analogous cumulative cap. If high-value cases tend to involve more procedural steps, the uncapped Aargau system would permit actual compensation to grow more strongly relative to its tariff baseline than the capped Zurich system, which is consistent with the sign difference in the baseline coefficient.

[171] More generally, the canton dummy may also absorb differences in case composition, court organization, local practice, data collection methods (LLM-based for Zurich, manual for Aargau), temporal coverage (Aargau enters only from 2017), and publication practice. The canton effect should therefore be understood as an aggregate residual difference rather than a clean institutional comparison of judicial cost-setting behaviour. The restriction to the overlapping period 2017–2025 (R3), however, yields stable coefficient patterns, which supports the comparability of the two courts.

7.3.2. Judge Effects

[172] Once procedural path is controlled for, judge fixed effects add little further explanatory power. Adding judge fixed effects in Model (6) increases the adjusted R2 by at most 0.5 percentage points for either cost component (court costs: +0.5 percentage points to 0.534; party compensation: +0.1 percentage points to 0.476). This should not be read as evidence that judges have little influence on costs. Judges may affect costs precisely through procedural choices already captured in the model, especially the ordering of a second exchange, the scheduling of settlement hearings, and the overall development of the proceedings.[93] If judicial influence operates mainly through these channels, the small incremental contribution of judge fixed effects means only that little additional between-judge variation remains once the realized procedural path is controlled for. In this specification, judge fixed effects therefore capture only the residual, non-procedural component of judicial cost-setting.

7.4. Additional findings

7.4.1. Statistical Robustness

[173] The bootstrap analysis largely confirms the main inference results. A wild cluster bootstrap at the judge level (999 replications, Rademacher weights) supports the core HC1 findings. The central coefficients, including Second Exchange, DClaims_URG, and Settlement Hearing, remain significant at the 1% level under bootstrap. Expert Report for court costs remains significant at the 5% level (bootstrap p=0.027). DIP loses significance for court costs under bootstrap (HC1: p=0.062; bootstrap: p=0.134), while DClaims_FinInsurance gains significance for party compensation (HC1: p=0.103; bootstrap: p=0.022). Overall, ten of the eleven significance changes

93 Frandsen/Lefgren/Leslie (Fn. 71); Eisenberg/Fisher/Rosen-Zvi (Fn. 70).

move toward greater significance, and the broader pattern remains consistent with the main HC1 results.[94]

[174] Judicial cost-setting appears broadly stable over time. The year fixed effects reveal no statistically significant deviation from the reference year 2011 in either the court-cost or the party-compensation model. Point estimates fluctuate only within a narrow band (approximately ś0.24 log points for court costs and approximately ś0.45 log points for party compensation), and all 95% confidence intervals include zero. Since the applicable fee schedules did not change during the observation period 2011–2025, any systematic time trend would indicate a genuine shift in how courts exercise their discretion within the tariff framework. The absence of such a trend therefore suggests that judicial cost-setting practice was temporally stable, at least within the limits of statistical detection given the sample size. This also reduces the concern that the cross-sectional coefficients are driven by time-varying confounders. At the same time, the year fixed effects for 2012–2016 are identified solely from Zurich, which limits the interpretability of the pooled pre-2017 estimates.

7.4.2. Legal Subject Effects

[175] URG cases are the clearest outliers in the sample and generate the largest tariff deviations. Among the legal-subject dummies, URG claims are the strongest individual predictor in both equations (+0.592 for court costs and +1.058 for party compensation). For party compensation, a coefficient of approximately 1.05 implies that actual compensation is on average nearly three times the base tariff. The descriptive group analysis underscores how unusual these cases are. The median value in dispute is CHF 300 (versus CHF 172'808 for ClaimsServices), the median duration is 118 days (versus 612 days), a defence is filed in only 17% of cases (versus 66%), and not a single URG case involves an expert report. These cases follow a repetitive litigation pattern with very low values in dispute, which strongly distorts the ratio between actual compensation and the base tariff. As discussed in Section 7.1, excluding URG cases confirms that the court-cost results are robust, whereas the party-compensation model depends heavily on their inclusion.

[176] Other legal-subject effects are much weaker and more selective. IP cases do not show a significant coefficient at the 5% level in any model. Construction claims (ClaimsConstruction) show a significantly negative tariff deviation for party compensation (-0.208, $p<0.05$) but not for court costs (+0.037, not significant). Corporate cases deviate significantly downward for court costs (-0.227, $p<0.05$) but not for party compensation. The residual category Miscellaneous shows a marginally negative coefficient for party compensation (-0.159, $p<0.10$).

7.4.3. Case and Party Characteristics

[177] Litigation outcome matters for party compensation, but not for the overall level of court costs. Plaintiff loss share is significantly positive in the party-compensation equation (+0.122, $p<0.01$). The more the plaintiff loses, the higher the party compensation awarded. This is consistent with the statutory mechanism, because greater plaintiff loss implies greater defendant success and thus a higher compensation claim. Since the dependent variable measures deviation from the base tariff, and the base tariff itself does not incorporate the loss share, the relationship

94 See Appendix 2 for the full comparison of HC1 and bootstrap p-values.

is not tautological. When plaintiff loss share is included in the court-cost equation as a robustness check (R5), it is not significant (-0.049, p=0.11). This supports the view that plaintiff loss share matters for the allocation of court costs between the parties, but not for the total fee level.

[178] Cases with international parties are associated with higher costs. Swiss domicile of the plaintiff is consistently and significantly negative in both equations (-0.086 for court costs and -0.129 for party compensation). For court costs, Swiss domicile of the defendant is also significantly negative (-0.079), whereas for party compensation the defendant-domicile coefficient is not significant (-0.022, not significant). On average, cases involving at least one foreign-domiciled party therefore show higher costs. A likely explanation lies in the institutional cost framework rather than in case complexity alone. In Zurich, the applicable fee regulation expressly permits the court cost to be increased by up to double where neither party has its seat or domicile in Switzerland (§ 11 GebV OG-ZH), so that at least part of the observed association may reflect a statutory surcharge for international disputes.

[179] The number of plaintiffs and defendants does not have a stable independent effect once the other controls are included. In the full Model (6), the log number of plaintiffs and defendants is not significant for either cost component. The point estimates are in the expected direction, but they do not reach conventional significance levels.

7.5. Unexplained variance

[180] A substantial share of cost variation remains unexplained even in the full model. Model (6) still leaves approximately 46.6% of the variance in court costs and 52.4% of the variance in party compensation unexplained. This residual dispersion may partly reflect judicial discretion, but it is not reducible to discretion alone. It may also capture unobserved case heterogeneity, differences in substantive legal complexity, measurement error in the extracted variables, incomplete documentation of procedural history, and model misspecification. At the same time, the fact that roughly half of the court-cost variance can be explained is consistent with the view that judicial cost-setting is meaningfully structured by observable procedural characteristics.

[181] For litigants, the remaining unexplained variation limits how precisely litigation costs can be forecast ex ante. This residual uncertainty suggests that litigation cost risk cannot be fully managed through budgeting alone and may justify the use of litigation insurance or contingent reserves.

7.6. Limitations

[182] This study has several methodological limitations that should be considered when interpreting the results. The analysis is descriptive and ex post. It identifies associations between observable characteristics and deviations from the tariff benchmark, but it does not establish causal effects. The estimated coefficients should therefore be interpreted as conditional associations relative to the tariff benchmark.

[183] A first limitation concerns the specification of the deviation equation. The baseline appears both in the denominator of the dependent variable and on the right-hand side of the regression. Although the value in dispute is determined by the court and the tariff calculation is mechanical, any measurement error in the relevant value in dispute would affect both sides of the equation

and bias the baseline coefficient downward. The level equation (R2) does not suffer from this problem and confirms the core findings of the deviation specification.

[184] As noted in Section 7.3, the canton dummy should be understood as an aggregate residual difference rather than an isolated institutional effect. The judge fixed effects are subject to the same constraint. Because random or quasi-random case assignment is not established, they do not identify causal judge effects, but only differences across judges after incomplete control for case composition.

[185] The party compensation regression excludes 78 cases in which no quantified party compensation was set in the operative part of the judgment («Urteilsdispositiv»). At approximately 8% of the court cost sample, this is substantial. These cases may differ systematically from cases with a quantified award, so the estimated associations apply only to cases with positive and quantified party compensation, not to the full universe of commercial court cases.

[186] More generally, the procedural complexity indicators are not purely exogenous case characteristics. Variables such as the second exchange or the settlement hearing are partly ordered by the court during case management. They are therefore both cause and consequence of judicial decisions, which again limits coefficient interpretation to conditional associations. In addition, several indicators are strongly correlated, as discussed in Section 7.2.1. The corresponding VIF values remain below 10, suggesting moderate rather than severe multicollinearity.[95]

[187] A further limitation is that these variables are measured only as binary indicators. They record whether a procedural step occurred, but not its intensity. Additional filings, for example, do not distinguish between a single supplementary brief and an extensive sequence of submissions, and the settlement hearing indicator does not capture the duration or depth of the attempt. More granular measures could improve explanatory power, but were not feasible given the heterogeneity of procedural documentation across judgments.

[188] A related omission is law-firm identity, which may proxy for case complexity or litigation strategy. Published judgments typically report the number and professional titles of party representatives, but the names of individual attorneys and the identity of the instructing law firm are rarely disclosed, reflecting the strongly anonymized publication practice of Swiss commercial courts. Systematic extraction of law-firm characteristics is therefore not feasible from the available data source. In addition, party compensation follows cantonal tariff schedules tied to the value in dispute rather than actual fees charged by counsel, which limits the channel through which law-firm characteristics could affect the observed cost awards.

[189] The analysis also produces a substantial number of coefficient estimates across six nested models and multiple robustness specifications. No adjustment for multiple testing is applied, so individual significance levels should be interpreted with caution, especially near conventional thresholds.

[190] Sample selection poses an additional concern. The study relies exclusively on published judgments. The sample covers an estimated 61.3% of the estimated population of ordinary, non-settled proceedings at the Zurich and Aargau commercial courts, and only an estimated 6% in Bern (see Table 3). These coverage rates are approximate and depend on assumptions about settlement rates. Because publication practice varies across cantons and over time, selection effects cannot be excluded. Published judgments need not be representative of the full population

95 See Appendix 3.

of commercial court proceedings. According to court representatives, cases requiring extensive redaction for business confidentiality reasons are less likely to be published. Because URG cases involving collecting societies are procedurally straightforward and rarely require redaction, they may be overrepresented in the published sample relative to more complex cases, which could contribute to the strong URG coefficients observed in the regressions. As discussed in Section 3, this publication-driven selection skews the observed sample toward simpler and less costly cases, so the estimated cost levels and procedural complexity coefficients likely understate the true population-level values. The Aargau sample is also small, with 102 observations and 96 for party compensation, which limits statistical power in the canton-specific analyses and makes individual coefficients, especially the positive baseline coefficient in the separate Aargau party compensation regression, more sensitive to outliers.

[191] Finally, the data are not free from coding error. The LLM-based extraction for the Zurich commercial court achieves an overall accuracy of 99.45% on the 130-judgment golden set. However, the same judgments served both as the calibration basis during iterative prompt refinement and as the final validation sample. This creates data leakage, and the reported accuracy should therefore be treated as an upper bound on out-of-sample extraction quality.[96]

[192] Occasional misclassifications cannot be excluded, especially for variables that require interpretation, such as the classification of legal subjects or the identification of procedural steps in inconsistently drafted procedural histories. The manual coding of the Aargau and Bern judgments was performed by a single coder without formal intercoder reliability assessment. Although the coding rules were predefined and applied consistently, coder-specific interpretation bias cannot be ruled out, particularly for variables that require judgment, such as the classification of procedural steps. The value in dispute distribution is also heavily right-skewed, with a maximum approximately 4'500 times the median. Excluding the top 1% of observations by value in dispute does not materially affect the main coefficients, suggesting that the results are not driven by a small number of extreme cases. However, formal leverage diagnostics were not computed.

[193] In addition, court costs and party compensation are estimated in separate equations. Because both cost components are determined in the same judgment, a seemingly unrelated regression framework could in principle exploit cross-equation error correlation for efficiency gains. Given the largely overlapping regressor sets, such gains are expected to be modest, but the separate estimation does not account for possible joint determination.

96 See Section 3.

8. Conclusion

[194] This paper provides the first empirical analysis of court-determined litigation costs at Swiss commercial courts. Based on 976 judgments from the commercial courts of Zurich and Aargau, it shows that the cantonal base tariff serves as a starting point for cost-setting, but courts do not adopt it proportionally. At higher values in dispute, the tariff is systematically undercut, more strongly for party compensation than for court costs.

[195] Procedural complexity, measured by indicators such as the second exchange, settlement hearing, and expert report, is the central factor conditionally associated with the tariff deviation for court costs. For party compensation, the contribution of procedural indicators is secondary. The base tariff, the canton, and the litigation outcome dominate. Canton effects in the deviation model require a differentiated reading and vary with the level of the base tariff. Individual judge fixed effects add only marginally to explained variance after controlling for realized procedural characteristics, although this does not preclude that judges influence costs through the procedural paths controlled for in the model.

[196] Even in the full model, approximately 47% of court cost variance and 52% of party compensation variance remain unexplained, reflecting the limits of observable predictors in capturing judicial discretion and unobserved case heterogeneity. The results for party compensation are, moreover, substantially less stable than those for court costs. The exclusion of structurally distinct URG cases reduces the party compensation model's explanatory power to near zero. The party compensation findings should therefore be regarded as indicative rather than as established evidence comparable to the court cost results.

[197] The paper makes several contributions to the literature on litigation costs. It extends the empirical evidence on direct litigation costs by adding the previously missing dimension of court-determined fees and compensation. It documents how the interplay of statutory tariffs and judicial discretion structures cost uncertainty for litigants. It provides the first quantitative evidence on the compression of court-determined costs at higher values in dispute, which has direct implications for litigation cost modelling and the settlement calculus. It also demonstrates the use of LLM-based data collection for the systematic analysis of large volumes of unstructured court decisions. Finally, the supplementary ex ante analysis offers an empirically grounded tool for litigation cost budgeting at the outset of proceedings and quantifies the residual forecast uncertainty that litigants must absorb.

[198] The practical implication for litigants is that cost uncertainty before commercial courts does not depend exclusively on the value in dispute but is materially influenced by the procedural trajectory. Litigants before commercial courts can estimate expected costs on the basis of the base tariff with a typical forecast error of approximately 21% (court costs) and 26% (party compensation), based on in-sample prediction errors. Out-of-sample forecast accuracy may differ and remains to be tested. They must, however, expect that procedural escalation is associated with actual costs substantially above the tariff benchmark. This insight is directly relevant for litigation cost budgeting, for the calibration of litigation provisions, and for the financial evaluation of the settlement-versus-trial decision.

[199] Future research could test out-of-sample forecasting performance, broaden the institutional comparison across additional cantonal jurisdictions, and connect judicial cost awards more directly to settlement behaviour and financial reporting choices.

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Appendices

Appendix 1: Variables and Extraction Variables

Variable	Description	Type	Used In
Panel A: Dependent Variables			
CourtCost	Court costs (Gerichtsgebuehr) as fixed in the judgment dispositif, in CHF.	Continuous	Descriptive
PartyComp	Party compensation (Parteientschaedigung) awarded in the judgment dispositif, in CHF.	Continuous	Descriptive
ln(CourtCost)	Natural log of awarded court costs. Main specification: ln(CourtCost/BaselineCC).	Continuous	Regression (dep.)
ln(PartyComp)	Natural log of awarded party compensation. Main specification: ln(PartyComp/BaselinePC).	Continuous	Regression (dep.)
Panel B: Tariff Baseline			
DisputeValue	Value in dispute (Streitwert) in CHF; primary input for tariff baseline computation.	Continuous	Descriptive; input for Baseline
BaselineCC	Tariff-implied court cost baseline from DisputeValue and cantonal fee schedule (GebV OG ZH / KD AG).	Continuous	Input for ln(BaselineCC)
BaselinePC	Tariff-implied party compensation baseline from DisputeValue and cantonal fee schedule (AnwGebV ZH / KD AG).	Continuous	Input for ln(BaselinePC)
ln(BaselineCC)	Natural log of tariff-implied court cost baseline.	Continuous	Regression (indep.)
ln(BaselinePC)	Natural log of tariff-implied party compensation baseline.	Continuous	Regression (indep.)
Panel C: Case Characteristics			
CaseID	Docket number (e.g. HG180153 for ZH, HOR.2023.64 for AG).	Identifier	Identifier (not in regression)
TrialStartDate	Filing date / date of lis pendens, YYYY-MM-DD.	Date	Input for Duration
TrialEndDate	Judgment date (Urteilsdatum), YYYY-MM-DD.	Date	Input for Duration; FilingYear
LegalSubject	Legal subject as stated in the rubrum (raw, ∼150 categories).	Categorical	Descriptive; input for LegalSubjectGrouped
NPlaintiffs	Number of plaintiffs listed in the rubrum.	Count	Input for ln(NPlaintiffs)
NDefendants	Number of defendants listed in the rubrum.	Count	Input for ln(NDefendants)
ln(NPlaintiffs)	Natural log of number of plaintiffs.	Continuous	Regression (indep.)
ln(NDefendants)	Natural log of number of defendants.	Continuous	Regression (indep.)
NAttorneysPlaintiffs	Number of plaintiff-side attorneys.	Count	Descriptive
NAttorneysDefendants	Number of defendant-side attorneys.	Count	Descriptive
LegalFormPlaintiffs	Legal form of plaintiff no. 1 (34 categories).	Categorical	Descriptive
LegalFormDefendants	Legal form of defendant no. 1 (34 categories).	Categorical	Descriptive
DomicileCH_Plaintiffs	Dummy: plaintiff no. 1 domiciled in Switzerland (=1).	Binary	Regression (indep.)
DomicileCH_Defendants	Dummy: defendant no. 1 domiciled in Switzerland (=1).	Binary	Regression (indep.)
NOGA_Plaintiffs	Industry of plaintiff no. 1 (NOGA 2008 level 1; 22 sectors + residual).	Categorical	Descriptive

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Variable	Description	Type	Used In
NOGA_Defendants	Industry of defendant no. 1 (NOGA 2008 level 1; 22 sectors + residual).	Categorical	Descriptive
Panel D: Procedural Complexity Indicators			
Defence	Dummy: statement of defence (Klageantwort) was filed (= 1).	Binary	Regression (indep.)
SecondExchange	Dummy: second exchange of written submissions (Replik/Duplik) took place (= 1).	Binary	Regression (indep.)
Counterclaim	Dummy: counterclaim (Widerklage) was filed (= 1).	Binary	Regression (indep.)
CounterclaimSecond Exchange	Dummy: second exchange on counterclaim took place (= 1).	Binary	Regression (indep.)
AdditionalFilings	Dummy: additional written filings beyond standard exchange were submitted (= 1).	Binary	Regression (indep.)
SettlementHearing	Dummy: court-conducted settlement hearing was held (= 1).	Binary	Regression (indep.)
ExpertReport	Dummy: expert report (Gutachten) was produced or submitted (= 1).	Binary	Regression (indep.)
Duration	Trial duration in days (TrialEndDate − TrialStartDate).	Continuous	Input for ln(Duration)
ln(Duration)	Natural log of trial duration in days.	Continuous	Robustness only
NPages	Judgment length in pages.	Count	Input for ln(NPages)
ln(NPages)	Natural log of judgment length in pages.	Continuous	Robustness only
Panel E: Cost Allocation			
PlaintiffLossShare	Plaintiff losing share (0 = full win, 1 = full loss). Determines statutory cost allocation.	Cont. [0,1]	Regression (indep.) for PC; Robustness for CC
DefendantLossShare	Defendant losing share (= 1 − PlaintiffLossShare).	Cont. [0,1]	Descriptive
Panel F: Court-Side Characteristics and Fixed Effects			
PresidingJudge	Name of the presiding judge (first-listed panel member). Surname only, lowercase.	Text	Input for JudgeFE
JudgeN2-JudgeN5	Names of 2nd-5th panel judges. Surname only, lowercase.	Text	Descriptive
D_AG	Canton dummy: Aargau (= 1) vs. Zurich (= 0, ref.).	Binary	Regression (indep.)
JudgeFE	Presiding-judge fixed effects (ZH: $n \geq 15$; AG: $n \geq 10$; remainder pooled as "other"). Ref. = most frequent judge.	Categorical FE	Regression (FE)
Panel G: Derived / Constructed Variables			
JudgmentYear	Calendar year of judgment date. Used for year FE; consistent with tariff regime at judgment date.	Categorical	Input for YearFE
YearFE	Judgment-year fixed effects (α_t). $T-1$ year dummies. Reference = 2011.	Categorical FE	Regression (FE)
Clerk	Name of court clerk (Gerichtsschreiber). Surname only, lowercase.	Text	Descriptive
HasThirdParty	Dummy: at least one third party participated (= 1).	Binary	Descriptive

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Variable	Description	Type	Used In
HasForeignParty	Dummy: at least one first-listed party domiciled abroad (=1).	Binary	Descriptive
LegalFormGroup_Pl	Aggregated legal form of plaintiff no. 1: NaturalPerson, AG, GmbH, Foreign, Other. Ref. = AG.	Categorical	Descriptive
LegalFormGroup_Def	Aggregated legal form of defendant no. 1. Same grouping. Ref. = AG.	Categorical	Descriptive
D_AG_x_lnBaseline	Interaction: D_AG × ln(Baseline). Tests whether tariff elasticity differs across cantons.	Continuous	Regression (indep.)
LegalSubjectGrouped	Grouped legal subject (4 cat.): Forderung (ref.), Forderung_URG, IP, Sonstiges.	Categorical	Regression (indep.)
Panel H: Sample Filters (not in regression)			
ProblemIndicator	Flag for problematic observations requiring manual review.	Categorical	Sample filter
ProblemComment	Free-text comment describing the nature of the data quality issue.	Text	Sample filter

Source: Own illustration.

Table 15: Variable definitions and construction.

Variable	Description	N	Acc.%	Type	Notes
Panel A: General Case Information					
case_id	Docket number extracted from the rubrum (e.g. HG180153).	125	100.0	str	No issues.
file_id	Source PDF filename for traceability.		-	str	Pipeline field, not LLM-extracted.
trial_start_date	Filing date / lis pendens (Art. 62 ZPO), YYYY-MM-DD.	118	100.0	date	7 cases not comparable (no filing date in GT). Filing dates outside expected document zone missed due to lost-in-the-middle effect.
trial_end_date	Judgment date (Urteilsdatum), YYYY-MM-DD.	125	100.0	date	No issues.
problem_indicator	True if extraction problems exist (e.g. procedural order, redacted amounts).	125	99.2	bool	1 false positive: trademark case incorrectly flagged.
problem_indicator_comment	Short explanation when problem_indicator = True.		-	str	Free-text control field, not evaluated at field level.
Panel B: Legal Subject					
legal_subject_judgement_RAW	Legal subject from rubrum ('betreffend...'), normalized with underscores.	125	100.0	str	Initial issues with parentheses and slash separators.
Panel C: Panel Composition					
judge_no1_RAW	Presiding judge, surname only, lowercase.	125	100.0	str	No issues.
judge_no2_RAW	Second panel judge.	125	100.0	str	No issues.
judge_no3_RAW	Third panel judge.	124	99.2	str	1 mismatch: OCR artifact truncated name.
judge_no4_RAW	Fourth panel judge.	124	99.2	str	1 mismatch: OCR artifact produced spurious underscore.
judge_no5_RAW	Fifth panel judge (if applicable).	125	100.0	str	No issues.
clerk_RAW	Court clerk (Gerichtsschreiber/in), surname only.	125	100.0	str	No issues.
Panel D: Party Information					
plaintiffs_all_count	Number of plaintiffs in the rubrum.	125	100.0	int	Schema bug (no required fields) discovered and fixed during development.
plaintiffs_all_attorneys_count	Number of plaintiff-side attorneys.	125	100.0	int	Non-attorney representatives initially miscounted; resolved by restricting to persons with attorney titles.
defendants_all_count	Number of defendants in the rubrum.	125	100.0	int	Same schema bug as plaintiffs; resolved.
defendants_all_attorneys_count	Number of defendant-side attorneys.	125	100.0	int	Same issues as plaintiff side; resolved.
third_parties_all_count	Number of third parties (e.g. interveners, Art. 74-77 ZPO).	125	100.0	int	No issues.
third_parties_all_attorneys_count	Number of third-party attorneys.	125	100.0	int	No issues.
plaintiff_no1_legal_form_category	Legal form of plaintiff no. 1 (34 categories). Classification follows three steps: foreign check, then Sachverhalt, then rubrum fallback.	125	100.0	Enum	No issues on plaintiff side. Same systematic issues as defendant side resolved during development.
plaintiff_no1_domicile_CH_indicator	True if plaintiff no. 1 domiciled in Switzerland.	125	100.0	bool	No issues on plaintiff side.
plaintiff_no1_NOGA1_industry	Industry of plaintiff no. 1 (NOGA 2008 level 1; 22 sectors).	124	97.6	Enum	3 mismatches: empty document zones, electrical installations vs. Telecom/IT confusion, ambiguous mixed-purpose companies.
defendant_no1_legal_form_category	Legal form of defendant no. 1 (34 categories).	124	97.6	Enum	3 mismatches: SA suffix misinterpreted as foreign, commercial register entries ignored, ambiguous bank subsidiary.
defendant_no1_domicile_CH_indicator	True if defendant no. 1 domiciled in Switzerland.	124	97.6	bool	3 mismatches: anonymized domicile, SA suffix misleading, plaintiff/defendant attribution errors.
defendant_no1_NOGA1_industry	Industry of defendant no. 1 (NOGA 2008 level 1). Highest error rate of all variables.	124	95.2	Enum	6 mismatches: advisory activity vs. financial services confusion, trade vs. business services, anonymized descriptions. 47 prompt iterations.

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Variable	Description	N	Acc.%	Type	Notes
Panel E: Cost Information					
dispute_nominal_value	Streitwert in CHF. Extraction follows the hierarchy Dispositiv, then cost section, then BGG appeal, then rubrum.	122	99.2	float	1 mismatch: ambiguity between original and adjusted Streitwert after partial claim withdrawal.
plaintiff_loosing_share	Plaintiff losing share (0.0-1.0, 4 decimals).	124	100.0	float	No issues.
defendant_loosing_share	Defendant losing share (= 1 − plaintiff_loosing_share).	124	100.0	float	No issues.
court_cost_awarded_nominal	Court fee (Gerichtsgebuehr) from Dispositiv, in CHF.	125	100.0	float	No issues.
party_compensation_awarded_nominal	Party compensation (Parteientschaedigung) from Dispositiv, in CHF.	124	100.0	float	Offset PE ('wettgeschlagen') initially confused with missing values; resolved.
Panel F: Procedural Indicators					
has_defence_filed	True if Klageantwort was filed.	124	100.0	bool	All procedural indicators affected by four systematic issues: lost-in-the-middle effect, prompt false-bias, escape hatches, function-calling default-bias. All resolved.
has_second_exchange	True if written Replik was filed (with own act number).	124	99.2	bool	1 mismatch: oral Replik at hearing confused with written second exchange.
has_counterclaim_filed	True if Widerklage was filed.	124	100.0	bool	No issues.
has_counterclaim_second_exchange	True if Widerklagereplik was filed.	124	100.0	bool	No issues.
has_additional_filings	True if additional written submissions beyond standard exchange were filed.	124	96.8	bool	4 mismatches: distinguishing standard exchange from additional filings; 'Eingabe' is ambiguous in Swiss procedure.
has_settlement_hearing	True if court-conducted Vergleichsverhandlung took place.	124	100.0	bool	Notable default-bias case: LLM quoted evidence for hearing but returned False due to schema default. Resolved.
has_expert_report	True if Gutachten was produced or submitted (incl. party-commissioned).	124	100.0	bool	Cost references ('Gutachterkosten') triggered false positives; resolved.

Auxiliary reasoning fields (e.g. trial_start_date_reasoning, dispute_value_reasoning, loosing_share_reasoning, and all procedural indicator reasoning fields) are omitted; they support extraction but are not part of the final dataset. N=number of comparable observations in golden set. Acc.% = field-level accuracy; *Source:* Own calculations based on validation against manually coded golden set (N=125).

Table 16: Extraction variable definitions and validation results.

Variable	Description	N	Acc.%	Type	Notes
legal_subject_subsequent	Specific contractual relationship underlying a "Forderung" claim. Extracted via LLM from judgment text. Coding: forderung_[contract_type]. Classification by contractual relationship (not basis of liability). Always most specific type (specificity rule). 68 unique categories. AG cases (N=102) classified manually.	81	92.6	str	3 specificity-rule mismatches (liefervertrag misclassified as kaufvertrag, speditionsvertrag misclassified as auftragsvertrag, architektur_werkvertrag misclassified as werkvertrag). 2 genuine errors (einfache_gesellschaft misclassified as maklervertrag, lebensversicherung misclassified as konto_depotvertrag). 1 recurring edge case (totalunternehmervertrag misclassified as liefervertrag). 16 calibration rounds (accuracy improved from 80% to 92.6%). Main issues: (1) classification by liability basis instead of contractual relationship, (2) generic vs. specific contract types (e.g. Bankvertrag vs. Konto/Depotvertrag), (3) LLM nondeterminism at larger batch sizes, (4) specificity rule not consistently applied. Resolved via iterative prompt refinement and specificity rule.

Source: Own calculations based on validation against manually coded golden set (N=81).

Table 17: Subsequent legal subject extraction, validation results.

Appendix 2: Wild-Cluster-Bootstrap vs. HC1 p-values Model 6

Model	Variable	Coef.	HC1 p	HC1	Boot. p	Boot.
CC (6)	D_AG	-0.518	0.293	n.s.	0.055	*
CC (6)	D_Claims_FinInsurance	0.068	0.064	*	0.001	***
CC (6)	D_IP	0.069	0.062	*	0.134	n.s.
CC (6)	counterclaim_second_exchange_indicator	0.395	0.024	**	0.000	***
CC (6)	additional_filings_indicator	0.051	0.115	n.s.	0.002	***
PC (6)	ln_n_defendants	0.176	0.105	n.s.	0.061	*
PC (6)	domicile_plaintiff	-0.129	0.028	**	0.000	***
PC (6)	D_Claims_Construction	-0.208	0.017	**	0.000	***
PC (6)	D_Claims_FinInsurance	-0.120	0.103	n.s.	0.022	**
PC (6)	second_exchange_indicator	0.319	0.067	*	0.000	***
PC (6)	expert_report_indicator	-0.319	0.028	**	0.000	***

999 bootstrap replications, Rademacher weights, 11 judge clusters. Shows only the 11 variables where significance level changes between HC1 and bootstrap; *Source:* Own calculations.

Table 18: Wild-cluster-bootstrap vs. HC1 p-values, variables with changed significance.

Appendix 3: Variance Inflation Factors

Variable	VIF (CC, $N = 976$)	VIF (PC, $N = 898$)
ln(Baseline)	3.32	4.65
D_AG	52.22†	47.41†
D_AG × ln(Baseline)	53.33	48.24
ln(Plaintiffs)	1.12	1.15
ln(Defendants)	1.19	1.22
Domicile plaintiff	1.22	1.24
Domicile defendant	1.14	1.15
D_Claims_Construction	1.91	1.94
D_Claims_Trade	1.69	1.68
D_Claims_FinInsurance	2.21	2.26
D_Claims_CorpLiability	1.58	1.6
D_Claims_URG	3.42	4.65
D_IP	1.82	1.82
D_Corporate	1.42	1.3
D_Miscellaneous	1.38	1.43
Defence	6.99	7.84
Second exchange	6.54	7.3
Counterclaim	6.53	7.69
Counterclaim × 2nd exch.	6.58	7.74
Additional filings	1.65	1.66
Settlement hearing	1.92	1.91
Expert report	1.14	1.15
Plaintiff loss share	-	1.72
Year FE (max)	5.57	5.47
Judge FE (max)	5.78	5.97

† D_AG VIF reported from specification without Judge FE. In the full Model (6), D_AG is structurally collinear with the Aargau judge dummies and has infinite VIF, which is expected in nested fixed-effects designs and does not affect identification. *Source:* Own calculations.

Table 19: Variance inflation factors for Models (6).