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The volume of federal litigation and the macroeconomy

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Abstract

In this paper we examine the extent to which fluctuations in a number of macroeconomic variables impact on the volume of federal litigation cases. In particular, the impact of aggregate U.S. GDP, consumption, inflation, unemployment, and interest rates on the volume of antitrust, bankruptcy, contract, personal injury, and product liability cases between the years 1960 and 2000 is examined using Granger causal analysis and vector autoregression models [see e.g., Granger, C. W. J. (1988). Some recent developments in a concept of causality. *Journal of Econometrics*, 39, 199–211]. Our empirical findings suggest that there are several linkages between macroeconomic variables and the volume of litigation cases, in broad agreement with the findings of Siegelman and Donohue [1995; The selection of employment discrimination disputes for litigation: using business cycle effects to test the Priest–Klein hypothesis. *Journal of Legal Studies*, 24, 427–462], who find that unemployment is an important determinant of the (number and) quality of employment cases filed. Most noteworthy, we find that there is a causal linkage from output, consumption and inflation to the total volume of federal litigation, so that predictions of future litigation volume can be improved by using information contained in current macroeconomic aggregates. Causation in the other direction (i.e. from the volume of litigation to macroeconomic activity) is not found in the data, however. Based on impulse response analysis, it is seen that shocks to income, consumption and inflation immediately lead to an increase in the volume of litigation, with shocks to inflation having the largest impact, and shocks to consumption having a rather moderate impact. In addition, the long run impact that shocks to each of these variables has on the volume of litigation is positive, regardless of whether the VAR or VEC model is used. Here, again, the impact of consumption is quite moderate, though. Additionally, similar results arise

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when examining the relation between various individual measures of federal litigation volume and the macroeconomy. Thus, the volume of federal litigation does not appear to be immune to the business cycle, a finding which is in broad agreement with the findings of Siegelman and Donohue.

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1. Introduction

Some attorneys are of the belief that their market is relatively immune from the volatility of business cycles. The recent front page headline from the New Jersey Law Journal summarizes this view:

*“However Hard the Market Falls, Soft Landing Seen for IP Lawyers
Also likely to thrive in sluggish times: employment, bankruptcy, and practice areas
relatively immune to the business cycle”¹*

The litigation business consists primarily of attorneys who, in turn, generate a demand for the services of a range of other professionals. These range from real estate companies who lease space to attorneys, to professionals such as support staff, outside experts, and other “litigation support professionals and their employees, as well as other workers who provide services directly to the court system.” National Economic Research Associates, for instance, conducts a “legal leading indicators” survey to forecast spending by corporations on outside legal counsel over the coming year. One of the purposes of this survey is to determine whether current economic conditions are expected to affect the litigation business. Given that firms are willing to pay for this information, forecasts of the volume of litigation must play an important role when decisions are made.²

For some types of lawsuits, such as bankruptcy litigation, one would expect there to be a significant relationship between slowdowns in the economy and the volume of bankruptcy lawsuits. However, for other types of lawsuits considered in this study, such as contract cases, antitrust lawsuits and various types of tort litigation, there is no obvious relationship. For example, are individuals more likely to pursue a personal injury lawsuit in better or poorer economic times? Litigation is a costly endeavor, and individual plaintiffs and their attorneys, who may be financing the expenses of the lawsuit and are paid through contingency arrangements, would presumably be influenced by economic conditions. Contingency fee arrangements further cloud the picture. Attorneys may be funding current and future lawsuits from the proceeds of prior lawsuits. However, cases may not conclude in a manner that relates to the economy. There is a significant lag between when a lawsuit is filed and when it reaches an end in the form of one of several potential outcomes: settlement, plaintiff dropping the case, dismissal, or trial.

¹ Henry Gottlieb (2001, pp. 1–16).

² Detailed information on this survey can be found at the website <http://www.nera.com>.

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