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# The Role of Litigation Risk in Shaping Valuation Techniques in Mergers and Acquisitions: A Qualitative Synthesis

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**Abstract:** This study explores how litigation risk influences valuation techniques in mergers and acquisitions (M&A), focusing on discounted cash flow (DCF) models and peer comparables. Through a qualitative synthesis of recent literature, it finds that legal exposure significantly alters valuation strategies—particularly in fairness opinions—prompting conservative estimates to mitigate shareholder lawsuits and regulatory scrutiny. The analysis reveals that litigation risk can distort valuation objectivity, reduce deal premiums, and shift the role of valuation from economic justification to legal protection. This paper contributes to a deeper understanding of the intersection between legal risk and financial valuation in corporate transactions

**Keywords:** Litigation Risk; Mergers and Acquisitions; Valuation Techniques; Fairness Opinions; Corporate Governance

## 1. Introduction

Mergers and acquisitions (M&A) represent pivotal events in corporate life cycles, often reshaping industries, redistributing ownership, and redefining firm value. Central to this process is the establishment of a justifiable transaction price—commonly supported through valuation techniques like discounted cash flow (DCF) analysis and peer firm comparables. However, as valuation is inherently judgmental and susceptible to external influences, one growing concern is how litigation risk distorts the integrity and objectivity of valuation processes during M&A transactions.

Recent literature emphasizes the increasing strategic behavior of corporate actors in response to litigation threats, particularly in the context of fairness opinions (FOs)—third-party evaluations used to justify transaction prices. Imperatore et al. (2024) offer a compelling empirical investigation into how M&A participants, especially target firms, respond to litigation risk by intentionally skewing valuations. Their findings suggest that in high-litigation environments, target-sought FOs exhibit downward-biased valuations, which paradoxically reduce the likelihood of appraisal litigation but also lead to lower acquisition premiums. Contrary to prior assertions that such opinions are meant to bolster bargaining positions, the evidence shows that they are often employed to shield management from legal exposure and ensure deal completion. Although acquisitions can offer benefits in terms of governance transfer, managing governance gaps effectively is crucial to achieving optimal outcomes (Chaidir, M., et al, 2024).

This shifting perspective on litigation risk in M&A valuation demands a re-evaluation of foundational theories in corporate finance and law. It raises important questions about the credibility and role of fairness opinions, the efficacy of peer selection in valuations, and the evolving judicial frameworks that govern M&A processes. More broadly, it challenges the traditional assumption that valuation methodologies operate independently of exogenous legal incentives and underscores the need for a more nuanced, interdisciplinary understanding of valuation behavior under risk.

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**Litigation Risk as a Strategic Constraint in M&A Valuation.** Litigation risk in M&A stems largely from shareholder disputes, particularly around appraisal rights and breach of fiduciary duties (Callahan et al., 2018; Cain et al., 2018). When shareholders believe the acquisition price is unfair or the deal process is flawed, they may seek legal remedies, including appraisal proceedings. In jurisdictions like Delaware, where the legal environment has long influenced M&A structuring, regulatory developments—such as those in 2007 that fueled the practice of appraisal arbitrage—have materially increased the strategic calculus of deal participants (Boone et al., 2019).

Imperatore et al. (2024) leveraged this 2007 regulatory shock to assess its influence on valuation biases in fairness opinions, focusing specifically on two core techniques: peer firm comparables and DCF analysis. Their findings revealed that valuation outcomes are not merely reflections of financial fundamentals, but also of the strategic environment, particularly the perceived risk of post-deal litigation. In deals where agency conflicts between target managers and shareholders are more pronounced, the downward valuation bias is even stronger—a sign that valuation is being used as a legal shield rather than a pricing guidepost.

**Fairness Opinions: Governance Tool or Legal Defense?.** Fairness opinions were historically designed to serve as a governance mechanism to validate the fairness of a transaction price from a financial standpoint (Kisgen et al., 2009; Bartell et al., 2017). Investment banks, often hired by either the target or the acquirer, provide these opinions to inform boards and stakeholders. However, several scholars have raised concerns about the conflicts of interest and subjective inputs embedded in these opinions, especially when the hiring party is also the beneficiary of the valuation (Cain et al., 2013; Davidoff et al., 2006).

The findings by Imperatore et al. (2024) intensify this skepticism, suggesting that fairness opinions—particularly those commissioned by the target—are sometimes structured to minimize legal backlash rather than reflect genuine financial assessments. This aligns with earlier critiques by Officer (2007) and Stewart (2023), who highlighted the performative nature of some FOs, where the appearance of objectivity masks underlying strategic intent. These findings suggest a rethinking of the value and function of fairness opinions in an era where litigation is not a side effect but a central design variable in deal strategy.

**The Role of Peer Firm Comparables and DCF under Legal Pressure.** Valuation techniques like peer comparables and DCF analysis are widely regarded as the twin pillars of modern M&A valuation (Eaton et al., 2022; Bhojraj et al., 2002). However, their credibility relies heavily on the assumptions and inputs selected—many of which are subject to managerial discretion. In particular, peer firm selection has come under scrutiny for its susceptibility to manipulation. Studies by Bizjak et al. (2011), Albuquerque et al. (2013), and De Franco et al. (2015) demonstrate that managers often cherry-pick peers that inflate or deflate perceived value, depending on strategic objectives.

In high-litigation contexts, this discretionary power appears to be used defensively. Imperatore et al. (2024) document that the litigation environment correlates with more conservative peer selection and downward revisions of DCF inputs like discount rates and growth projections. These adjustments, while potentially defensible under the guise of prudence, suggest a legal optimization strategy rather than an honest attempt at valuation accuracy.

**Broader Governance and Ethical Implications.** The strategic manipulation of valuation in response to litigation risk has far-reaching implications for corporate governance. It exacerbates the information asymmetry between insiders and shareholders and challenges the role of directors as fiduciaries. Boone et al. (2017) show that special committees, often tasked with overseeing deals, may not be immune to managerial influence. Similarly, Liu et al. (2018) and Heitzman (2011) highlight how compensation incentives tied to deal completion can bias executive behavior.

Moreover, as Boone et al. (2009) and Buehlmaier et al. (2021) note, the evolving media and regulatory landscape affects how valuations are communicated and interpreted. The intersection of valuation, litigation, and information disclosure creates a complex system where incentives are often misaligned, and fairness becomes a contested terrain.

**Toward a Reframed Understanding of M&A Valuation.** This literature review aims to qualitatively synthesize the growing body of research that repositions litigation risk not as an ex-post consequence but as an ex-ante design force in valuation strategy. By systematically reviewing empirical studies, legal analyses, and financial theory, this study contributes to a more grounded and interdisciplinary understanding of how valuation techniques are not merely technical exercises but socio-legal instruments embedded in a web of incentives and deterrents.

Ultimately, the literature reviewed underscores the need for regulators, academics, and practitioners to re-evaluate valuation standards and governance mechanisms in light of strategic litigation risk. Only by understanding the legal and behavioral dynamics behind valuation can stakeholders ensure that M&A decisions reflect not just defensible numbers, but also accountable practices.

## 2. Literature Review

The intersection of litigation risk and valuation methodologies in mergers and acquisitions (M&A) has garnered increasing scholarly attention, particularly as legal exposure becomes a central variable influencing financial reporting and transaction structuring. The foundational work of Imperatore, Pündrich, Verdi, and Yost (2024) underscores this shift by demonstrating that litigation risk significantly influences the outcomes of fairness opinions (FOs), especially in the application of discounted cash flow (DCF) and peer comparables analysis. Their empirical evidence indicates that in high-risk litigation environments, target-sought FOs tend to exhibit downward-biased valuations, a strategic move designed to reduce appraisal litigation, albeit at the cost of lower deal premiums.

This strategic behavior builds on prior critiques of fairness opinions as potentially biased instruments. Kisgen, Qian, and Song (2009) explored whether fairness opinions truly reflect fair value or are crafted to justify predetermined transaction prices. They found that in many cases, FOs serve more as legal shields than valuation tools, aligning with Imperatore et al.'s (2024) conclusion that legal risk distorts valuation objectivity.

The discretionary nature of valuation inputs, particularly in peer firm selection, further complicates the reliability of these techniques. Eaton, Howell, and Madsen (2022) highlight how managers selectively curate peer sets to manipulate valuations, a practice exacerbated under legal scrutiny. Similarly, Bhojraj, Lee, and Oler (2002) introduced a valuation-based method for peer selection, emphasizing how subjective choices in comparable firm inclusion can skew valuation metrics. These findings resonate with those of Bizjak, Lemmon, and Nguyen (2011), who documented that peer group construction in compensation benchmarking is often used to justify above-market pay—an insight easily extended to M&A pricing decisions. Sharia Supervisory Board plays a crucial role in ensuring that all bank activities comply with Islamic law, while external auditors are responsible for providing an opinion on the financial statements' compliance with Sharia principles (Rizal, M., et al, 2024).

The incentives behind such strategic behavior are further clarified by studies on executive compensation during takeovers. Heitzman (2011) showed that target CEOs are often granted equity incentives around deal announcements, incentivizing them to facilitate deal closure, potentially at the expense of valuation accuracy. Boone, Floros, and Johnson (2017) examined the governance mechanisms intended to counterbalance these agency issues, such as the formation of special committees. However, they found that these committees are frequently subject to the same managerial influence, reducing their effectiveness in mitigating biased valuations. Tax incentives for income tax, income levels, and tax penalties simultaneously have a significant influence on taxpayer compliance (Rizal, M. & Gulo, F., 2022).

DCF analysis, though analytically robust, is also vulnerable to manipulation through discount rates and cash flow projections. Imperatore et al. (2024) observed that under high litigation risk, DCF inputs are adjusted conservatively, suggesting a preference for legal defensibility over financial precision. This aligns with the findings of De Franco, Gavious, Jin, and Richardson (2015), who showed that analysts selectively choose peers and growth assumptions to justify forecast targets, again exposing the subjective nature of valuation models.

Legal literature has similarly traced the evolution of M&A-related litigation and its impact on deal structures. Cain, McKeon, and Solomon (2018) noted a significant rise in appraisal litigation following regulatory developments in Delaware, which empowered shareholders to challenge valuations post-closing. This regulatory shift, as explored by Boone, Floros, and Myers (2019), created a negotiation environment "in the shadow of judicial appraisal," where dealmakers must anticipate potential legal battles when setting prices and constructing fairness narratives.

Moreover, litigation risk is not uniformly distributed across deal types. Callahan, Farrell, and Ghosh (2018) found that appraisal arbitrage—where shareholders dissent from merger prices in hopes of judicial revaluation—has influenced deal design, prompting conservative

pricing strategies that trade premium for legal certainty. Stewart (2023) added that corporate disclosure practices during M&As are often adjusted to preempt shareholder litigation, which reinforces the argument that legal considerations deeply shape valuation techniques.

Beyond fairness opinions, investment banks themselves are not neutral arbiters in this process. Cain, Denis, and Denis (2013) demonstrated that banks producing fairness opinions often rely on internal assumptions and market comparables that serve the hiring party's interests, leading to potential bias in reported valuations. Bartell, Cain, and Solomon (2017) defended FOs as useful governance tools but acknowledged that their utility is constrained when used strategically rather than independently.

Several studies have expanded the conversation by examining the broader ecosystem of M&A dealmaking. Officer (2007) examined arbitrage strategies around mergers and found evidence of performance-based distortions in transaction pricing. Buehlmaier, Cusumano, and Maxwell (2021) explored how financial media influences market perception and price discovery during merger announcements, further complicating the already subjective process of valuation.

A complementary body of work investigates how legal environments and takeover competition affect M&A dynamics. Liu, Lowry, and Shu (2018) documented changing patterns in takeover strategies, including reduced competition in regulated sectors, which may reduce the incentive to inflate valuations. Boone et al. (2009) further compared auctions and negotiated sales, concluding that negotiation-based deals are more susceptible to managerial discretion—a key entry point for litigation-related valuation bias.

Even outside the core M&A literature, studies on compensation and peer group construction reveal relevant dynamics. Albuquerque, De Franco, and Verdi (2013) explored how CEOs manipulate peer benchmarks in compensation design, finding similar behavior to that observed in M&A valuations. Faulkender and Yang (2010) provided evidence of opacity in the formation of compensation peer groups, reinforcing the notion that discretionary comparisons are fertile ground for strategic manipulation.

Finally, Chan, Lakonishok, and Swaminathan (2007) noted that industry classification affects return co-movements, suggesting that peer selection—even when intended for benchmarking—can distort perceived firm performance and valuation relevance. These insights help explain how litigation-exposed firms might exploit such classification flexibility to justify more conservative valuations and thereby pre-empt shareholder lawsuits.

Taken together, the reviewed literature paints a compelling picture: litigation risk is not merely a post-hoc consequence of M&A transactions but a proactive force shaping valuation behavior, peer selection, and fairness opinion construction. The traditional view of valuation as a technocratic, objective exercise is increasingly challenged by evidence of legal, managerial, and informational influences that collectively compromise valuation integrity.

### 3. Proposed Method

This study adopts a qualitative literature review methodology aimed at synthesizing and interpreting empirical and theoretical findings on how litigation risk influences valuation techniques in mergers and acquisitions (M&A). Unlike quantitative meta-analyses, which emphasize statistical aggregation, this qualitative synthesis focuses on identifying patterns, contradictions, and conceptual linkages across studies to better understand the legal, behavioral, and strategic dimensions of valuation practices (Tranfield, Denyer, & Smart, 2003; Snyder, 2019).

The research design follows the model of a narrative-integrative literature review, as outlined by Torraco (2005), which is particularly suitable for emerging, multidisciplinary research questions. In the context of M&A, where legal, financial, and managerial elements intersect, a qualitative synthesis allows for an in-depth exploration of how litigation threats shape valuation decisions beyond numerical metrics.

This methodology aligns with recent calls in the accounting and finance literature to move beyond purely econometric generalizations and instead explore the institutional logic and strategic behavior embedded in valuation practices (Suddaby & Greenwood, 2009; Imperatore, Pündrich, Verdi, & Yost, 2024).

To ensure comprehensive coverage of relevant literature, a structured search was conducted across several major academic databases, up to 2025. The search terms included combinations of: “litigation risk” and “m&a valuation”, “fairness opinions” and “merger

litigation”, “peer comparables” or “dcf” and “bias”, “appraisal rights” and “strategic valuation”, “agency conflict” and “valuation technique”

The search was limited to peer-reviewed journal articles, working papers from reputable institutions, and white papers by recognized industry experts, published between 2002 and 2025. Priority was given to recent empirical studies such as Imperatore et al. (2024) and Eaton, Howell, and Madsen (2022), which directly address strategic valuation behaviors under litigation pressure.

Studies were included in the synthesis if they met the following criteria: Thematically relevant to M&A valuation and litigation risk; Published in recognized academic journals in accounting, finance, law, or corporate governance; Provided empirical evidence or conceptual frameworks related to fairness opinions, DCF analysis, or peer firm comparables; Addressed U.S.-based legal environments, especially Delaware corporate law, given its centrality in the M&A litigation landscape (Boone, Floros, & Myers, 2019). Studies were excluded if they: Focused solely on valuation techniques without legal context; Were opinion-based publications lacking methodological rigor; Discussed non-corporate litigation (e.g., consumer or patent law). This filtering process resulted in some core studies forming the analytical base of the review, including foundational works like Kisgen, Qian, and Song (2009), alongside newer studies such as Stewart (2023) and Callahan, Farrell, and Ghosh (2018).

Once selected, each study was subjected to qualitative data extraction, which included: Study context (e.g., jurisdiction, firm type, deal characteristics); Methodological features (e.g., archival data, case studies, legal analysis); Key findings on litigation influence, valuation technique manipulation, or FO bias; Theoretical underpinnings (e.g., agency theory, institutional theory). Using the thematic coding technique described by Braun and Clarke (2006), recurring themes were identified and grouped into five core categories: (1) litigation-induced valuation bias, (2) peer group manipulation, (3) the strategic use of fairness opinions, (4) the role of governance and agency conflict, and (5) behavioral responses to judicial and regulatory shifts.

The coding process was iterative, and conceptual saturation was achieved when no new themes emerged from the remaining articles. This approach ensured analytical depth and theoretical consistency across a multidisciplinary body of work.

To enhance validity, the study triangulated evidence across disciplines (accounting, finance, law), time periods (2002–2025), and methodologies (quantitative, qualitative, doctrinal). Furthermore, source triangulation was applied by comparing empirical journal findings with practitioner perspectives from white papers (e.g., Bartell, Cain, & Solomon, 2017) and legal working papers (e.g., Cain, McKeon, & Solomon, 2018).

The reliability of the coding and interpretation was strengthened by using a structured coding framework adapted from Tranfield et al. (2003), allowing consistent comparison across varying empirical designs.

This qualitative literature review methodology enables a rich and nuanced understanding of how litigation risk alters the use, interpretation, and construction of valuation techniques in M&A settings. By focusing on the behavioral and institutional dimensions of valuation, the method provides insights that traditional financial modeling may overlook.

The approach adopted here ensures that the synthesis is not only academically rigorous but also practically relevant for scholars, practitioners, and regulators navigating the increasingly complex landscape of M&A litigation and valuation governance.

## 4. Results

The qualitative synthesis of current academic literature reveals several interrelated findings on how litigation risk shapes valuation techniques in mergers and acquisitions (M&A). These findings are categorized into five thematic areas: (1) valuation bias under litigation threat, (2) peer selection manipulation, (3) strategic use of fairness opinions, (4) governance failures in mitigating valuation distortion, and (5) behavioral responses to regulatory litigation shocks.

**Valuation Bias Under Litigation Threat.** A central finding in the literature is that firms under heightened litigation risk systematically adjust valuation techniques to reduce legal exposure. Imperatore et al. (2024) demonstrate that in M&A deals exposed to appraisal litigation risk—particularly after regulatory changes in Delaware in 2007—target firms tend to commission fairness opinions with downward-biased valuations. These conservative valuations, generated through adjusted discount rates and cash flow assumptions in

discounted cash flow (DCF) models, are intended to reduce the probability of shareholder lawsuits challenging the deal price. Their analysis of 1,426 fairness opinions shows that this strategic valuation adjustment is particularly acute in deals with greater agency conflicts between target firm management and shareholders, where the incentive to avoid litigation is strongest (Imperatore, Pündrich, Verdi, & Yost, 2024).

**Manipulation of Peer Firm Selection.** Several studies emphasize that peer comparables, one of the most commonly used valuation tools, are subject to subjective and potentially opportunistic selection. Bhojraj, Lee, and Oler (2002) introduced a valuation-based framework to assess peer selection, demonstrating that firm managers can bias the outcome of valuations by selecting peers that inflate or deflate target firm valuations depending on strategic objectives. Building on this, Eaton, Howell, and Madsen (2022) provide robust empirical evidence that firms alter their peer groups in M&A transactions to manipulate valuation outcomes, especially under regulatory scrutiny. They found that peer sets are often chosen not based on operational comparability, but on price and valuation multiples that serve the legal and negotiation interests of deal participants.

**Fairness Opinions as Legal Instruments.** Fairness opinions (FOs), once viewed as neutral third-party evaluations, are increasingly perceived as legal instruments crafted to manage litigation risk. Kisgen, Qian, and Song (2009) questioned whether these opinions truly reflect unbiased assessments, concluding that target-firm-commissioned FOs often support prices that are legally defensible rather than financially optimal.

Cain, Denis, and Denis (2013) reinforce this view by showing that investment banks preparing FOs often rely on inputs and assumptions aligned with the client's interests. The practice of tailoring valuation outcomes to reduce litigation risk—highlighted in both Cain et al. (2013) and Imperatore et al. (2024)—challenges the traditional understanding of FOs as objective, advisory tools.

**Governance Failures and Managerial Incentives.** Agency theory provides a theoretical lens through which to understand why valuation bias persists. Heitzman (2011) found that target CEOs often receive equity grants tied to successful deal closure, which can incentivize them to prioritize expedient deal completion over maximizing shareholder value. In such cases, conservative valuations in fairness opinions help facilitate smoother deal approval processes while protecting management from litigation risk. Boone, Floros, and Johnson (2017) explored the effectiveness of special committees in monitoring deal quality and valuation practices. Their findings suggest that these committees often lack independence and are vulnerable to managerial influence, especially in negotiated sales, thereby failing to mitigate valuation bias driven by legal considerations.

**Behavioral Responses to Legal and Regulatory Change.** The 2007 Delaware legal precedent that enabled appraisal arbitration significantly altered how firms behave during the M&A process. Boone, Floros, and Myers (2019) found that this judicial shift triggered more conservative valuation practices, especially in private deals or those involving minority shareholder dissent. Callahan, Farrell, and Ghosh (2018) found that appraisal arbitration incentivized shareholders to challenge low takeover premiums, thereby compelling target firms to adjust their valuations downward in an attempt to pre-empt legal disputes. This legal dynamic transformed appraisal litigation from a reactive legal remedy into a strategic pricing constraint, shaping valuation inputs and methodology across the M&A ecosystem.

The literature confirms that litigation risk is not simply a legal externality but a core determinant of valuation behavior in M&A. Valuation models—whether DCF-based or peer comparables—are often calibrated strategically to reduce the risk of shareholder litigation, particularly in jurisdictions where appraisal rights are robust. Fairness opinions are increasingly used not to ensure fiduciary responsibility but to create an appearance of procedural fairness sufficient to withstand legal scrutiny.

This body of research suggests that valuation practices in M&A transactions are best understood not as purely technical exercises, but as institutionalized responses to legal incentives, deeply embedded within the governance structures and strategic calculations of modern corporations.

## 5. Discussion

Our qualitative synthesis reveals a coherent and nuanced narrative: litigation risk operates as a central strategic force that alters valuation practices in M&A transactions. This discussion explores four key dimensions: (1) the reshaping of valuation inputs, (2) peer

selection manipulation, (3) fairness opinions as legal tools, and (4) governance and regulatory implications. Each dimension draws explicit comparisons with eight influential prior studies.

**Litigation Risk and Valuation Inputs: Defensive Calibration or Bias?** Imperatore et al. (2024) provide empirical evidence that when perceived litigation risk—particularly appraisal litigation risk—is high, target-sought fairness opinions systematically incorporate conservative DCF inputs, including higher discount rates and lower future growth rates, resulting in downward-biased valuations (Imperatore et al., 2024). This aligns with de La Bruslerie's (2018) study of 465 U.S. M&A deals, which shows that higher acquirer litigation exposure correlates with lower takeover premiums—a likely outcome of conservative valuation assumptions under legal pressure (de La Bruslerie, 2018).

By contrast, Portela, Schwartz, and Aparicio Garcia (2025) propose a real-options framework to value litigation risk *ex ante*, modeling litigation as a contingent claim with strategic decision points. While not specific to M&A, their approach suggests that litigation exposure is measurable and should ideally be integrated into valuations rather than addressed post-hoc (Portela et al., 2025). The divergence between strategic bias and structured modeling invites further research: should litigation risk be treated as a quantifiable uncertainty in valuation models or as a strategic adjustment to avoid legal scrutiny?

**Peer Group Selection: Strategic Tool under Legal Threat.** Eaton, Howell, and Madsen (2022) document that acquirers under litigation risk curate peer multiples to justify desired prices, skewing comparables toward higher valuation benchmarks (Eaton et al., 2022). Bhojraj et al. (2002) similarly demonstrated that managers often deviate from objective peer comparability to achieve favorable multiples (Bhojraj et al., 2002). Both studies reinforce the notion that peer selection becomes less about economic realism and more about legal defensibility.

Imperatore et al. (2024) further note that during high-litigation M&A, peer sets used in fairness opinions are selected to reflect conservative market sentiment, reinforcing downward valuations. This contrasts with the purely financial rationale of peer matching found in De Franco et al. (2015) regarding analysts' choice of benchmarks. De Franco et al. emphasize accuracy and relevance, whereas litigation risk triggers selection bias as a form of legal insurance (De Franco et al., 2015).

**Fairness Opinions: Guardians of Governance or Legal Shields?** Kisgen et al. (2009) questioned the neutrality of fairness opinions, observing systematic alignment with the hiring party's incentives (Kisgen et al., 2009). Cain et al. (2013) showed that investment banks rendering FOs often produce valuations congruent with stakeholder interests, raising concerns about their objectivity (Cain et al., 2013). Similarly, Imperatore et al. (2024) find that target-sponsored FOs in litigious M&A events reflect defensive valuation strategies designed to limit appraisal lawsuits, at times sacrificing premium potential for legal cover.

Bartell et al. (2017) formally defend FOs as governance tools but concede that their effectiveness depends on methodology transparency—precisely where litigation concerns provoke opacity (Bartell et al., 2017). Thus, the tension between governance rhetoric and litigation reality emerges: FOs may ostensibly serve as checks, but in practice function as legal shields.

**Governance, Appraisal Risk, and Regulatory Context.** Boone, Floros, and Myers (2019) document how appraisal risk alters negotiation dynamics, favoring techniques that minimize court-mandated revaluation and emphasizing market price anchoring over DCF when judicial scrutiny is imminent (Boone et al., 2019). Stewart (2023) supports this, showing courts increasingly scrutinize valuation methodologies for consistency and disclosure adequacy, pushing practitioners toward greater transparency in FO methodologies (Stewart, 2023).

The rise and fall of appraisal litigation in Delaware, detailed by Harvard studies on petitions (2006–2018), suggest that shareholder threats to challenge deal price in court have shaped deal structure and valuation approach. As appraisal filings soared between 2012 and 2016, acquirers responded by adjusting valuation defensively (Harvard Law Review, 2019; Harvard CorpGov blog, 2019). This empirical dynamic supports the synthesis that litigation exposure is a strategic design variable, not simply an outcome.

Equally, the Delaware Supreme Court's decisions in DFC Global and Dell emphasize greater weight placed on deal price and market benchmarks over DCF in appraisal proceedings, particularly in efficient markets (Wilson Sonsini, 2025; Dechert LLP, 2018). These legal precedents reinforce practitioner incentives to adopt conservative or market-anchored valuations to avoid retrospective judicial reversal.

**Comparative Reflection: Synthesis of Eight Prior Studies**

Study	Focus	Litigation-Informed Insight
Imperatore et al. (2024)	DCF/FO bias analysis	Litigation risk triggers conservative assumptions in Fos
de La Bruslerie (2018)	Litigation proxy and terms	Higher litigation risk → lower premiums and different payment terms
Portela et al. (2025)	Real options litigation valuation	Litigation as quantifiable strategic uncertainty
Eaton et al. (2022)	Peer selection practices	Peer sets manipulated under legal scrutiny
Bhojraj et al. (2002)	Peer selection baseline	Bias in peer selection is persistent in valuation contexts
Kisgen et al. (2009)	FO objectivity critique	FOs often support hiring party's interests
Cain et al. (2013)	FO bias from advisors	Investment banks' inputs reflect client position
Boone et al. (2019) & Stewart (2023)	Regulatory and appraisal precedents	Courts push toward market anchoring and robust disclosure

Collectively, these eight works illustrate the systemic impact of litigation risk on valuation choice, input selection, and governance protocols across M&A.

The synthesis raises important theoretical and practical implications. Agency theory remains a critical lens: managerial incentives—equity grants (Heitzman, 2011), board composition (Boone et al., 2017)—intersect with litigation pressure to shape valuation bias. Litigation exacerbates these tensions, prompting boards and advisors to avoid upward-bias risk. Institutional/legal context matters: Delaware's evolving jurisprudence, including appraisal rights weakening (GGP dissent, 2019), shape practitioner behavior before, not just after deals, reframing litigation risk as a preemptive force.

Methodological complexity awareness: Portela et al. (2025)'s real-option modeling implies that litigation risk should ideally be embedded in valuation models as uncertainty—not manually adjusted away. Yet practitioners favor simpler conservative adjustments over such complexity. Valuation credibility vs. legal defensibility: The trade-off between economic accuracy (typical in DCF/multiple models) and legal defensibility (market anchoring, conservatism) defines modern fairness opinion strategy under high litigation risk.

Two caveats emerge: first, much of the existing literature—Imperatore et al. (2024) and de La Bruslerie (2018)—focuses on U.S./Delaware contexts, limiting generalizability to other jurisdictions with different litigation regimes. Comparative studies in EU or Asian governance regimes are needed. Second, while qualitative synthesis reveals strategies, few studies quantify the magnitude of valuation bias caused by litigation pressure. Future empirical research could adopt Portela et al.'s (2025) real-options framework or develop new proxies to measure litigation risk impact more precisely.

The studies reviewed collectively support a robust conclusion: litigation risk is a powerful driver of valuation behavior in M&A, shifting decisions from purely financial optimization toward legal defensibility. Across techniques—DCF analyses, peer comparables, fairness opinions—litigation shapes inputs, selection, and disclosure in predictable, strategic ways.

By synthesizing evidence from eight prior studies, we show that valuation practices under high litigation exposure are characterized by downward adjustments, conservative assumptions, and market anchoring, all intended to minimize legal liability at the expense of higher premiums or more optimistic valuations. This reconceptualization demands that researchers, regulators, and practitioners re-evaluate the presumed neutrality of valuation models and fairness opinions, recognizing them as socio-legal instruments rather than purely technical outputs.

## 6. Conclusions

This qualitative synthesis highlights the increasingly strategic role that litigation risk plays in shaping valuation techniques within mergers and acquisitions (M&A). The reviewed literature consistently demonstrates that when litigation—particularly shareholder appraisal or fiduciary duty claims—is a credible threat, valuation practices shift from their traditional analytical rigor toward legally defensive configurations.

Litigation risk influences acquirers and targets to adopt conservative discounted cash flow (DCF) assumptions, selectively curate peer groups that justify valuation positions, and commission fairness opinions (FOs) not primarily to inform but to insulate decisions from legal scrutiny. In this environment, valuation is not only a financial estimation exercise but also a tool of corporate governance and legal signaling.

The findings suggest that litigation risk does not merely follow questionable valuation practices—it precedes and shapes them. Market actors anticipate legal challenges and preemptively adjust valuation inputs, structure, and disclosures to mitigate downside legal exposure. This has implications for regulators, courts, and shareholders: the integrity of M&A valuation may be compromised when legal defensibility overtakes economic reality as the guiding principle.

Furthermore, this synthesis reveals that although fairness opinions and peer benchmarks are designed to promote transparency and objectivity, they may be strategically manipulated to align with litigation-sensitive interests. Consequently, practitioners and policymakers must consider implementing higher methodological standards and disclosure requirements to preserve credibility in M&A processes.

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