THE PENNSYLVANIA STATE UNIVERSITY
SCHREYER HONORS COLLEGE

DEPARTMENT OF FINANCE AND SCHOOL OF LABOR AND EMPLOYMENT RELATIONS

Investigating Adoption of Compulsory Employment Arbitration Among the 2022 *Fortune* 100

OLIVIA CORDANO
SPRING 2023

A thesis
submitted in partial fulfillment
of the requirements
for baccalaureate degrees
in Finance and Labor and Employment Relations
with interdisciplinary honors in Finance and Labor and Employment Relations

Reviewed and approved* by the following:

Mark Gough
Associate Professor of Labor and Employment Relations
Thesis Supervisor

Brian Davis
Associate Clinical Professor of Finance
Discipline Coordinator
Honors Adviser

Cody Stephens
Assistant Teaching Professor of Labor and Employment Relations
Faculty Reader

* Electronic approvals are on file.

ABSTRACT

The present study investigates the *Fortune* 100 sample from 2022 concerning their use of compulsory employment arbitration, which has grown in popularity since *Gilmer v. Interstate/Johnson Lane* (1991). Many on the list of these top revenue-producing companies use the cheaper, timely, and private alternative dispute resolution (ADR) method of compulsory arbitration, while few do not and pursue the expensive, lengthy, and public means of litigation in the court system. This paper fleshes out why this is the case by delving into the history of compulsory employment arbitration and then utilizing the *Fortune* 100 sample from 2022 to theorize on company financials, Board of Directors, and publicly/non-publicly held considerations, all under the umbrella of whether they utilize employment arbitration and how often.

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF TABLES

ACKNOWLEDGEMENTS

First and foremost, I would like to thank Dr. Mark Gough for encouraging me to read and gather data simultaneously, and to follow what I found interesting. As my thesis supervisor, he truly helped me produce research and a study that not only combined my two majors but also intellectually stimulated me. Next, I would like to express gratitude to Dr. Brain Davis who understood the importance of looking at employment law from the perspective of people as natured human beings just as much as the story the numbers tell. Then, I extend thanks to Dr. Cody Stephens for his willingness to read my work to make it what it is today. Furthermore, I wholeheartedly thank my family and friends, both here and at home, for if I did not have your support, this would have been a much tougher journey. A special shoutout is extended to the friends I made in Atherton Hall who would book library study rooms to complete our theses: an absolute must for those still writing! I would like to thank David B. Lipsky, Ariel C. Avgar, and J. Ryan Lamare for their inspirational work in "Organizational conflict resolution and strategic choice: Evidence from a survey of *Fortune* 1000 firms". Such a study eloquently relates top revenue companies' strategies in the United States (U.S.) to the utilization and subsequent frequency of ADR methods, combining labor with finance. Above all, I would like to thank God for blessing me with his grace to handle this workload on top of my course load, graduation preparation, and other commitments.

Chapter 1 Introduction

Signing an employment contract comes with a whir of emotions; sheer happiness of being chosen by a company to represent the brand; satisfaction from earning a wage for doing so; a sigh of relief in being able to afford day-to-day expenses of life and socialization. With a quick skimming of the employment agreement, one might have the urge to sign and send, almost immediately, especially if other options do not exist. If the company extending the agreement to employ is a household name, the odds are ever in the business's favor, with published articles calling for thousands of applicants (Tkaczyk, 2014). The annual release by *Fortune* magazine of its *Fortune 100* remains the most coveted list of top-revenue producing companies in the United States (U.S.). As a "dream job" machinery, Harvard Business Review finds itself researching how to recover from such rejections and land a job in one of these desired companies (Howell, 2020). In the crux of recruiting and onboarding within Corporate America's offices, warehouses, and wholesale stores, lie young, impressionable college graduates and middle-aged adults alike. The sheer allure of "work" in the U.S. differs from that of Europe which mandates diversity quotas (Krus et al., 2012).

Gilmer v. Interstate/Johnson Lane Corp. (1991) established the clause – unbeknownst to many – that remains rampant within employment contracts among the *Fortune* 100 and smaller business associations alike. At the age of 62, Gilmer was terminated by his employer Interstate/Johnson Lane Corp. In filing a charge with the Equal Employment Opportunity Commission (EEOC) for illegal discharge in violation of the Age Discrimination in Employment Act of 1967 (ADEA), Gilmer hoped he could waive the compulsory employment arbitration agreement he had signed as a condition of employment and pursue justice through the courts

(*Alexander v. Taylor*, 2019). Little did he know that he waived the right to go to court by signing his name on the dotted line with the swipe of a pen; indeed, Gilmer had agreed – whether knowingly or not – to arbitrate legal disputes with his employer and stifle any employment discrimination, sexual harassment, disabilities protection, minimum wage, overtime, maternity leave, and medical leave claims (Colvin, 2019). This infamous clause that results in a barring of the employee from the courts is referred to as compulsory employer-promulgated employment arbitration. Legally enforceable per the decision of Gilmer (1991), companies can utilize self-drafted employment arbitration agreements and require them as a condition of employment, spanning into supplier and customer agreements as well (Colvin, 2019). Within this system, a third-party neutral arrives at a binding decision, based upon the "unilaterally developed" employment arbitration clause (Colvin, 2019). Unlike in labor arbitration where the union and the employer bilaterally negotiate the system of dispute resolution, employer-promulgated employment arbitration often results in settlements and confidentiality agreements (Colvin, 2019).

Of employers that have adopted compulsory employment arbitration, 39.50% adopted their policy from 2012 to 2017 (Colvin, 2019). The adoption of compulsory employment arbitration precipitated per the Supreme Court's 2011 *AT&T Mobility LLC v. Concepcion* decision. The case held that class action waivers in compulsory arbitration agreements were broadly enforceable (Colvin, 2019). With the newfound allowance of class action proceedings, employer-promulgated clauses continued without plans to cease. Now, more than ever, employees are subject to these clauses due to their metastasization (Colvin, 2019). Countless articles arranged by *the New York Times, the Huffington Post, and the Wall Street Journal,* the

movie *Bombshell,* and the #MeToo Movement have brought attention to the private nature of the alternative dispute resolution method (Carlson, 2019). Waves of traditional federal securities class action lawsuits followed the movement, with allegations surrounding "public companies' practices, policies, and/or procedures with respect to sexual harassment and gender bias issues" (Carlton, 2019).

Ample studies conducted in a post-*Gilmer* and post-*AT&T Mobility LLC v. Concepcion* environment validate the present study's intention to investigate household names, particularly the *Fortune* 100, and whether they utilize employment arbitration and at what frequency. The literature review and statistical analysis seek to analyze the utilization and frequency of employer-promulgated arbitration among the 2022 *Fortune* 100 list over the span of 2012 through 2022 in association with variables of diversity and inclusion, bottom lines, and unionization coverage.

Chapter 2 Literature Review & Hypotheses

Scholars once viewed the rights of unionized employees and the rights of nonunionized employees to resolve disputes as distinct from one another; however, "the law and politics of labor and employment arbitration have become increasingly intertwined" and integral to understanding compulsory employment arbitration agreements today (Staszak, 2020). In the early 1800s, the first federal statutes concerning arbitration emerged between unions and employers before Congress intervened with continued industrial strife and tense labor relations. In the 1930s and the 1940s, laws like the National Labor Relations Act (NLRA) and the Taft-Hartley Act established legal processes for collective bargaining amongst organizations, union formation, and the grievance procedure. Still, this time only allowed for arbitration between unionized employees and their respective employers. It was not until the passage of the Federal Arbitration Act (FAA) in 1925 that nonunionized, private employment arbitration over commercial transactions – not employment contracts – was deemed legal (Staszak, 2020). Thus, nonunionized employment arbitration was not written into law as far as the mid-twentieth century, while labor arbitration was running smoothly.

In 1960, the Supreme Court specifically outlined labor arbitration through a trilogy of cases known as the Steelworkers Trilogy. The first two – Steelworkers v. American Manufacturing Co. and Steelworkers v. Warrior & Gulf Navigation Co. – enforced arbitration dispute resolution upon unwilling parties (Malin et al., 2015). With the method of ADR approved through employment agreements, the third case – Steelworkers v. Enterprise Wheel & Car Corp. – affirmed the enforcement of an arbitration award, despite the amount or manner (Malin et al., 2015). Indeed, arbitration was validated as desirable for employers regarding its

place in labor and employment law as a potential substitute for litigation in the court system and as a substitute for strikes in the workplace.

The FAA drafters left that of employment arbitration rather vague, without designation of an administrative agency to oversee the arbitration in its private setting, relying in totality on industry to shape it. Much like the idea behind the efficient market hypothesis, where prices will reflect the market without government intervention, nonunionized employment arbitration gained traction. After all, the FAA "was the product of long-standing interests in the business community that often joined with progressives who were motivated by the idea that arbitration could be a cost-effective way of handling "daily" commercial disputes that were overwhelming preferable – as the chairman of the Arbitration Committee of the New York Chamber of Commerce put it in 1924 – to 'costly, time-consuming and troublesome litigation.'" (Staszak, 2020). For context, the New York Chamber of Commerce was formed by a group of merchants to encourage business and industry, maintain the standard of fair trade, and demonstrated by this example, develop commercial arbitration procedures to avoid the exorbitant costs of litigation. In helping create the 1020 New York State arbitration law for an "arbitration tribunal" as a joint venture with the state itself, the foundation for the FAA was laid in such conservative business principles. Yet, even the progressives found solidarity in employment arbitration to address increasing inequalities while dealing with problems of judicial expense and delay by this efficient ADR process; for instance, former Dean of Harvard Law School (HLS) Roscoe Pound in 1906 stated the "backwardness" of [the] procedure with ADR [was] as a path forward" (Staszak, 2020). Both a form of self-regulation that corresponded with the growth of trade associations as well as a way of responding to the crisis that litigation had created in overfilled

legislative dockets (Gough and Taylor-Poppe, 2020), both Republicans and Democrats alike treated nonunionized employment arbitration as a bipartisan business plan for the United States legal system and society; in fact, trade associations grew drastically in the 1920s with Secretary of Commerce Herbert Hoover vocally supporting commercial employment arbitration among nonunionized businesses (Staszak, 2020).

Without federal legislation regarding arbitration, the early 1920s consisted of similar state arbitration laws like that of New Jersey and New York where hearings were then held regarding the possibility of a federal law (Staszak, 2020). Cases like *Tobey* failed to enforce specific performance of arbitration clauses and were met with nominal damages, leading to state and federal legislatures taking notice of the overall negative opinion of the judiciary towards arbitration (Robbins, 2021). Private businessmen worked for the support of their progressive counterparts by standing at the forefront of the fight for national standardization. New York businessman, the Arbitration Foundation founder, and the New York State arbitration law drafter Charles Bernheimer wrote a series of influential writings to promote employment arbitration's merits. As a private-sector visionary, he fostered support from both sides by painting the ADR method as one that "helped the small man or the poor man who cannot stand the stress and expense of protracted litigation" (Staszak, 2020). Furthermore – the President of the American Manufacturers' Export Association of New York – W.W. Nichols argued that the lack of requirements was of high value for streamlining dispute resolution in private, commercial settings. In arbitration "all technicalities of legal procedure and requirements are removed without any formality and interference from the court," he stated. (Staszak, 2020). Congress responded with drafted legislation that sought to put nonunionized employment arbitration

agreements “upon the same footing as other contracts, where [they] belong” (Staszak, 2020). With Congress’ admission that labor arbitration and employment arbitration are on the same footing, judges’ fears of losing jurisdiction by tagging these as “ordinary” arbitration cases were downplayed (Staszak, 2020). Ultimately, when the FAA was signed into law by former President Coolidge in 1925, the first federal statute regarding nonunionized employment arbitration was intended to “govern voluntary arbitration agreements among merchants of equal bargaining power and to exclude all workplace disputes”; in other words, the law did not touch the subject of compulsory arbitration nor did it handle employment arbitration as the world knows it today, other than an employee and an employer being the involved parties (Staszak, 2020). Scholars maintain that the enactment of the FAA clarified any negative misunderstanding that the judiciary had regarding arbitration clauses, allowing the FAA to remain one of the oldest justifications for the ADR method (Robbins, 2021).

Scholars argue that the omission of a designated administrative agency to oversee the implementation of arbitration – unlike the National Labor Relations Board (NLRB) in labor arbitration – left the private sector’s businesses to define nonunionized employment arbitration for themselves. With the law’s reenactment in 1947, adding “staying or dismissing pending lawsuits in favor of arbitration and enforcing awards when appropriate,” federal support for such voluntary arbitration between commercial, private businesses of equal bargaining power remained (Staszak, 2020). Both sides of the coin - from private business owners to progressive civil rights activists - considered it an efficient, cost-effective practice that alleviated court dockets. Although difficult to find someone against arbitration for commercial transactions, harsh attitudes met compulsory arbitration.

By contrast, in labor arbitration, Congress' 1935 National Labor Relations Act (NLRA) created and still creates equal bargaining power in the workplace between labor and management through the National Labor Relations Board (NLRB) (Colvin and Gough, 2015). While the FAA was the first step to legitimizing arbitration for the skeptical judiciary court system, the NLRA was initially used as the enforcement mechanism for labor and employment arbitration (Robbins, 2021). The board consists of a three-person panel that establishes policy and renders decisions on unfair labor charges and issues of union representation, collective bargaining, peaceful worker association, and other defined rights. The NLRB's members oversee the judges, arbitrators, and elections (Staszak, 2020). The Taft-Hartley Act ("LMRA") in 1947 ultimately provided federal court jurisdiction to enforce collective bargaining agreements. In 1957, the Supreme Court first granted unions the power to enforce the rights of unionized employees contained in collective bargaining agreements. Much of this passage was colored with negative remarks about labor arbitration's opposite – employment arbitration. The argument of labor arbitration being a substitute for strife as opposed to litigation allowed for collective bargaining agreements to constitute a "contract of employment" under the FAA (Stazsak, 2020). As a result, private businesses and other proponents for nonunionized employment arbitration had to shift gears for support. Yet it is important to note that the LMRA was initially used to support labor arbitration by Congress during the Steelworkers Trilogy, not the FAA (Stazsak, 2020). The LMRA allows either party to bring suit for breaches in the bargaining agreement that arise in the course of the unionized employment relationship (Robbins, 2021). These three cases set a court precedent to mandate the enforcement of collective bargaining agreements through LMRA without expanding the FAA's authority (Robbins, 2021). Labor arbitration remained a key feature of the New Deal

state and labor law by the mid-twentieth century, while employment arbitration was largely defined by commercial, private, nonunionized businesses as opposed to political powers and structured law.

By the 1960s, numerous actors backed both labor and commercial arbitration alike from businesses and unions to the legal community and conservatives and liberals in Congress. When enforcing employment arbitration clauses, initially, they were justified under the LMRA and not the FAA. Courts explicitly interpret the FAA as an enforcement mechanism for compulsory employment arbitration, leaving employees unprotected by a CBA or union relationship (Robbins, 2021). Several bipartisan bills passed in the 1980s and 1990s promoted binding arbitration (Stazsak, 2020). Despite the Equal Employment Opportunity Commission's (EEOC) strong stance against compulsory employment arbitration's utilization in the private sector, its limited institutional capacity proved futile in halting its progression.

When the U.S. court system initially discussed arbitration pre-1991, it was in tandem with the contractual interpretation of collective bargaining agreements under labor law; however, since the 1970s, Malin (1993) argues that collective bargaining has steeply declined while nonunion employment arbitration has risen. Scholars maintain that this utilization of compulsory employment arbitration is an effect of the ADR method's ability to handle statutory issues through an arbitrator, opening doors for a wide variety of legal problems, as opposed to contractual issues alone (Robbins, 2021). Robbins believes that individual and class action litigation are not pursued employment dispute resolution methods due to the attractive alternative of compulsory employment arbitration.

Malin (1993) states that the trend has progressed in the same form: “since the early 2000s, the percentage of workers subject to mandatory arbitration has more than doubled, now including approximately 54% of non-union, private-sector employers. A recent study estimates that by 2024, 80% of non-union, private-sector employees will be prohibited from suing their employers due to these clauses,” (Staszak, 2020). With more than 60 million workers having signed compulsory employment arbitration agreements today – in both the public and private sectors – the only way out is by foregoing employment as most mandatory clauses come as a condition of employment (Staszak, 2020). While compulsory arbitration in unionized workplaces under law favors the method as an instrument for workplace self-governance, policies favoring compulsory arbitration in nonunionized workplaces under employment law concern efficiency in dispute resolution. The law of employment arbitration today seems to be developing at a level and speed parallel to that of the previously more popular law of labor arbitration. The debate over whether arbitration's import from the unionized to the nonunionized workplace solidified with the Supreme Court’s 1991 passage of Gilmer v. Interstate/Johnson Lane Corp.; indeed, the high court refused to find a policy against compulsory arbitration neither in the Age Discrimination in Employment Act (ADEA) nor other federal equal employment opportunity statues. Gilmer – like many employees’ conditions of employment – signed a uniform securities registration statement with the New York Stock Exchange requiring him to arbitrate “any dispute, claim or controversy… required to be arbitrated under the rules… of the organizations with which I register,” (Malin, 1993). Despite his discharge violating the ADEA, Gilmer found himself instructed by the high court to arbitrate his claim through its interpretation of the Federal Arbitration Act (FAA): “having made the bargain to arbitrate, the party should be held to it

unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue" (Malin, 1993).

Indeed, the powerful incentive of this "relatively low cost, speed, efficiency, and informality" when compared to litigation provides employers the ability to enforce compulsory arbitration upon those in a securities exchange registration agreement (Malin, 1993). However, the reach of Gilmer expanded far beyond the scope of registered securities, creeping into the FAA and powers of Congress; for example, Section 1 of the FAA exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" (Malin, 1993). Yet, the Court concluded that Gilmer's securities registration agreement was sufficient for arbitration, despite the clause not being in his employment contract. Clumped into one relatively cheap and fast proceeding, such arbitration-spanning agreements and employment contracts allow employers to not only include the clause in any employment contract but also consolidate several potential claims that would otherwise be litigated (Malin, 1993). Scholars have criticized the wholesale arbitration of statutory claims because of the sanctity and values deliberated in court, by a trained judge or public official whose duty is to make law in the public interest, as opposed to a third-party neutral arbitrator potentially resolving disputes on nonlegal social mores (Malin, 1993; Gough and Alpert, 2019; Gough 2021a; 2021b). Furthermore, federal employment statutes declared by Congress have continually expressed against enforcing pre-dispute agreements to arbitrate, particularly in The Americans with Disabilities Act (ADA), The Civil Rights Act of 1991, and the Employee Polygraph Protection Act (Gough, 2016). Such express declarations contribute further evidence

of the broad presumption of arbitrability virtually covering all statutory claims in a post-Gilmer U.S. legal environment.

Unlike in labor arbitration, where the collective bargaining agreement contains the basic legal rules governing the workplace, in employment arbitration, federal and state employment statutes (i.e., ADEA at issue in Gilmer) contain the fundamental groundwork. Malin (1993) states that once the employer and employee have agreed to arbitrate, there is a strong presumption that any dispute is arbitrable, whether explicitly enumerated. At-will employees – even interns – sign an arbitration agreement with their employer to continue to work for that specific employer (Robbins, 2021). A rarity exists when courts refuse to enforce an arbitration agreement. Despite its imperfect system, courts are more inclined to enforce the ADR method than not (Colvin, 2008). With this heavy burden and high threshold of proving the legislature intended to preclude arbitration post-1991, as well as the Uniform Arbitration Act's (UAA) backing of narrow grounds for vacating an arbitration award, parties are left receiving an arbitrator's interpretation, accepting precisely what they bargained for, and thus unreleased from that bargain. Privately accountable arbitrators interpreting developed law are not held publicly accountable for the binding decisions rendered in arbitration (Malin, 1993). With confidentiality agreements often tied to employer-promulgated arbitration agreements, private accountability occurring behind closes doors is unlike, even after hearing union representatives fighting for workers' rights. Employees subject to a publicly accountable judge or administrative agency to interpret public law through litigation, striking, or class-action lawsuits will most likely make the headlines rather than private arbitrations. Promoting a private system of workplace self-

government, employment arbitration can “further public interest by reducing over-crowded judicial and administrative dockets” without being held publicly accountable (Malin, 1993).

The history of employment arbitration knowing that of labor arbitration evokes thoughts on whether the justification for employment arbitration being just about the same as any other type of ADR (i.e., speed, informality, and cost-effectiveness), is enough to issue high arbitration awards or limit substantive judicial review. The privatization of public justice thus creates a binary choice between publicly accountable lawmaking which labor arbitration is closer to, or that of speedy, informal, cost-efficient resolutions more resemblant of employment arbitration. With its history rooted in labor arbitration, the debates surrounding employment arbitration vary from positive, negative, and indifferent opinions. In simplifying the complex comparisons and contrasts between employment arbitration and litigation, Estreicher achieved this by his analogy of “Cadillacs for the few, rickshaws for the many” (Estreicher, 2001). The meaning behind this analogy is that accessible justice can be delivered through arbitration for average claimants in a way that is unavailable through litigation. He claims that 15.00% of federal courts are overburdened and cannot effectively process discrimination cases. Court dockets with capacity will most likely not fill with private lawyers due to the low payouts for private attorneys (Estreicher, 2001). Estreicher (2001) claims that without arbitration as an option, resolving employment disputes is unobtainable. Despite the overwhelming criticism in the literature, employment arbitration has plentiful benefits surrounding cheaper costs for fees and attorneys and shorter timespans, comparatively, to litigation. Although it seems that there is more research on the other side of the spectrum, his materials provide an argument for employment arbitration being a voluntary option as opposed to compulsory or a last resort, perhaps, when a company is

in a poor economic state and not a large corporation, as many in the 2022 *Fortune* 100 are listed. The present study's interest lies in the compulsory arbitration clauses that subject employees. Eigen, Menillo, and Sherqyn (2012) disagree on various topics surrounding employment arbitration; however, the one aspect agreed in unison concerns the idea that voluntary arbitration is not an option. Attributing this to the EEOC's failure range of 41-82% no-cause findings rate and an EEOC administratively closed case rate of 28.3%, the trio regal the $100,000.00 litigation minimum with the $1,000,000.00 high (Eigen et al., 2012). The three scholars argue that employers settling baseless cases creates cynicism, causing employers to discriminate when recruiting employees in protected classes. With the 373 resolving average for arbitration compared to 709 in EEOC litigation, the authors feel eliminating employment at-will will decrease the number of discrimination cases in general as the cases would not arise through discharge. This argument provides employers with a foundation for cost savings and efficiency through the alternative dispute resolution method of employer-promulgated arbitration. Arbitration certainly has its benefits, but at what cost? Mandating the process for producers of the highest revenue across the nation with global supply chains and networks spanning vast breadths allow for the costs of litigation – in time, money, and resources – to be assumed. The relationships behind an employer's corporate governance policy, unionization coverage, and financials can determine the significant factors in deciding employment arbitration.

Gough (2018) maintains that gender bias in employment arbitration cases is not statistically significant and that the repeat player effect is top of mind for those interested in the post-Gilmer environment and employment law moving forward. Arbitrator characteristics are not as important as previous literature maintains, providing exigence for the current study into

companies that may utilize and frequent employment arbitration among the 2022 *Fortune* 100 (Gough, 2018). Because employer-promulgated arbitration cases can deliberately "hand-pick" an arbitrator with desirable characteristics, background, experiences, track records, and more, most literature supports employer preference for the ADR method. Gough and Colvin (2020) found that "more than half of employment arbitrators have worked as defense counsel representing employers, and, among part-time arbitrators, approximately twice as many represent employers rather than employees in their other work-related capacity". Although not necessarily establishing pro-management bias upon arbitrators with this past track record, the AAA does not maintain third-party neutrality in its arbitrator selection process. ADR through the AAA – the sole association in which the nation's conduit of arbitration lies – does not equate with neutrality in arbitrator selection (AAA, 2023). Once again, the call to action is clear regarding mandatory arbitration practices as internal grievance procedures reduce the employee win rate in cases that do proceed through compulsory arbitrators. Although the present study does not consider the arbitrator actors – but the employers, specifically – the ranging debates surrounding employment arbitration yield exigence for the present study.

Indeed, Gough (2021) found that award amounts for employment claims in federal court outpaced inflation every year since 1993. If award amounts are not decreasing, even when set by employer-promulgated standards, the top-down decision to engage in the ADR method could involve the overall health of the bottom line. More likely, factors like the corporate governance structure of the Board of Directors and C-suite, the public nature of the company, and its unionization coverage will be associated with the utilization and frequency of the practice.

Estlund (2018) wrote of the "black holes" in employment arbitration. She delves into non-disclosure provisions that bar parties from discussing the case or resolution, arguing that it allows for firms to care less about violating the law lest the "reputational sanctions" would occur if litigation took place. Referencing the 60 million employees covered by mandatory arbitration today, Estlund discusses the 9,600 to 28,400 "missing" arbitration cases as of 2016. Ultimately, her compilation of missing case data leads to a conclusion that compulsory arbitration nullifies employees' rights and protections by silencing voices and forcing settlements, with plaintiffs able to move on to another company without anyone batting an eye or knowing otherwise. The American Arbitration Association's database does not claim to have any missing cases between 2017 and 2022 (AAA, 2023). The present study hopes to fill in the blanks of the past decade and determine how many of the 2022 *Fortune* 100 utilize employment arbitration, at what frequency, and in correlation with what factors.

The present study derives inspiration from David B. Lipsky, Ariel C. Avgar, and J. Ryan Lamare's 2020 work in "Organizational conflict resolution and strategic choice: Evidence from a survey of *Fortune* 1000 firms". Their study is one of the only existing works of literature relating top revenue companies in the United States to the utilization of ADR methods, in other words, the study complements employment law with business principles. The past 40 years of U.S. labor and employment law history remain beset with third-party dispute mechanisms for resolving workplace conflicts (Lipsky et al., 2020). Spanning from discrimination to securities cases, mandatory arbitration allows companies to avoid responsibility for binding decisions regarding an employee and the employer. Executives in non-union firms must adopt and implement alternative dispute resolution (ADR) methods like mediation and arbitration to shift the narrative

from expensive and timely litigation to affordable and desirable ADRs, like that of compulsory employment arbitration (Gough, 2014). Nonetheless, firms that best utilized ADRs – even those ranked on the *Fortune* 1000 List – succumb to the same pitfalls the start of the "ADR revolution" predicted (Lipsky et al. 2020). David B. Lipsky, Ariel C. Avgar, and J. Ryan Lamare (2020) provide a realistic framework for firmwide compulsory arbitration to instill an organizational commitment to ADR through the categories of availability, mandatory use, established policy, due process, and scope. The legal lens sets an imperative foundation for the theoretical study that evokes business implications.

Lipsky et al. (2020) believed that an organization's use of the top two most common ADRs - mediation or arbitration – served as a twofold function of its strategy and commitment to company-wide initiatives. The trio proposed three conflict management objectives that drive the frequency of an organization's implementation of ADR: organizational efficiency improvements, sustainable and satisfying resolutions of workplace disputes, and limits to litigation exposure. Next, the case study defined five key ways organizations can signal their commitment to ADR: availability, mandatory use, established policy, due process, and scope. The study's methodology used 368 responses from a 2011 Cornell University survey of *Fortune* 1000 corporations (Lipsky et al., 2020). The dataset included human resource managers, inside counsel, outside counsel, consultants, and other ADR experts. The methodology included running two models, one test for strategic choice and the other for strategic choice and ADR practices. The regression model controls for the employer size, union presence, and industry but fails to relate the results to distinct companies, industries, unionization coverage, or differentiation. By assuming all *Fortune* 1000 firms function similarly, the researchers found that an employer's commitment to ADR

generally drives its employees to adopt mandatory arbitration or mediation policies. Lipsky et al. (2020) found that sustainability inversely correlated with arbitration or mediation utilization, while exposure reduction and efficiency directly correlated with ADR usage. Corporations that included compulsory ADR clauses in their organization resulted in a greater frequency of arbitration and mediation than general partnerships, limited partners, and other small business associations (Lipsky et al., 2020). The present study seeks to explore company differences, following the assumption that the *Fortune* 1000 has similarities in corporate strategy and financials.

Arbitration – among all ADR practices – is indisputably more favorable than litigation from the employers' point of view. From financial barriers to publicity and discovery, in-house lawyers would be unemployed if this remained a disputed fact. The hypothesis regarding "a firm that seeks to limit its exposure to litigation will prefer arbitration to mediation to resolve employment disputes" is not novel (Lipsky et al., 2020). Labor and employment lawyers have disclosed this principle for over 40 years amidst the ADR Revolution. The journal article's literature review highlights 2006 accounts; however, as recent as the literature review seems, its content covers previously known mediation and arbitration differences without contextualizing the data in terms of the many discrepancies *Fortune* 1000 firms may have. For example, Lipsky et al. (2020) attribute mediation preference to firms looking to improve efficiency but fail to provide current instances of the why behind the utilization of *Fortune* 1000 firms. For business leaders to adopt the more amicable and employee-facing practices of ADRs, academia Lipsky et al.'s (2020) work was imperative in connecting all tested data back to one discrete company strategy. By not testing industry segmentation, unionization coverage, Board of Director

composition, or public/non-facing differences within the *Fortune* 1000, Lipsky et al. (2020) open doors for the present study. The *Fortune* 1000 combines one-third of the nation's leading companies in terms of revenue, crafting a myriad of questions for readers and those in the community of labor relations. Wall Street giants like J.P. Morgan using compulsory arbitration have a vastly different strategy than a non-profit like the Knights of Columbus. The article leaves the reader with many questions: What industries are more inclined to favor the ADR method of compulsory employment arbitration? Which companies are covered by a union and/or a CBA? What does the bottom lines of those *Fortune* 1000 companies look like utilizing employment arbitration?

The present study derives general inspiration from this *Fortune* 1000 empirical case but shifts the focus from arbitration strategy to frequency correlations. It focuses on a smaller, feasible, and present dataset of the 2022 *Fortune* 100 to establish exigence and appropriate conclusions regarding their associated industry, Boards of Directors, and public/non-public facing variables. Hypothesis I of the present study will investigate whether employer size – the sheer mass of numbers – affects the frequency of employment arbitration.

> Hypothesis I: Employer size, measured as the number of employees per respective firm, will be positively associated with the frequency of employment arbitration.

Due to Lipsky et al.'s (2020) findings that the *Fortune* 1000 succumb to the same pitfalls of ADR methods as smaller companies, the present study theorizes that the *Fortune* 100's employer size will not strongly correlate with frequency. In this manner, the present study builds upon the relation of *Fortune* Magazine's finest to produce accurate results and build a bridge

between academia and professionals, ultimately contributing to the field of labor and employment relations from a business perspective.

Fortune Magazine prides itself as a driver of global business conversation, reflecting the current market and its future expectations. Founded in 1929 by Henry Robinson Luce in the wake of the Great Depression and the death of his Yale classmate Briton Hadden, he yearned to be the “ideal super-class magazine” for “wealthy and influential" people. He and Briton previously cofounded Time magazine in 1922 (*Fortune* Editors, 2023). In setting the annual magazine subscription at a costly $10.00 in the 1920s, there was a barrier to entry; to peruse the laminated pages. Today, the magazine remains a paid-for subscription service pursuing transparency and accuracy while providing “the keenest pleasures in the life of every subscriber” (*Fortune* Editors, 2023). Filled with works since its initial publishing of some of the most prominent editors, authors, illustrators, and photographers like Ernest Hemingway, Leo Lionni, Ben Shahn, and Charles Sheeler, it comes as no surprise that today *Fortune's* multinational corporation and breadth encompasses a monthly magazine, daily website, and conference series (*Fortune* Editors, 2023). With its first *Fortune* 100 list released in 1955, businesses revel in the idea of being printed in the press, garnished with this badge of honor. Hypotheses II, III, and IV consider whether the *Fortune* 100’s popularity in appearances among *Fortune’s* rankings is associated with the frequency of employment arbitration.

The *Fortune* 100 list annually measures the top 100 public and privately held companies in the United States based on their revenue. Pursuant to the U.S. Securities and Exchange Commissions' CFR rule 17 parts 210 and 240, the U.S. entity must file its financial statements with the government agency to “instill confidence in our nation's securities markets” and to

"disclose in their annual proxy statements certain information related to, among other things, the non-audit services provided by their auditor during the most fiscal year" (U.S. Securities and Exchange Commission [SEC], 2001). To earn one of these coveted spots, the company must be a for-profit organization that files an initial registration statement for a public offering, annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K through the SEC's online electronic filing system called "EDGAR." Under Section 12 of the Exchange Act, EDGAR makes publicly available all filings and represents companies with listed securities on a U.S. exchange (U.S. Securities and Exchange Commission [SEC], 2017).

Since its inception, the history of the *Fortune* 100 reflects the changing landscape of American and global business (*Fortune* Editors, 2023). In its first three decades, oil, steel, and automotive industries dominated the list with companies like Exxon and General Motors repeatedly earning a seat, as they still do. When the 1980s arrived, technology corporations like IVM and Intel rose through the ranks as the internet took heed. In the 1990s, the list's focus shifted towards mergers and acquisitions, forming mega-corporations with grand balance sheets, including Citicorp and Travelers. As for the 2000s, before the bubble burst, the list was comprised of financial and energy companies like Goldman Sachs and ExxonMobil, respectively. In recent years, the *Fortune* 100 list has reflected that of the 1980s, becoming dominated by companies in the technology industry, like Apple, Alphabet, and Amazon, reflecting the growth of e-commerce, AI, and cloud computing (*Fortune* Editors, 2023). The present study's composition of the 2022 *Fortune* 100 sample represents the financial, healthcare, and retail industries, as crypto, vaccinations, and e-commerce remain at the forefront of

consumers' minds. The 68th most recent edition is the most accurate list of top earners in the United States (*Fortune* 500, 2022).

Today, *Fortune* releases a myriad of rankings including Best MBA Programs, World's Most Admired Companies, 40 Under 40, 100 Fastest-Growing Companies, the 50 Most Powerful Women, Profitable, Global 500, *Fortune* 500, *Fortune* 100 Best Companies to Work For, Future 50, Change in Rank (Full 1000) and more (*Fortune* 500, 2022). The present study seeks to explore whether there is a relationship between *Fortune's* (2022) 100 Best Companies to Work For (Hypothesis II), *Fortune's* (2022) Profitable (Hypothesis III), and *Fortune's* (2022) Change in Rank (Full 1000) (Hypothesis IV) in tandem with the frequency of employment arbitration. Are the *Fortune* 100 utilizing employment arbitration? Are those that are profitable utilizing employment arbitration at a higher frequency? By analyzing the American Arbitration Association's arbitration case database, the present study intends to classify the data into two columns: one of utilization (Y/N) and the other of frequency (Count Number >1). Are those with a high frequency a favored place to work? The present study predicts low frequenters will yield a strong correlation with this list, as employees without compulsory employment arbitration agreements will enjoy if at all, the court process more than a binding decision from a third-party.

Hypothesis II: Favored place to work, measured as placement upon *Fortune's* (2022) 100 Best Companies to Work For, will be negatively associated with the frequency of employment arbitration.

Are the *Fortune* 100 utilizing employment arbitration? Are those that are profitable utilizing employment arbitration at a higher frequency? Are they concerned about the cost of litigation on their bottom lines or interested in its efficiency, or both? The test predicts that

companies with strong bottom lines who earn a seat on *Fortune's* (2022) Profitable list will have resultingly high profitability ratios of ROA% and ROE% Net Averages and be correlated with frequency (Refer to Hypotheses V and VI). Explicit statements of efficiency regarding litigation versus arbitration are not among company financial statements on a specific line item; however, *Fortune's* (2022) Profitable list may be one of the closest measures to exploring whether a relationship exists between efficiency pushes and the *Fortune* 100's frequency of employment arbitration.

Hypothesis III: Employer profitability, measured by *Fortune's* (2022) Profitable, will be positively associated with the frequency of employment arbitration.

The present study seeks to conclude if there is a correlation between *Fortune* features regarding utilization and frequency of employment arbitration among top-revenue producers that have low changes in rank. Companies that have become a prominent fixture among the coveted list are predicted to be associated with a greater frequency of employment arbitration in an overall effort to maintain their public image without litigation cases making the front page of news outlets like *the Wall Street Journal*, *the New York Post*, or page six of *the New York Times*.

Hypothesis IV: Fixture of the *Fortune* 100, measured by a change in *Fortune 1000* rank, will be negatively associated with the frequency of employment arbitration.

Through analysis of the 2022 *Fortune* 100 dataset over the past decade from 2012 to 2022, the companies' financial health is subject to the common challenge in portfolio risk analysis of overall efficiency ratios impacted by certain assets having shorter return histories than others (Page, 2013). Because full return histories are often required to analyze companies' overall financial health, and mechanisms like revenue, profitability, and more are subject to a

wide variety of factors not related to labor and employment relations, the financial lens chosen for the dataset and present study concerns the efficiency ratios of return on asset (ROA), return on equity (ROE), and direct labor efficiency ratio (LER), with respect to arbitration. Corporate governance is at the root of ROA and ROE, as it is the relationship between a company's management, board, shareholders, and stakeholders (Garefalakis et al., 2017). Arbitrary financial analyses avoidance is imperative when culminating a myriad of industries, unionization, and other factors in one dataset (Page, 2013). Thus, the present study pursues diversity reporting and the Board of Directors' influence on investors through corporate governance by measuring overall efficiency ratios.

The net percentage of return on asset (ROA) is calculated by dividing a firm's net income by the average of its total assets. After subtracting expenses and costs from revenue at the bottom of the income statement, net income is found. The total assets lie at the bottom of the assets section of the balance sheet. Because assets include liabilities and equity, there is no fundamental way ROE could be higher than ROA. The *Fortune* 100's liabilities would most likely never be negative, no matter how stellar the financials are. In totality, ROA considers a company's leverage and debt.

The net percentage of return on equity (ROE) does not consider leverage and debt. The DuPont Identity calculates ROE as profit margin multiplied by asset turnover, further multiplied by the equity multiplier. The present study theorizes that those companies among the *Fortune* 2022 that assume leverage and benefit from assets due to the cash coming in will have higher ROEs than ROAs. Unlike Microsoft, whose corporate strategy has been to avoid debt assumptions until the last three years, the present study operates under the assumption that

leveraged finance corresponds with an increased change in rank that would have been otherwise unachievable relying on equity alone. Those with higher ROEs could be more susceptible to increased frequency of employment arbitration compared to those with high ROAs due to their higher appetite for risk.

Both ROA and ROE attempt to gauge how efficiently the company generates its profits from the top-down spirit and motivation of the Board of Directors funneling down to middle management. ROA compares net income to the company's assets alone, providing an internal snapshot of the company's efficiency. ROE compares net income to the net assets of the company in its totality and deducts liabilities. Academia agrees that the two profitability ratios are amongst the two strongest indicators of efficiency. Because the utilization of compulsory employment arbitration has been deemed attractive due to its strong sense of efficiency in shorter time and cheaper costs than litigation, ROA and ROE are appropriate financial indicators for efficiency. In other words, the present study tends to analyze the relationship between efficiency financial ratios and the utilization of the efficient process of compulsory employment arbitration.

Due to the inner workings of ROA and ROE being industry-specific when it comes to industry comparisons, a high ROA will show that companies can earn more money with a smaller investment (Damodaran, n.d.). An overall upwards trend of ROA will determine whether the *Fortune* 100 companies are seeking efficiency financially and potentially adopting arbitration as one of those factors in their ROA. Hypothesis V predicts that ROA% Net Averages from 2012 to 2022 will move upwards in tandem with a high frequency of employment arbitration per general high trends of ROA among public companies, which comprise most of the 2022 *Fortune* 100.

Hypothesis V: Employer's financial efficiency ratio with leverage and debt considerations, measured by ROA% Net Average, will be positively associated with the frequency of employment arbitration.

However, the trend for ROE is slightly more complicated. The top ten S&P 500 companies have averaged around 18.6% regarding ROE long-term; however, highly competitive industries with substantial assets to generate revenues worthy of a seat on the coveted *Fortune* 100 list will generate a much lower ROE (Hoenig, 2019). Industries with relatively few players and where few assets are needed to generate top-revenue-producing financials worthy of distinction, yield the opposite effect. Thus, ROE's analysis will derive from industry-determined averages instead of an overall upwards trend like ROA (Damodaran, n.d.). Hypothesis VI predicts that companies whose ROE% Net Averages remain in line with industry standards will move in a parallel, upwards shift with the frequency of employment arbitration.

Hypothesis VI: Employer's financial efficiency ratio in line with industry standards, measured by ROE% Net Average, will be positively associated with the frequency of employment arbitration.

Both the return on asset and the return on equity – beyond a *Fortune* recognition and directly from their annual reports – will determine whether profitability and efficiency ratios relate to the ADR method's frequency. Because ROA and ROE measure the effectiveness of management, the financial analysis would be incomplete without a measure of labor effectiveness. The direct labor efficiency ratio (LER) refers to the labor performing client work; in other words, direct LER is a financial measure of employees' productivity and efficiency in delivering a product or service based on gross margin and direct labor costs. The ratio is

calculated by determining gross margin (revenue – cost of sales) divided by direct labor costs. The higher an employer's LER, the more efficient the employee is about pay and output. The price of direct labor costs is hence directly represented in the LER, analyzed by profitability. The best derivation of the LER Average is gathered with one decade worth or more of financial history and adjusting for inflation accordingly. Hypothesis VII intends to test whether efficiency regarding labor funnels down into dispute resolution decisions.

> Hypothesis VII: Employer's labor efficiency, measured by the direct Labor Efficiency Ratio (LER) Average, will be positively associated with the frequency of employment arbitration.

As the largest U.S. employer and the rank of No. 1 on the 2022 *Fortune* 100 list, the present study theorizes that those who increase spend on labor and thus have inefficient, low LER Averages would be less likely to use employment arbitration. Time magazine reported that when Walmart increased its direct labor costs in 2015, its shares fell about 3.00% on average, plunging 10.00% on the day its chief financial officer (CFO) presented the near-term profit declines due to the involved expense (Delaney, 2022). With the average median salary of a U.S. Walmart employee constituting only $29,000.00 per year, the present study is interested in seeing if those with high LER Averages showing efficiency are frequent users of employment arbitration. The Goldman Sachs Group, for instance, is known to operate on a lean structure of employees as opposed to that of excess labor. The test theorizes that the firm could potentially utilize employment arbitration more than Walmart. The difference in a corporate office role compared to that of a warehouse staffer will most likely yield different results, even if direct labor ratios are high. "Walmart Corporate" – whose direct labor costs are arguably lower than

that of its "1.6 million [store associates] in the U.S. alone" – might have less employment arbitration than consumer arbitration due to the composition of the workforce being less white-collar (About, 2023).

Apple, a company that could significantly accrue spend towards labor might still have a decreasing LER Average over time as reports of harsh labor conditions over the last decade would inhibit efficiency and productivity when the direct labor costs investigated remain in the lens of gross margin. Indeed, in a 17,000-employee factory, 159 women were hospitalized for food poisoning after rats had infiltrated the workspace's refrigerators and cabinets (Wayt, 2021). Although the present study theorizes an increasing LER Average over time as inflation and the cost of living have increased drastically since 2012, the present study speculates that those with high LER Averages will be more likely to utilize employment arbitration due to efficiency concerns.

In sum, the chosen financial percentages of ROA and ROE provide a macro-level overview of the company's capital management, coupled with the LER Average encompassing a micro-level glance into the workforce's productivity and efficiency. The consideration of labor and employment relations working in tandem with the bottom line gauges support from institutional theory; indeed, "high-performance work practices have been found to increase financial performance" (Hull et al., 2019). The effect of corporate governance - of managerial insights trickling down to the median employee - proves the direct influence labor investment efficiency maintains and alleviates the agency problem between managers and investors. Thus, Hypotheses V, VI, and VII yearn to test explicit financial profitability and efficiency ratios with the frequency of employment arbitration.

When analyzing the list of the 2022 *Fortune* 100, household names are commonplace, including brands like CVS Healthcare, Walmart, and Amazon. Yet not all the companies in the *Fortune* 100 are "public," so to speak, despite recollection among the general public. The decision to "go public" is not always solely regarding a company's growth potential or financial backing; in reality, regulatory burdens such as requirements for financial disclosures through quarterly and annual financial reports and regulations by the Securities and Exchange Commission (SEC) lend themselves to remain non-public. Those that remain non-public are owned by a small group of individuals or entities with managerial control over day-to-day operations, less regulation, and without publicly traded shares. Despite most of the companies on the list designating themselves as publicly held – since its publishing in the 1950s – some trailblazers have earned their stripes on previous *Fortune* 100 lists without having shares traded on a stock exchange, including Cargill, Koch Industries, and Mars (*Fortune* 500, 2022). In the absence of IPO-ing – the process of going public – challenges arise in raising capital to fund new projects, research and development, acquisitions, higher payroll, and more.

If a company has the honor and privilege of becoming a fixture in *Fortune's* 100, especially repeat earners, they are subject to greater regulatory oversight. Subsequently, increased pressure to meet quarterly and annual earnings targets and accountability to meet DE&I and work-from-home initiatives to maintain competitiveness remains at the forefront of their corporate governance. The present study argues that the difference between the company being publicly held or non-publicly held is arbitrary when placed on this list; verily, these companies in the public eye are watched for impending litigation lawsuits, scandals, and more, whether they publish a 10-k annual report on the SEC's website or not.

Scholars agree that firms within the broader *Fortune* 1000 are associated with litigation risk. Those with higher potential litigation risk are more likely to appoint financial accounting experts to their audit committees and establish corporate governance policies for financial reporting benefits (Krishnan and Lee, 2009). Top-revenue producing firms are concerned with the costs of litigation, which involve time and money, two imperative concepts for companies that earn top-dollars. Annually, Corporate Counsels release a list of the law firms that represent *Fortune* 500 companies as outside counsel per litigation lawsuits. According to Reuters, as of 2013, companies that were once willing to hire top dollar, "Big Law" firms such as Cleary, Davis Polk, and Cravath, have been investigating "different fee structures" (Zaretsky, 2013). Indeed, of the Vault's "Top 15 Law Firms" list, only two – Kirkland & Ellis and Gibson Dunn – appear (Zaretsky, 2013). Of those chosen, the top five firms have specialty practices in labor and employment law, specifically, who would be well-equipped as industry experts to recommend compulsory employment arbitration clauses to their clients looking to restructure litigation costs (Zaretsky, 2013). The allure of efficiency and more cash on hand speaks to the audience of the *Fortune* 100, regardless of their ownership structure, as they hold themselves up in front of the public.

Compulsory employment arbitration remains a shadow for them to hide in; a secretive, binding dealing for employment issues that may arise; a shield from the cover of the New York Post. The present study seeks to understand whether publicly held companies frequent compulsory employment arbitration to self-preserve their image and likeness more than non-publicly held companies due to regulation and disclosure requirements. CSR reports, ESG reports, and sustainability reports fall under the umbrella of diversity, equity, and inclusion

reporting, but not annual reports because those reports do not contain specific diversity information important to stakeholders and shareholders alike (Mergent Online, 2023). The present study theorizes that those publicly held companies will associate with a high frequency of employment arbitration to protect their reputation, which is already a required filing rule through SEC filing requirements or institutional investor diversity reporting pressures. Hypothesis VIII will test whether becoming or maintaining the status of publicly held from 2012 to 2022 is associated with the frequency of employment arbitration. The present study predicts that the frequency of the ADR method will not discriminate upon whether a *Fortune* 100 trades stocks on a public exchange.

> Hypothesis VIII: Employer's publicly held status, measured by IPO registration and shares offered on a public exchange, will be positively associated with the frequency of employment arbitration.

Alexander Colvin's 2018 study regarding the growing use of compulsory arbitration found that "since the early 2000s, the share of workers subject to mandatory arbitration has more than doubled and now exceeds 55.00%". Colvin found that over half of employees subject to nonunionized employment arbitration in the private sector have compulsory arbitration clauses (2018). Of those that require compulsory arbitration, 30.10% couple that clause with a class action waiver, losing rights in the judiciary twofold (Colvin 2018). Employees who once had the right to go to court and sue for legal claims based on Title VII of the Civil Rights Act, the American Disabilities Act, the Family and Medical Leave Act, and the Fair Labor Standards Act are subject to class action suit barring and a resulting introduction to compulsory employment arbitration. Among the 2022 *Fortune* 100, the financial, healthcare, and retail industries are the

most represented, following similar suit of Colvin's 2018 study found compulsory arbitration permeated the following sectors: education and health (62.1%), business services (61.1%), and retail trade (57.1%).

Unionized employees partake in a fair and reciprocal legal relationship between the labor union, management, and themselves. The history of labor arbitration validating employment arbitration lends itself to the newer realm of arbitration from the nonunionized perspective. Because labor arbitration offers a track record of contractual interpretation protections through the collective bargaining agreement – negotiated upon employee's interests by the union with management – the present study predicts a positive correlation between unionization and CBA coverage found on the National Labor Relation's Board (NLRB) docket and 10-Ks in association with the frequent use of employment arbitration (NLRB Case Search, 2023; Mergent Online, 2023).

Hypothesis IX: Employer's unionization coverage, measured by the employees' ratification of union representation, will be positively associated with the frequency of employment arbitration.

Gough and Colvin (2020) found that as many as half of all private-sector employees are subject to mandatory arbitration. This finding puts into perspective just how likely private-sector employees are to be subject to mandatory arbitration – ten times more than protected employees under a collective bargaining agreement (Gough and Colvin, 2020). Because the 2022 *Fortune* 100 contains mainly public companies with less than 3.00% private companies, on average, the present study seeks to recognize if there is a correlation between those who are not offered the same protection as the CBA and NLRA provide – nonunionized corporations under employment

law – and the utilization of compulsory employment arbitration. Specifically, the study hopes to note the relationship between union coverage and often subsequent collective bargaining agreement coverage with the frequency of the ADR method. The present study theorizes that the private companies in the 2022 *Fortune* 100 have utilized employment arbitration more during the decade than the public ones. Additionally, those with union and CBA coverage serve as indicators of engagers in labor arbitration. The theorized covered groups with a fervent history of labor arbitration might funnel into the employment arbitration sphere as a form of habit and familiarity.

> Hypothesis X: Employer's collective bargaining agreement (CBA) coverage, measured by management's ratification of a CBA with the union on the behalf of its employees, will be positively associated with the frequency of employment arbitration.

Aside from the macro-theory of union and CBA coverage extracting views from the roots of employment arbitration found in labor arbitration, the present study theorizes on a micro-level of sector differences. Mirrored off Colvin's 2018 Economic Policy Institute polling, the present study expects the financial services sector will have a lower frequency of employment arbitration than the healthcare and retail sectors. The U.S. Bureau of Labor Statistics 2021-2022 summary report maintains that the finance industry was among the lowest unionization rates, of only 1.30% (U.S. Bureau of Labor Statistics, 2023). Compared to the health care sector whose members unionized by 6.60%, and the retail sector whose members unionized by 4.30%, the present study theorizes that the finance industry may take more time to consider the history of labor arbitration and apply a similar attitude of adoption towards employment arbitration. Furthermore, the test conjectures that in a post-*AT&T Mobility LLC v. Concepcion* environment,

public scrutiny and knowledge of health care vaccinations, clinical trials, and more are likely to gain access to the court system with human subjects aligning with sympathy and damages, as opposed to claims regarding employment contracts in white-collar financial services roles.

With compulsory arbitration remaining high in the sectors of education and health (62.1%), business services (61.1%), and retail trade (57.1%) (Colvin 2018), the present study theorizes that the financial services industry will not correlate with frequency and union coverage but will correlate due to history of FINRA arbitration. Like the importance of past labor arbitration being the basis for employment arbitration today, FINRA arbitration refers to the forum where investors have a broad choice in panel selection when arguing a dispute (Ackerman 2008). Before buying or selling securities, investors' instructions from brokerage firms like Merrill Lynch, Citi, UBS, Wachovia Securities, Charles Schwab, and more require its consumers to sign pre-dispute arbitration agreements (Akerman, 2008; Gough, 2016). In other words, compulsory arbitration agreements provide the binary choice of a public or private panel. Many questions precipitate after reading this article. Although FINRA arbitration is not considered an explicit correlative measure, the present study predicts the differential to yield a low correlation between financial services frequency of employment arbitration and union/CBA coverage versus the high correlations between health care and retail frequency of employment arbitration and union/CBA coverage. Hypothesis IX considers union coverage, while Hypothesis X considers CBA coverage. The present study implies similar confidence levels for the two hypotheses for union coverage almost always assumes CBA coverage unless the union has not begun ratifying an agreement (i.e., the company fulfilled union registration in the year 2022 but ratified a collective bargaining agreement in early 2023).

The coveted role of *Fortune* 100 "Director" reflects one of the most desired seats to be on. Today, the SEC calls for stricter guidelines regarding the public dissemination of information regarding environmental, social, and governance (ESG) (Mergent Online, 2023). Diversity has always been a question regarding who is privileged enough to sit at the table. Although the SEC has yet to leverage formal diversity reporting as much as it has regarding ESG, businesses must fervently adapt and implement DEI strategies to stay competitive in the 2023 marketplace experience. Despite women and racial minority groups composing nearly 70.00% of the workforce, only 79 *Fortune* 500 companies (1:6) publish annual DEI reports (Brand, 2022). Among additional optional disclosures and transparencies are ESG reports and Best Purpose Statement examples. For those companies adorned with the badges of honor - DiversityInc's Top 50 Companies for Diversity, Human Rights Campaign Foundation's Corporate Equality Index, and the Disability Index's Best Places to Work for Disability Inclusion - they have implemented human resources strategy into the business strategy and bottom line. In a world that is becoming increasingly diverse, one would presume the Board of Directors would reflect the same momentum of diversity in the entry and lower levels of the company. One would also assume that if companies can worry about their contributions to the environment and how that might affect us ten to twenty years from now, their boards remain superfluously diverse, with their people being well-represented, before moving onto ESG.

Hypothesis XI: Company-wide push for diversity, measured by the formal publication of diversity, equity, and inclusion reports, will be positively associated with the frequency of employment arbitration.

However, the literature tells a different story; in 2010, “the Alliance for Board Diversity found that, of the Boards of Directors of *Fortune* 100 companies, 72.9% of all corporate board seats were held by white men” (Krus et al., 2012). From 2004 to 2010, little to no movement occurred since the study. The reports have remained unchanged, with minorities and women sharing the remainder. Deloitte’s 2021 Women in the Boardroom report maintains that women held just 23.90% of board positions across all US companies (*Woman in the Boardroom: A Global Perspective*, 2021). In its 2022 report update, progress again slowed, noted by the global average of women on boards sitting at just under 20.00%, at 19.70%, specifically (Konigsburg & Thorne, 2022). With only a 2.80 percentage-point increase since the 2019 report, Deloitte predicts the world’s board seats will reach parity of gender representation until at least 2045, two decades from now (Konigsburg & Thorne, 2022).

Focus on increasing board representation has gained steam not only due to a moral call for transparency across the business community, supported by federal regulators and institutional investors alike but due to quota systems introduced in Europe. Surprisingly, the United States has only focused on public disclosure of board diversity in the broader sense, whereas Europe has focused on female integration on corporate boards through quotas (Krus et al., 2012). In Europe, Norway established a 40.00% corporate board quota for women and achieved this within two years in 2008, followed by Spain introducing the same apportionment and meeting the threshold by 2015 (Krus et al., 2012). After ten years of stalemate and a storming of annual meetings by “bearded ladies,” the European Union (E.U.) has required companies to ensure at least 40.00% of their seats on corporate boards go to the quote-on-quote underrepresented sex, meaning women

(Peluso, 2022). Beyond that, the E.U. has threatened to cancel non-complying companies and has even set a 33.00% overall target for filling senior roles with women (Peluso, 2022).

Women assume more than 40.00% of board seats among French companies, a rate double that of the United States. France - a mere sliver of the E.U. - remains the prime example of female integration upon the Board of Directors (Konigsburg & Thorne, 2022). The UK mandated a 40.00% gender diversity minimum for listed companies, of which Belgium, Italy, Germany, Austria, Portugal, Greece, and the Netherlands all had active national quotas before the joint E.U. agreements as well, leaving them in a fruitful spot for progress (Peluso, 2022). The European countries with less than 10.00% of women on company boards, like Estonia and Cyprus, will have to change their tune amidst the E.U.'s approach (Peluso, 2022). It is appropriate to theorize on the E.U.'s approach to board diversity because it binds a similar sample to the *Fortune* 100; indeed, "the new law goes into effect for all 27 member nations on June 30, 2026, and only applies to publicly listed companies with more than 250 employees". With four years to meet their quotas, the E.U. will most likely surpass the U.S. *Fortune* 100 and then some in terms of progress regarding women on corporate boards.

In December 2009, the U.S. Securities and Exchange Commission (the "SEC") bound companies to a new rule requiring disclosure of whether the factor of diversity serves as a consideration by the nominating committee in the director selection process and, if applicable, its impact (Krus et al., 2012). The informality of the United States is not necessarily wrong or less than the European Union. Former Commissioner Aguilar stated that the institution of the diversity disclosure rule occurred "because investors care about board diversity issues, and it is an important factor when they make investment and voting decisions. Investors do not care if the

diversity policy is formal or informal; they care about the substance of the policy and whether it is effective" (Krus et al., 2012). Among regulatory reform with SEC disclosure rules lies Section 342 of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act) which mandates federal regulators to establish an Office of Minority and Women Inclusion and requires federal agencies and private companies that contract with them to achieve "fair inclusion and utilization" of women and minorities in their workforces (Krus et al., 2012). Granting liberty to U.S. companies for self-definition of diversity without federal legal binding quotas like the European Union has opened doors for company-specific policies to lead by example.

Individual states have implemented self-produced policies due to the lack of national quotas and requirements for women on boards and in C-suite roles in the United States. Such policies remain an area of tension and challenge; for example, the state of California introduced a law requiring its incorporated, publicly held companies to have at least one female-identifying board member was deemed unconstitutional by violating the equal protection clause of the state constitution with a mandated gender-based quota (Henderson, 2022). Even so, both public and private institutional investors have adopted board diversity policies; for instance, the California Public Employees Retirement System (CalPERS) states that corporate bonds should establish and disclose nomination policies specific to historically underrepresented groups on that board, including women and minorities (Krus et al., 2012). California is the leading state in terms of promotion of board diversity, with its institutional investors promoting the use of shareholder proposals; indeed, the California State Teachers Retirement System (CalSTRS) - the highest-endowed public teacher pension fund in the U.S. – submitter shareholder proposal to eight

companies to implement board diversity policies, all of which responded actively, and then were met the dismissal of proposals. The impact of California's institutional investor activism and its strength in implementing diversity policies is striking. Although California's forced gender quotas were deemed unconstitutional, other states without forced gender quotas have met some statewide success; for instance, Washington requires its incorporated companies to seat a minimum of 25.00% female board directors by year-end 2023, and Illinois requires its incorporated, publicly held companies to report diversity information to the Secretary of State (Henderson, 2022).

The effect of mandated policy from a governing body has yet to be determined, but the literature does provide guidelines for women advancing to the coveted corporate board seat based on the company's self-guidance. Both Nasdaq and the Goldman Sachs Group have spearheaded gender quotas internally. In 2020, the Goldman Sachs Group refused to allow companies to IPO or take them public if they did not have more than two "diverse" board members, subject to their discretion. In 2012 Nasdaq required most of its listed boards to have at least one women board member and one member of any gender from a minority race or sexual orientation (Henderson, 2022). Its only exception refers to entities with boards of only five or fewer members. By setting expectations for whom the Goldman Sachs Group and Nasdaq want to conduct business with, they are leading examples of how women can sit at the table without state or federal intervention like the E.U. Although Nasdaq is not among the 2022 *Fortune* 100, it earned a spot in the *Fortune* 500 for the first time in 2021 and is on a positive trajectory to one day gain a seat at the coveted table (*Fortune* 500, 2023). Deloitte (2022) maintains that requiring

more women to join boards through quota mandates is one way to bolster numbers but that this does not address how long women tend to remain in those board roles.

The literature supports gender differences in the speed of advancement. Rocio Bonet, Peter Capelli, and Monika Hamori (2020) conducted an empirical examination in 2020 of top executives in *Fortune* 100 companies in 2001 and 2011. They found that "women executives secured top executive positions faster than men... / … and that the advantage of women concerning men grew with the number of years they spent in the organization". However, the broad support of women in the *Fortune* 100 was short-lived, as they found the female advantage disappeared once companies introduced one other high-ranking female executive (Bonet et al., 2020). In other words, the fast advancement of women among the *Fortune* 100 can be attributed to public pressure driving company choice, slowing once the check fills the box. For the few women who have managed to break those glass ceilings, obtain senior leadership roles, and assume the seat at the table of the Board of Directors, one cannot help but infer implicit bias. Women's advancement in the study partly offers explanations in part regarding the fact that they "had at least some qualifications that were better than those of their male counterparts; they had more years of education, were promoted faster out of their first job, and had greater industry variety in their resume than their male counterparts." Yet, the Oaxaca decomposition reveals that "even if women had the same observable attributes as men, they would still get ahead almost two years faster" (Bonet et al., 2020). Deloitte's 2022 Women in the Boardroom report states that the disparity between the tenure of women and men on corporate boards around the world is longer than the sample of the *Fortune* 100, with an advantage of two and a half years.

Since Bonet, Cappelli, and Hamori (2020) controlled for age, prominent organization, and several other variables, the push towards diversity - whereby institutional investors, society, and public relations take part - cannot be denied. The literature raises questions concerning why women, who assumed board seats in 2001, will not reach parity in Board of Directors representation until 44 years from now. The present study seeks to probe whether women undertake one position or multiple on the respective Board of Directors among the 2022 *Fortune* 100. If women assume more than one Board position and thus a high percentage breakdown on the total Board seats, the present study infers that allies will exist in the boardroom. If so, why would *Fortune* 100 companies adopt compulsory employment arbitration if women had seats at the table? Are companies with high percentages of female Board representation also publishing DE&I reports? (Hypothesis XI, alluded to in the publicly held section). Does increased diversity among Directors relate to better employment arbitration victim representation and lower frequency of employment arbitration? Perchance institutional pressure for litigation avoidance serves as a benefit to bottom lines in line with business strategy. Human resources strategy remaining second in line of importance to profitability could be more common without diversity at the Board level.

Hypothesis XII: Employer Director-level push for diversity, measured by the percentage of women on the Board of Directors, will be positively associated with the frequency of employment arbitration.

No existing literature exists on the effect of women sitting on the Board of Directors and the utilization of compulsory employment arbitration. Married to the theory of publicly held corporations' frequency of employment arbitration increasing in line with diversity reporting, the

Board's gender breakdown falls along the same line of thought. Women not having a seat at the corporate Board's table could relate to the *Fortune* 100 and their increased frequency of employment arbitration. In 2019, Fox News correspondent Gretchen Carlson released an opinion in The New York Times called: "Fox News, I Want My Voice Back," to discuss her retaliation and sexual harassment complaint against former Fox News chairman and C.E.O. Roger Allies. Hypothesis XIII dives into the importance of female representation at the CEO level among household name companies. In her 2019 piece – before the #MeToo or Times Up movements – she discussed the NDA that she signed a process of her employee onboarding to "safeguard the sharing of proprietary information" which ultimately led to what she believes to have "protected predatory behavior" (Carlson, 2019). Carlson (2019) relates her settlement to "buying silence" and evoking the "loss of talented women" instead of stopping the harassment. Her NDA – much like many of which employees sign and give up their constitutional rights to the courts – legally prohibits her from discussing what happened to her in both public and private settings. TV series, books, movies, and more may and have funneled from her truth (I.e., "Bombshell," "The Loudest Voice," etc.), but without her assistance. However, Carlson was integral to the success of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA), which received bipartisan support from Democrats and Republicans, including Senators Lindsey Graham and Kirsten Gillibrand. Perhaps compulsory arbitration between an employee and an employer is apolitical. The current political environment as well as the states of New Jersey and California enacted laws years ago seem to think so. As of March 3, 2022, the EFFA invalidated pre-dispute arbitration agreements that preclude an individual from bringing sexual harassment or sexual assault claims in court (Gigante et al., 2022).

Hypothesis XIII: Employer CEO-level push for diversity, measured by female representation in the CEO position, will be positively associated with employment arbitration.

The #MeToo Movement cannot attribute its success to social media and protests alone; indeed, its institutional support has allowed for its legal defense fund, managed by the National Women's Law Center, to raise $20.00 million in the first five weeks of its existence (Sternlight, 2019). Yet, remiss from celebrities like Oprah Winfrey and Oscar presenters, the victims of compulsory arbitration are in stark contrast: "farmworkers, hotel workers, autoworkers, sportswear executives, tech experts, or airport security providers" (Sternlight, 2019). With federal law now outlawing mandatory arbitration for sexual harassment claims, these victims yield more protection than ever before. Yet, *Fortune* 100 companies continue to adopt compulsory arbitration clauses during the course and scope of employment, with more victims seeking support. Employment arbitration has not taken a backseat post-#MeToo, despite having less attention or backing from Hollywood. Existing literature regarding compulsory employment arbitration and women maintains that it often "overlooks the fact that many employees have no say in the choice of an arbitration service provider or the rules that govern their arbitration" (LeRoy, 2005). Arrangements made on behalf of employers have led to the cost of adjudicating an employment claim before an arbitrator amounting to three to fifty times more than the cost of the trial (LeRoy, 2005). Women have incurred high attorney's fees when they win in court on Title VII claims, often resulting in negative impacts by arbitrations as lengthy and expensive for the individual (LeRoy 2005; Gough, 2014;). LeRoy's (2005) empirical study provides a mixed review of employment arbitration but highlights women having a lower chance of being awarded

attorney's fees in otherwise successful arbitrations. With less motive to represent women in compulsory employment arbitration, without access to the courts, the impact of the gender of the Board of Directors is imperative to this study. The test theorizes that companies with a higher percentage of women on their Board of Directors will utilize employment arbitration less because denied rights in court access would be less likely if gendered managerial representation were strong. This present study seeks to focus and test in Hypothesis XII gender amongst the Board of Directors in connection with the frequency of the ADR method, as opposed to other factors of race and age but notes their importance and urgency for future research in the omnipresent struggle of intersectionality amidst employment law, compulsory employment arbitration, and more.

In conclusion, the last three hypotheses yield greater significance expectations. To review, Hypothesis XI considers whether companies who report formal DE&I information are associated with a higher frequency of employment arbitration. The test predicts that employers within the dataset that formally publish diversity, equity, and inclusion information derive their motivation from a representative sample of women among their Board of Directors and at the CEO level, leading to further correlation tests. Hypothesis XII considers whether the percentage of women on the Board of Directors is relational to employment arbitration's frequency. Hypothesis XIII considers whether female CEO representation between 2012 and 2022 is associated with frequenting the ADR method. If Hypothesis XII and XIII fail to reject the null hypothesis, the present study predicts that Hypothesis XI will be among the strongest

correlations due to the diversity of variables within the Board and CEO level supporting the DE&I report.

Chapter 3 Methods & Data

Pursuant to *Gilmer v. Interstate/Johnson Lane*, the 1991 Supreme Court decision, as well as Section 7 of the National Labor Employment Relations Act (NLRA), the enforceability of compulsory employment arbitration agreements has been upheld (Colvin, 2018). With the passage of *AT&T Mobility LLC v. Conception* and *American Express Co. v. Italian Colors Restaurant* in 2011 and 2013, respectively, businesses not only take away employees' rights to judicial review and due process but also broadly shield themselves from class action claims by utilizing class action waivers. Colvin found that 56.2% of private non-union American businesses subjected their 60.1 million American employees to mandatory employment arbitration clauses (Colvin, 2018).

The current study analyzes four original datasets, consisting exclusively of employment dispute cases conducted by the American Arbitration Association (AAA) and subsequently updated after the fourth quarter every five years (AAA, 2023). The first dataset consists of the publicly available arbitration information from Q4 2007, Q4 2013, Q4 2017, and Q4 2022, pursuant to the California Code of Civil Procedure §1281.96, Maryland Commercial Law §§ 14-3901 to 3905, and New Jersey Statutes § 2A:23B-1 et seq. required by law (AAA, 2023). The present study refined the AAA dataset to only include the cases between 2012 and 2022, over the past decade, to show whether the names of the 2022 *Fortune* 100 list appear to utilize employment arbitration and at what frequency. The second dataset consists of the *Fortune* 100 published by *Fortune* magazine every year since 1955, which refers to the top 100 companies in the *Fortune* 500 (i.e., a list of the 500 largest U.S. companies by revenue) (*Fortune* 500, 2023). The third dataset utilized Mergent Online, the Pennsylvania State University's database for

companies' 10-K annual reports, DE&I reports, and SEC filings, including proxy statements (Mergent Online, 2023). Inflation adjustment calculations employed Bloomberg inputs for inflation, and direct labor cost calculations utilized annual salary averages found on Indeed for the median workforce. The National Labor Relations Board (NLRB) docket for records of unionization registration, case filings, and collective bargaining comprised the fourth and final dataset (NLRB Case Search, 2023).

The regression model formulated for the present study represents a fit regression model to investigate how the frequency of employment arbitration among the 2022 *Fortune* 100 list is associated with several predictor variables. Also known as independent variables, the factors tested include employer size, *Fortune's* (2022) Best Companies to Work For/Profitable/Change in Rank, ROA% Net Average, ROE% Net Average, LER Average, Publicly Held Maximum, Union/CBA Coverage Maximum, DE&I Report Maximum, Board of Directors (BoD%) of Women Average, and Female CEO Maximum. The binary independent variable is the utilization of employment arbitration from the 2012 to 2022 span (Y/N). The continuous dependent variable, also known as the response variable, is frequency. Frequency refers to how often they have utilized employment arbitration over time. The controls are independent variables without hypotheses (i.e., sector, industry). Multiple regression best allows the determination of predictors significantly related to the frequency of employment arbitration. The means of fit regression was Minitab 19.0. The regression model fails to account for categorical variables and controls, resulting in several correlation tests in response to the regression results to highlight one-to-one relationships in consideration with the whole.

American Arbitration Association (AAA) Dataset:

- Company Name
- Subsidiaries' Name
- Dispute Type: Employment Arbitration
- Utilization
- Frequency

Fortune 100 Dataset:

- Rank
- Company Name
- Employer Size
- Sector
- Industry
- *Fortune's* 100 Best Companies to Work For
- *Fortune's* Profitable
- *Fortune's* Change in Rank (Full 1000)

Mergent Online Dataset:

- Return on Asset Net Percentage (ROA% Net Average)
- Return on Equity Net Percentage (ROE% Net Average)
- Direct Labor Efficiency Ratio (LER Average)
- Gross Margin
- Revenue

- Cost of Sales
- Direct Labor Costs
- Inflation Adjustments
- Board of Directors Seat Numbers
- Board of Directors Gender Breakdown (Percentage of Women)
- CEO Gender Breakdown (Number of Female CEOs)
- Publicly Held Status
- Diversity, Equity, and Inclusion (DE&I) Reports

National Labor Relations Board (NLRB) Docket Dataset:

- Unionization Coverage
- Collective Bargaining Agreement (CBA) Coverage

It is important to note that the average and maximum of the predictor variables over the ten-year time frame comprised the final regression dataset to reduce the number of variables in the regression for best results. Including more variables would inflate the significance of variables in the model simply due to the number of variables included. Some 10-Ks included the CEO as Chairman of the Board, while others did not. There is thus variability in the inclusion of "CEO" on the Board of Directors. DE&I reports included D&I reports, corporate, social, and environmental responsibility reports, sustainability reports, and other diversity-specific reports with content involving gender, race, and age. The exclusion of annual reports and quarterly SEC filings from the distinction of a DE&I formal report publication was essential in establishing a baseline for what constitutes a formal publication of diversity information. Matching

subsidiaries' names in the form of other business associations (i.e., LLC, LP) to the company's corporation name on the *Fortune* 100 list eased data sorting. The type of disputes included in the dataset consisted of "employer-promulgated arbitration procedures arising from standard organization-wide employment policies developed by the employer that are not subject to individual-level variation or modification" (Colvin and Pike, 2014). Specific company-tagged employment dispute resolution and mediation practices were in the dataset (i.e., JPMorgan Employment). The AAA dataset may have contained individually negotiated executive-level employment contract disputes with non-standard features. The AAA classifies the cases in individually negotiated and employer-promulgated buckets to ensure it can administer the arbitration cases under its own employment arbitration procedure rules (Colvin and Pike, 2014). The assumption that the AAA successfully classified and directed arbitration cases for all cases in the dataset is fair.

The AAA dataset regarding employment arbitration is representative of arbitration agreements in a post-*Gilmer* legal landscape and is, therefore, appropriate for commenting on the debate surrounding compulsory employment arbitration (Colvin, 2008). The dataset regarding the 2022 *Fortune* 100 measures the top-revenue producing companies in the United States and is therefore sensical to connect to utilization and frequency of employment arbitration, as companies invested in high profitability, efficiency, and success. The 10-K, Bloomberg, and Indeed datasets prove beneficial in the self-selection of data theorized on that has not been investigated before in relating direct labor costs, Board of Directors breakdown, and union coverage to the utilization and frequency of employment arbitration.

Chapter 4 Results

Upon data collection after combining the American Arbitration Association (AAA) datasets from Q4 2013 to Q4 2022, the present study found that 42.00% of the 2022 *Fortune* 100 utilized arbitration over the past decade from 2012 to 2022. Out of these 42.00%, employment arbitration was frequented 13,932 times. Of those 42.00% utilizers of employment arbitration, the present study found that just seven companies (17.5%) were among *Fortune's* (2022) Best Companies to Work For, including American Express, Target, Bank of America, FedEx, Cisco Systems, Publix Super Markets, and Comcast. Among the 42.00% of the 2022 *Fortune* 100 list over the 2012 to 2022 span that utilized employment arbitration, the average frequency amounted to 149.81. The average employer size was approximately 131,761.50 employees. Only one of these utilizers – General Electric – was not profitable in the year 2022, according to *Fortune.* The average change in rank from *Fortune's* (2022) Change in Rank (Full 1000) list was approximately +1.50, demonstrating minimal movement in just one year. Only 9.52% of the 42.00% remained privately held during the entirety of the period. Twenty-one companies (52.50%) of the utilizers were unionized and covered by a CBA during the 2012 to 2022 decade. About one-third of the users published diversity, equity, and inclusion reports publicly on their website or through the SEC filing system from 2012 to 2022.

The fit regression model tested the response variable of frequency versus the continuous variables of employer size, 2012-2022 ROA% Net Averages, 2012-2022 ROE% Net Averages, 2012-2022 LER Averages, and 2012-2022 Board of Directors (BoD%) of Women. Table 1 illustrates the results from the regression equation, followed by the summary statistics:

Regression Equation

Frequency = 387 + 0.00097 2022 Employees - 62.3 2012-2022 ROA% Net Average + 0.065 2012-2022 ROE% Net Average - 55 2012-2022 LER Average + 652 2012-2022 BoD Avg

Table 1: Regression Equation

Coefficients

Term	Coef	SE Coef	T-Value	P-Value	VIF
Constant	387	562	0.69	0.497	
2022 Employees	0.00097	0.00131	0.74	0.465	1.34
2012-2022 ROA% Net Average	-62.3	42.4	-1.47	0.152	1.52
2012-2022 ROE% Net Average	0.065	0.607	0.11	0.916	1.52
2012-2022 LER Average	-55	638	-0.09	0.932	1.04
2012-2022 BoD Avg	652	2057	0.32	0.753	1.06

Table 2: Regression Coefficients

Analysis of Variance

Source	DF	Adj SS	Adj MS	F-Value	P-Value
Regression	5	2196700	439340	0.53	0.754
2022 Employees	1	454451	454451	0.55	0.465
2012-2022 ROA% Net Average	1	1796062	1796062	2.16	0.152
2012-2022 ROE% Net Average	1	9429	9429	0.01	0.916
2012-2022 LER Average	1	6113	6113	0.01	0.932
2012-2022 BoD Avg	1	83787	83787	0.10	0.753
Error	32	26653308	832916		
Total	37	28850008			

Table 4: Analysis of Variance

Model Summary

S	R-sq	R-sq(adj)	R-sq(pred)
912.642	7.61%	0.00%	0.00%

Table 3: Model Summary

The fit regression model generated an overall summary of an r-squared value of 7.61%, which is not significant. The 0.754 p-value in the Analysis of Variance, or ANOVA, table generation indicates the fit regression model is not the best statistical model for the data, resulting in the need to test correlations (See Table 3). The closest value to significance was the 2012 to 2022 ROA% Net Average, resulting in the lowest p-value of 0.152 (See Table 2); however, ROA can be attributed to varied factors aside from employment arbitration, leaving insignificance. In view of the fact that the line items on the company's financial statements do not consider arbitration or litigation expenses, one cannot confidently maintain that a high ROA% Net Average correlated with a high frequency of employment arbitration. In the regression results, the least significant variables included ROE% Net Average, Board of Directors (BoD)% of Women Average, and LER Average. Based upon the results of Table 2, the regression significance regarding ROA% Net Average might directly transfer to the correlative importance as well.

Figures 1 to 12 below illustrate the results of correlations run for each continuous predictor tested in the regression model alongside the categorical variables excluded from the regression. Due to statistical constraints of categorical variables in a fit regression model, the correlations tested the variables exempt from the initial regression model plus the variables previously tested for further analysis.

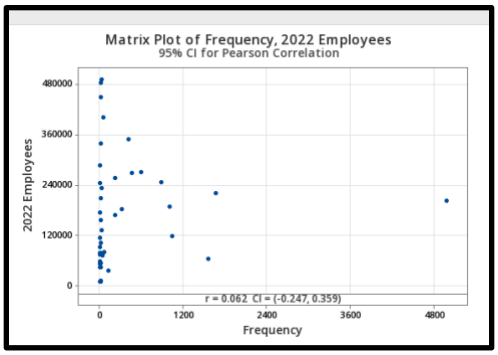

Figure 1: Hypothesis I Matrix Plot

In testing the correlation between the frequency of employment arbitration and employer size, the R^2 value is -0.0038. Based on the results in Figure 1, the present study fails to find a significant relationship at the 5.00% confidence level and, therefore, Hypothesis I regarding frequency and employer size is not supported.

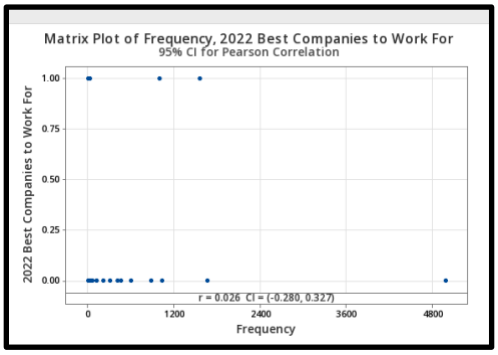

Figure 2: Hypothesis II Matrix Plot

In testing Hypothesis II, the correlation between the frequency of employment arbitration and *Fortune's* (2022) 100 Best Companies to Work For list, the R^2 value generated is approximately -0.0068. Based on the results in Figure 2, the present study fails to find a significant relationship at the 5.00% confidence level and, consequently, Hypothesis II regarding frequency and earning a spot on the non-revenue-based list is unsupported.

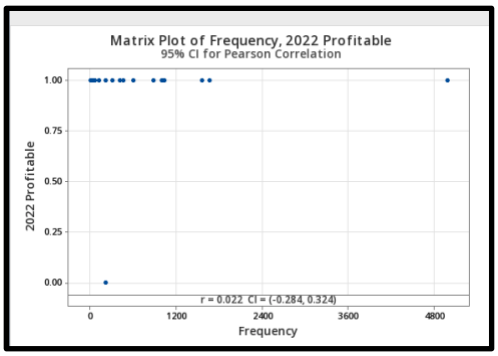

Figure 3: Hypothesis III Matrix Plot

The frequency of employment arbitration and maintaining a seat on *Fortune's* (2022) Profitable list has also generated a weak link. Hypothesis III's generated R^2 value is approximately -0.00048. Based on the results in Figure 3, the present study neglects to find a significant relationship at the 5.00% confidence level and, therefore, Hypothesis III is not supported.

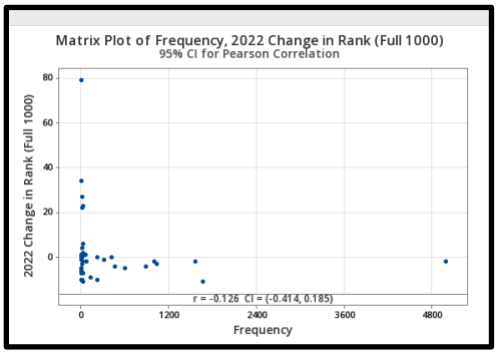

Figure 4: Hypothesis IV Matrix Plot

In testing the correlation between the frequency of employment arbitration and *Fortune's* 2022 Change in Rank (Full 1000), the R^2 value is -0.0159. Based on the results in Figure 4, the present study fails to find a significant relationship at the 5.00% confidence level and, accordingly, Hypothesis IV regarding frequency and earning a spot on the third and final

Fortune list is unsubstantiated. Thus, recognition within *Fortune's* less popular lists is weakly associated with the frequency of employment arbitration.

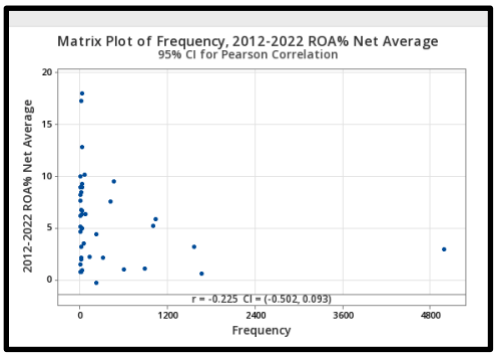

Figure 5: Hypothesis V Matrix Plot

Hypothesis V's correlation test between the frequency of employment arbitration and the ROA% Net Average of the 2022 *Fortune* 100 over the 2012 to 2022 span yielded an R^2 value of -0.0501. Based on the results in Figure 5, the present study fails to find a significant relationship at the 5.00% confidence level and, consequently, Hypothesis V – despite overall ROA% Net Averages increasing – is unproven.

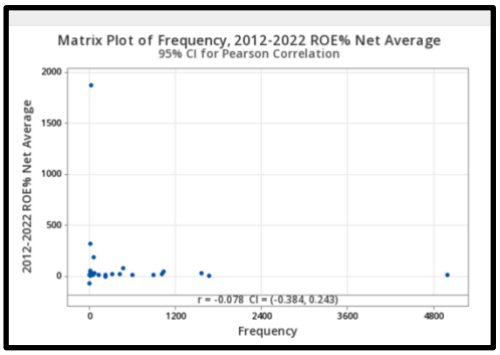

Figure 6: Hypothesis VI Matrix Plot

When determining the correlation between the frequency of employment arbitration and ROE% Net Average among the 2022 *Fortune* 100 from 2012 through 2022, the R^2 value for Hypothesis VI is -0.0061. Based on the results in Figure 6, the present study neglects to find a

significant relationship at the 5.00% confidence level and, consequently, Hypothesis VI is unfounded. Unlike ROA% Net Average – an overall return distinct from sector specification – difficulty in analysis per ROE% Net Average results across different industries, leading to further explanations in later text. As theorized, the ROE% Net Averages were higher than that of the ROA% Net Averages in the past decade for the 2022 *Fortune* 100 as leveraged finance has grown in popularity. However, both ROA and ROE relationships were insignificant regarding frequency.

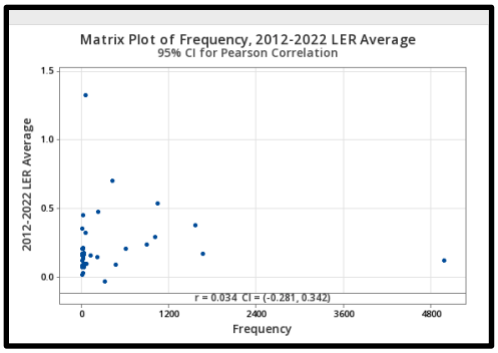

Figure 7: Hypothesis VII Matrix Plot

In determining the correlation of Hypothesis VII regarding the frequency of employment arbitration and LER Average among the 2022 *Fortune* 100 from 2012 through 2022, the R^2 value is -0.0012. Based on the results in Figure 7, the present study fails to find a significant relationship at the 5.00% confidence level and, subsequently, Hypothesis VII is unsupported. Direct labor costs increased over time for companies theorized upon (i.e., Walmart, Goldman Sachs, and Apple); however, the correct trend did not correlate with the frequency of the ADR method in question.

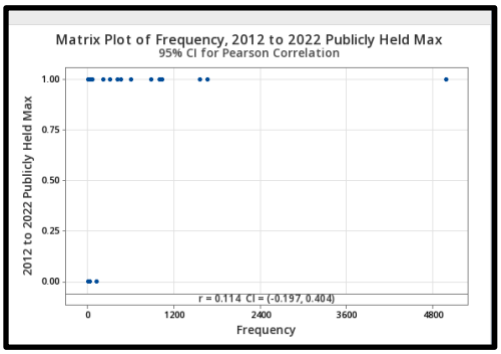

Figure 8: Hypothesis VIII Matrix Plot

Upon testing the relationship between the frequency of employment arbitration and *the* 2022 *Fortune* 100 list is publicly held distinction, the generated R^2 value is -0.013. Only 9.52% of the 42.00% of utilizers were not publicly held during the period. Based on the results in Figure 8, the present study fails to find a significant relationship at the 5.00% level and, therefore, Hypothesis VIII is uncorroborated. Although previous literature found that private employment arbitration is increasing at a faster rate than labor arbitration, the designation of not trading stocks on a public exchange (i.e., privatization) did not yield a relationship with the frequency of employment arbitration (Gough 2021).

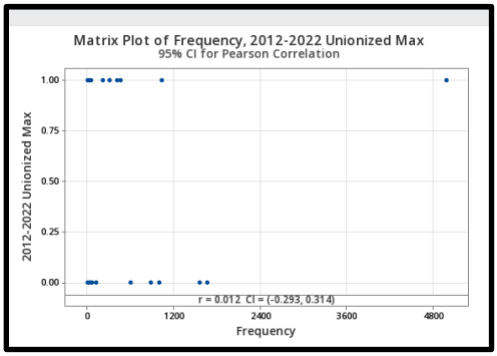

Figure 9: Hypothesis IX Matrix Plot

In deciphering Hypothesis IX's correlation between the frequency of employment arbitration and unionization coverage among the 2022 *Fortune* 100 from 2012 through 2022, -0.00014 was the yielded R^2 value. Nearly half of the utilizers displayed union coverage. Based on the results in Figure 9, the present study fails to find a significant relationship at the 5.00% level and, hence, Hypothesis IX is not supported.

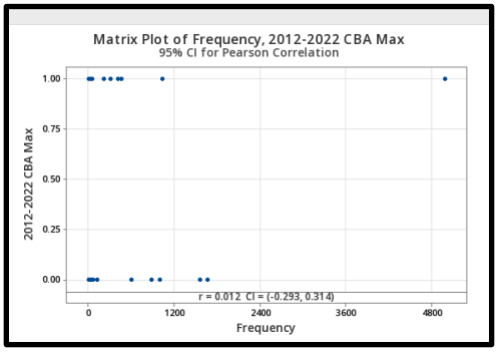

Figure 10: Hypothesis X Matrix Plot

Examining the connection between the frequency of employment arbitration and CBA coverage determines whether those covered by a union engage in negotiations and, in turn, utilize labor arbitration. Among the 2022 *Fortune* 100 from 2012 through 2022, the results found a one-to-one relationship between those covered by a union and those covered by a CBA. Based on Figure 9's exact results mirrored in Figure 10, the present study fails to find a significant relationship at the 5.00% level and, therefore, Hypothesis X is unsubstantiated.

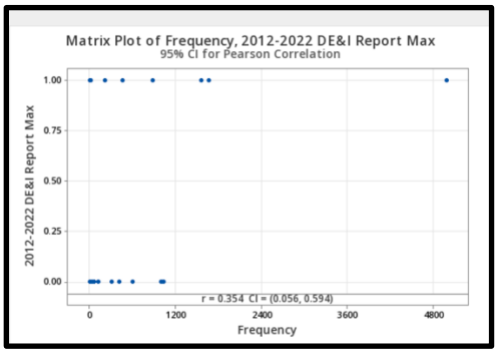

Figure 11: Hypothesis XI Matrix Plot

In correlating the frequency of employment arbitration with DE&I reporting among the 2022 *Fortune* 100 from 2012 through 2022, the test unearthed a positive correlation between the two variables tested in Hypothesis XI. With an R^2 value of 0.125, 0 does not lie within the confidence level, instilling confidence in the significance. Based on the results in Figure 11, the present study validates a significant relationship at the 5.00% level and, therefore, Hypothesis XI is supported. Thus, companies that frequently utilize employment arbitration publish DE&I statistics in reports together with those required by the U.S. Securities and Exchange Commission. The utilizers actively display data surrounding diversity, equity, and inclusion by choice, failing to reject the null hypothesis.

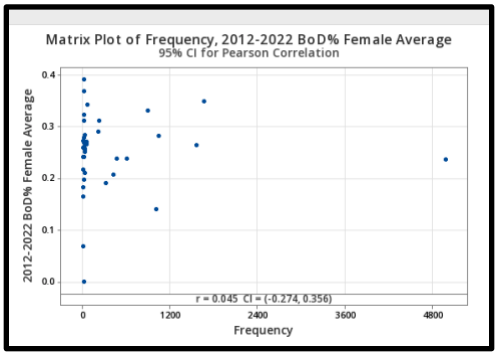

Figure 12: Hypothesis XII Matrix Plot

The frequency of employment arbitration and the average percentage of females on the Board of Directors among the 2022 *Fortune* 100 from 2012 through 2022 yielded an approximate R^2 value of 0.002. Based on the results in Figure 12, the present study neglects to find a significant relationship at the 5.00% level, and, in turn, Hypothesis XII is not supported. Despite gender reporting within published reports yielding a confidence level of significance, gender representation within the Board of Directors, specifically, did not correlate with employment arbitration frequency.

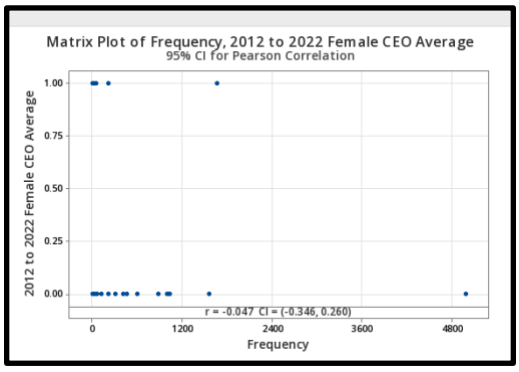

Figure 13: Hypothesis XIII Matrix Plot

In determining the correlation between the frequency of employment arbitration and the gender breakdown of CEOs among the 2022 *Fortune* 100 from 2012 through 2022, the generated R^2 value for Hypothesis XIII is -0.0022. Based on the results in Figure 13, the present study fails to find a significant relationship at the 5.00% level, and, in turn, Hypothesis XIII is unfounded. Despite gender reporting having significance, gender presence at both the CEO level and within the Board of Directors is uncorrelated with the frequency of employment arbitration.

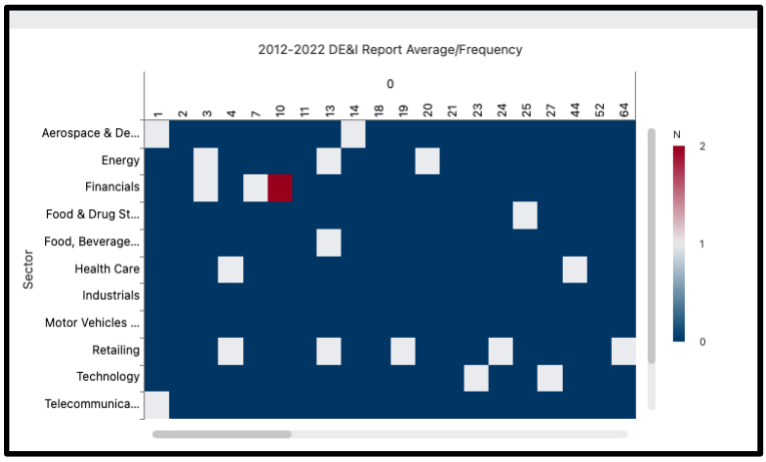

Figure 14: Heatmap Graph

In creating a heatmap by sector for the frequency of employment arbitration compared to DE&I reporting from 2012 to 2022, the generated significant values were $n = 2$ for companies within the financial services sector. The sectors of health care, telecommunications, retailing,

motor vehicles & parts, energy, and industrials generated values of n = 1. Considering the top 10.00% of frequenters are comprised of the financial sector by a striking 40.00%, the results of Figure 14 are sound as the financial services firms report diversity, equity, and inclusion data more than any other utilizer. The heatmap determined that financial service companies have the highest correlation between the frequency of employment arbitration and DE&I reporting average regarding Hypothesis XI, and sectors with middle to high frequencies, on average, are correlated with DE&I reporting average as frequencies increase.

Of the top 10.00% of 2022 *Fortune* 100 companies who utilized employment arbitration from the years of 2012 to 2022 with the highest frequency, 40.00% came from the financial sector, 30.00% appeared from the telecommunications sector, 10.00% arose from the health care sector, 10.00% surmised from the retailing sector, and the final 10.00% derived from the motor vehicles & parts sector. 30.00% of that 10.00% cut included commercial banks alone. AT&T, Citigroup, American Express, Wells Fargo, UnitedHealth Group, Verizon Communications, Ford Motor, JPMorgan Chase, Lowe's, and Comcast were the top ten companies utilizing employment arbitration at the highest frequency, culminating in an average frequency of 167.2. Of the 2022 *Fortune* 100 employing employment arbitration at the highest frequency, the present study found that only 20.00% were among *Fortune's* (2022) Best Companies to Work For, including American Express and Comcast. The top five frequent industries of employment arbitration over the last decade remain the basis for conducted percentages and analyses.

As previously mentioned, out of the top 10.00% of *Fortune* (2022) 100 companies who utilized employment arbitration from the 2012 to 2022 span with the highest frequency, 40.00% came from the financial sector. Within the sector, six companies (54.54%) represented the

commercial banking industry alone, four companies (36.36%) represented the insurance industry, and one company (9.09%) represented the diversified financials industry. The sector representatives included Citigroup, American Express, Wells Fargo, Bank of America, State Farm Insurance, JPMorgan Chase, Goldman Sachs Group, Morgan Stanley, Allstate, Liberty Mutual Insurance Group, and United Services Automobile Association (USAA). Citigroup had the highest frequency of 1,665.00, followed by American Express at 1,562.00 and Wells Fargo at 886. The ROA% Net Average of those in financial services was 1.419%, which is in the median range of the bank's industry average of banks within the 1.16% to 2.00% range. The ROE% Net Average of 11.423% is slightly greater than average banks and insurance firms, which can efficiently manage assets and produce profits at a ratio of 11.35% or more (NYU Stern). The resulting ROE Average is on par with insurance companies represented, however, as insurance valuations usually aim for about 10.00%. The insurance firms are bringing up the average. The LER ratio average of 0.196 means companies in financial services operate within lean numbers of employees but not necessarily with the production of efficient output. Aside from the Goldman Sachs Group and Morgan Stanley, which are utilizing labor efficiently under a lean workforce number far above the 0.65 ratio standard, all other firms have not been doing so, on average, from 2012 to 2022. The U.S. Bureau of Labor Statistics maintains that "although 27 selected service-providing industries increased output from 2020 to 2021, not all these industries saw their output return to their pre-pandemic levels," highlighting a lag in time before the LER ratios and direct labor costs move over the 0.65 thresholds.

All but three companies in the sector were publicly held, with only Allstate employees covered by both unions and CBAs. Thus, those in financial services do not engage in labor

arbitration and collective bargaining despite the frequency of employment arbitration. The frequency of employment arbitration is hence more commonplace around employment law for financial services than for labor law among the 2022 *Fortune* 100 finance sector. Goldman Sachs, Morgan Stanley, Citigroup, American Express, and Wells Fargo all published DE&I reports as non-unionized, publicly held, financially sound companies. Only one CEO (i.e., Citigroup) was female out of the entire sector during the period studied. The average percentage of women on the financial service sector's Board of Directors yielded 26.89%. In conclusion, the commercial banks were most aligned with Hypothesis XI's finding of significance regarding the frequency of employment arbitration and DE&I reporting, as opposed to insurance companies and diversified financials. Citigroup was the strongest example of a company in the financial services industry utilizing employment arbitration, having female representation at the CEO level, and DE&I reporting. State Farm Insurance did not experience the distinction of a publicly held entity, nor did it receive coverage from a union or CBA, resulting in the third-lowest frequency level of just seven employment arbitration cases during the span of ten years. Morgan Stanley was among the lowest frequenter with just one employment arbitration case during the decade.

As previously stated, 30.00% of the top 10.00% of frequenters appeared from the telecommunications sector. Four companies – AT&T, Verizon Communications, Comcast, and Charter Communications – represent the telecommunications sector. AT&T comes out on top with a frequency of 4,984 cases, followed by Verizon Communications with a frequency of 1,034 and Comcast with a frequency of 1,001. Charter Communications held one employment arbitration case during the entirety of the decade. With exact matches for the sector as well as

industry, all four designate themselves as publicly held. One full percent above the industry ROA% Net Average of 2.89%, the utilizers generated a ROA% Net Average of 3.89%. The ROE% Net Average for telecommunications firms amounted to 23.75%, lest Charter Communications' negative margins experienced during the 2012 financial crisis. The ROE% Net Average falls within the range but slightly higher than NYU Stern's 2022 recommendations of 15.76% to 20.13%. The LER ratio of 0.2813 is about 36.87% lower than the 0.65 threshold of efficient labor costs.

Unlike Comcast, AT&T, Verizon, and Charter Communications are unionized and covered by a CBA. Thus, unlike in the financial services sector, most companies in the telecommunications sector frequent collective bargaining and labor arbitration in addition to or in coordination with employment arbitration. Unionization did not uncover a significant correlation with frequency, highlighted by the antithesis results of high frequencies between unionized AT&T and nonunionized Citigroup. The most frequent utilizer of employment arbitration is the only one to report DE&I information and has been doing so for the past six years, much like in the financial services sector. None of the four has had a female CEO. 8.69% lower than the financial services sector, the telecommunications sector resulted in an average of 18.26% of women on their respective Boards of Directors.

10.00% of the top 10.00% utilizers were among the health care sector, two (40.00%) of which represent the pharmacy and other services industry, one (20.00%) of which represents the pharmaceuticals industry alone, one (20.00%) of which represent the health care insurance & managed care industry, and one (20.00%) of which represent the medical facilities industry. CVS Health, Cigna, UnitedHealth Group, Pfizer, and HCA Healthcare were among the health care

sector utilizers. UnitedHealth Group had the highest frequency of 418, followed by CVS Health at 218 and CVS Cigna at 44. Pfizer only utilized employment arbitration four times within the decade, and HCA Healthcare a mere three. All five companies in the sector designated themselves as publicly held. The ROA% Net Average of those in the health care sector was 6.135%, slightly larger than the industry average of health care is approximately 5.39%. The ROE% Net Average of 17.35% is far higher than the average calculated by NYU stern of 12.23%, and perhaps the highest difference of around 5.00%. The LER ratio average of 0.60 is the closest to perfection the present study found in meeting the most efficient direct labor standard of 0.65. The high level of unionization and CBA coverage amidst the utilizers in the health care sector of 80.00% directly influences the labor costs for employers. Thus, much like the telecommunications sector yet unlike the financial services sector, companies in health care are engaging in bargaining and labor arbitration along with employment arbitration, leading the variables of unionization and CBA coverage frequency to be indiscriminate of the sector, as found by the regression and correlations.

CVS Health was the only one in the sector to seat a female CEO. Both CVS Health and HCA Healthcare published DE&I reports. Thus, the sector outlier in the significant correlation between the frequency of employment arbitration and DE&I reporting (Hypothesis XI) lies within UnitedHealth Group. The average percentage of women on a health care company's Board of Directors yielded 24.24%, just two percentage points away from the financial services sector. In conclusion, the health care pharmacy and other services industries best align with the frequency of employment arbitration and diversity, with those two segments having the highest percentages of women on their respective Boards of Directors. CVS Health was the closest

example of a “catch-22” company in the health care industry utilizing employment arbitration at a high frequency, having female representation at the CEO level, DE&I reporting, the highest percentage of females at the Board of Director level, and unionization/CBA coverage. Although publicly held, unionized, covered by a CBA, and not on *Fortune’s* (2022) Best Companies to Work For like CVS Health, Pfizer did not share other diversity variables in common with CVS Health, resulting in the lowest frequency of the sector.

Of the top 10.00% utilizers of employment arbitration over the past decade in the dataset, only 10.00% comes from the retailing sector. Six companies – Lowe’s, Costco Wholesale, Home Depot, Target, Best Buy, and TJX – serve as sector representatives. 66.67% of those represented comprise the specialty retail industry, while the remaining 33.33% comprise the general merchandise industry. As theorized, Walmart – a company with a large LER ratio – was not a utilizer of employment arbitration in the database from 2012 to 2022. All six companies designate themselves as publicly held. Lowe’s had the highest frequency of 463, followed by Best Buy at 64 and Home Depot at 24. The ROA% Net Average was 10.93%, far above the 6.37% industry standard over the decade. Likewise, its ROE% Net Average of 38.72% was far above the 27.37% industry standard over time, aligned with the other results at the macro and micro-level (NYU Stern). Its average LER ratio falls within 0.158, far below the industry standard. The discrepancies between LER ratios and frequency remain in line with the correlative results finding no association between the two variables and can be explained through increasing labor costs, adjusted inflation, and the switch to e-commerce over the last decade. 50.00% of the companies displayed coverage by a union and a CBA, one of which was the highest frequenter and two of which were the lowest frequenters in the sector. In line with the

present study, no factor other than diversity alluded to significance with frequency at the sector-level. Best Buy and TJX were the only two companies to have female CEOs, as well as the highest average percentage of females on their respective Boards of Directors, followed by Lowe's. The high average expressed within the industrials sector of the proportion of female Board of Directors from 2012 through 2022 was 28.75%. Per the present study's correlative results through statistical analysis, the company with the highest frequency – Lowe's – was the only one in the sector to publish DE&I reports. Since 2018, Lowe's has annually and actively published diversity, equity, and inclusion statistics in a formal report.

10.00% of the top 10.00% utilizers derive from the motor vehicles and parts sector. Ford Motor and General Motors represent the sector users of employment arbitration but on opposite sides of the spectrum. The present study found that Ford Motor had a frequency of 314, while General Motors had a frequency of 11. Both profitable, publicly held companies, the higher frequenter – Ford Motor – had union and CBA coverage. With a ROA% Net Average of 2.68% compared to the industry average of 3.67% during that period, ROA% Net Averages increase over time as the companies grow in rank without association with employment arbitration (NYU Stern). As for the sector ROE% Net Average of 16.542%, the test solidifies ROE% Net Average is slightly above the industry time standard of 15.68% (NYU Stern). With a negative LER Average for the sector of -0.00082, costs for direct labor in the automotive industry were by far the lowest and diversified within the dataset. The high frequenter – Ford Motor – had direct labor costs impacting its bottom line over the period, whereas General Motors remained constant. Much like UnitedHealth Group – the highest frequenter in the health care sector – the two companies expressed union and CBA coverage, the lowest average percentage of women on their

Board of Directors, and failure to place a female CEO in charge during the past decade. Diversity was not on top of mind amidst the health care sector and motor vehicles & parts sector's highest frequenters of employment arbitration; indeed, the frequenters remained anomalies in the correlation, bringing down the R^2 value of significance.

Sector-specific breakdowns of financial services, telecommunications, health care, retail, and motor vehicles and parts were crucial in determining the correlative results of frequency of employment arbitration and DE&I reporting from 2012 to 2022 (Hypothesis XI) as indiscriminate of the sector. The top five users consisted of AT&T from telecommunications (4,984 frequency), Citigroup from financials (1,665 frequency), American Express from financials (1,562 frequency), Verizon Communications from telecommunications (1,034), and Comcast from telecommunications (1,001). Wells Fargo from financials (886 frequency) and UnitedHealth Group from health care (418 frequency) are notable frequenters outside the top five. Aside from Comcast, Verizon Communications, and UnitedHealth Group, the top users with the highest frequencies were associated with Hypothesis XI – DE&I reporting in 2022 – beginning during the year prior (2021) for all others except for AT&T who has published formal reports since 2014. Thus, the 2022 *Fortune* 100 company with the highest frequency of employment arbitration has been the longest to report DE&I information among the top five highest frequenters but, more importantly, within the entire dataset. The year 2021, on average, was the year the top five highest frequenters began publishing DE&I reports. Insignificant in the fit regression model and correlations using all *Fortune* 100 companies on the 2022 list, the percentage of women on the Board of Directors was high among the top five frequenters, at an average of 25.53%.

Chapter 5 Conclusions & Suggestions for Further Research

Showcased in the public eye by landing a spot in *Fortune*'s rankings – whether on *Fortune's* (2022) Best Companies to Work For, Profitability, or Change in Rank (Full 1000) list – did not yield significance. The nation's number-one resource for company rankings and badges of success does not tie together the companies' frequency of employment arbitration by most of the variables studied in the present test. The variable tested in Hypothesis XI of diversity, equity, and inclusion reporting from 2012 to 2022 was the most significant regarding the frequency of employment arbitration among the 2022 *Fortune* 100, failing to reject the null hypothesis. Perhaps the metric of legal strategy would be more associated with the utilization and frequency of employment arbitration than remaining in the public eye, union coverage, CBA coverage, or financial health.

Companies frequently utilizing employment arbitration were found to have published DE&I reports. The data is cohesive, maintaining that even those with insignificant results follow practically significant industry trends reporting and frequency of employment arbitration. Within the 2022 *Fortune* 100 dataset, the first company to adopt the publication of diversity information through the form of a formal report was AT&T in 2014. The decision to publicly report diversity information beginning in that year was not an arbitrary one; rather, at the macro-level in the telecommunications sector during that year, the Federal Bureau of Investigation (FBI) served telecommunications firms with suppression orders to disclose customer records post former National Security Agency contractor Edward Snowden's spying discoveries (Levine, 2014). At the micro-level, uncertainty was shared in 2014 as AT&T was accused by the Federal Trade Commission (FTC) of misleading 3.50 million consumers with "unlimited" data promises (*FTC*

Says AT&T Has Misled Millions of Consumers with 'Unlimited' Data Promises, 2014). In the filing of its complaint, the FTC (2014) charged AT&T for changing the terms of customers' unlimited data plans while those customers were still under contract and failing to disclose speed reductions of up to 80.00% to 90.00%. The decision of the court resulted in AT&T paying $80.00 million to the FTC in consumer refunds, with a reputation in shambles (*FTC Says AT&T Has Misled Millions of Consumers with 'Unlimited' Data Promises,* 2014). The present study operates under the inference that AT&T yearned to earn its consumer's trust back, and pressured by institutional investors, set a tone for transparency in DE&I reporting. In 2021, AT&T increased its Board of Directors percentage of women by 1.67% as well.

Unlike AT&T of the telecommunications sector – which had the highest frequency of employment arbitration among the 2022 *Fortune* 100 – the next two of the top five as well as Wells Fargo of the top ten began reporting DE&I statistics in 2021. Citigroup, American Express, and Wells Fargo comprise the financial services sector, which at a macro-level had a record number of Anti-Money Laundering (AML) fines that year; in fact, AmBank was fined $700.00 million in the 1MDB financial scandal, ABN Amro was fined $574.00 million for failure to report suspicious transactions, Capital one was fined $390.00 million for violations of the Bank Secrecy Act, and Deutsche Bank was fined $130.00 million for violations of the Foreign Corrupt Practices Act (FCPA) – just to name a few (Henderson, 2022). At the micro-level, each firm made headlines in 2021, leading the present study to infer that this year of inception for reporting amongst the second, third, and fourth companies with the highest frequency was anything but arbitrary.

In 2021, Citigroup was fined and paid $400.00 million to the Federal Reserve and the Office of the Controller of the Currency for engaging in “unsafe and unsound banking practices” (Flitter, 2020). As a result, female Jane Fraser replaced Citigroup’s CEO Michael Corbet (Flitter, 2020). Falling short of regulator’s expectations, institutional investors’ wishes, and transparency, Citigroup’s reversal in the span of the year 2021 was substantial in publishing its first Talent and Diversity, Equity & Inclusion Annual report, assuming its first female CEO, and increasing its percentage of women on its Board of Directors by nearly 10.00% from 37.50% in 2020 to 47.06% in 2021.

In 2021, American Express terminated Global Commercial Services employees for inappropriately pitching sales products with respect to tax benefits and rewards points (Reuters 2021). As a result, a new working capital solution replaced the previous Premium Wire Service and Membership Rewards components, and an investigation ensued by the offices of the Treasury Department, Federal Deposit Insurance Corporation (FDIC), Federal Reserve, and the Office of the Comptroller of the Currency (Andriotis et al., 2022). Rather than having 2021 be its second consecutive year of the percentage of women decreasing on the Board of Directors, American Express maintained its proportion of women at 26.67% in 2021. For American Express, 2021 was the year it changed its tune of transparency to avoid losing customers like Wells Fargo had years before in its 2016 cross-selling scandal (Andriotis et al., 2022); the year where it released its inaugural Diversity, Equity, & Inclusion Report and maintained its ratio of women on the Board of Directors despite the trend of decrease the year before.

In 2021, Wells Fargo was served in civil court by the FBI and the Office of the U.S. Attorney for the Southern District of New York for violating the Financial Institutions Reform

Recovery and Enforcement Act (FIRREA). Wells Fargo defrauded 771 customers by marking up FX transactions for more than what they had initially represented (Sherman, 2021). Wells Fargo paid $72.60 million in the settlement, while still operating under nine other remaining consent orders – aside from the $185.00 million fine – from its 2016 cross-selling scandal (Son, 2022). Poor publicity and fines taint the reputation of the firm, five years after the scandal no scholar predicted could be outdone. In 2016, the percentage of women on its Board of Directors was 35.71%, increasing to 38.46% in 2021. 2021 was the year of its second near-fatality, inaugural Diversity, Equity, & Inclusion Report, and an increase in female Board of Directors representation.

In sum, the years of inception for Hypothesis XI, or DE&I reporting amidst the 2022 *Fortune* 100 list who most frequent employment arbitration during the years of 2012 to 2022, are not arbitrary; indeed, the year 2014 is of substantial meaning for the frequenting great – AT&T – and the year of 2021 is of sound inception for the frequenting sector – financials. The present study also uncovered that during the year 2021, other utilizers of employment arbitration in the financial services industry published their inaugural reports outside of the top 5.00% frequenters, including Morgan Stanley. Although the percentage of women on the Board of Directors was not correlated with the frequency of employment arbitration among the large dataset of the 2022 *Fortune* 100, for the top 4.00% frequenters, the factor ties them together in addition to the non-arbitrary inception of DE&I report publishing. The percentage of women on the Board of Directors was high among the top five frequenters, at an average of 27.85%.

The two outliers in the top 5.00% are Comcast and Verizon Communications. Both publicly held and utilizers in the second-highest frequenting sector of employment arbitration,

the two companies have increased their frequency within the latter half of the decade. Verizon Communications – most like its larger counterpart, AT&T – has a similar history of unionization and CBA coverage, lack of female CEO representation, and above one-fifth female representation on its Board of Directors. The present study can infer that Verizon Communications' benchmarking of its top competitor would consider DE&I formal reporting in the near future, perhaps with more urgency than Comcast, which remains distant from AT&T in terms of financial metrics, diversity compositions, and other variables studied.

UnitedHealth Group of the health care sector was deemed the third outlier in the top 10.00%. UnitedHealth Group was the highest frequenter of employment arbitration in the health care sector but failed to publish DE&I reports. The present study notes that the significance of the found R^2 value is lower due to this discrepancy. With the highest ROA% Net Average (7.56%) and highest ROE% Net Average (21.97%), as well as the second-largest LER Average (.705) in the sector, the discrepancy is unclear at first glance. However, the present study found that the health care giant has yet to place a female CEO in charge during the last decade. Furthermore, the company has the lowest sector average percentage of women on the Board of Directors from 2012 to 2022, at approximately 20.76%. Unionized and covered by a CBA during the entirety of the period studied, UnitedHealth Group publishes on the front page of "Our People & Businesses": "as of June 2022, unionized employees comprise less than 1.00% of our United States domestic workforce (UnitedHealth Group Human Rights 2023). Despite a potentially unfavorable attitude towards bargaining and labor arbitration, the present study's results lead inferences away from those attitudes spilling into employment arbitration as frequency failed to correlate with unionization or CBA coverage. Rather, the results point us to

the lack of gender representation at the CEO level and on the Board of Directors. The lack of gendered representation filtering into a lack of motivation to publish DE&I statistics seems to be the case with UnitedHealth Group.

The fourth outlier in the top 10.00% was Ford Motor in the motor vehicles and parts sector. As the highest frequenter of employment arbitration within the motor vehicles and parts sector, much like UnitedHealth Group, the company did not publish DE&I reports. Similarly, Ford Motor has the second-to-highest sector ROA% Net Average (2.16%) and the highest sector ROE% Net Average (17.95%). From 2012 to 2022, the automotive giant was without a trace of female CEO representation and had the lowest sector average percentage of women on the Board of Directors (19.08%). Like its health care outlier, union, and CBA coverage existed for the entirety of the decade, despite reported records of union strife. The only difference between UnitedHealth Group and Ford Motor lies in its decreasing and negative LER Average (-0.032), maintained throughout the industry comparisons. Ceteris paribus, the similar conclusion of lack of representation of women at both the CEO level and Board of Directors leads the correlative results to infer there is less of an impetus to publish DE&I statistics formally when the representation is remiss in corporate governance.

Due to the outlier results of top frequenting sectors of telecommunications, health care, and motor vehicles and parts failing to publish DE&I reports, the heatmap tested sector and frequency of employment arbitration to determine sector trends. Financial services firms published DE&I reports in correlation to the frequency of employment arbitration at a factor of two, while other industries did so at that of one. Any value of *n* above zero determines practical significance, but those between one and two are statistically significant. For financial services

firms, who trade a myriad of securities on multiple markets like the stock market, bond market, FX market, and derivatives market, registering an initial statement to become publicly held is not an afterthought; indeed, it is essential to the business and its operations. Regarding other industries like retail companies, this has not always been the case because the essence of their operations does not include soft commodity trading. Financial services firms that file more SEC reports on average than retail companies would report an additional, non-required DE&I publication at a slighter higher factor.

The sector is indiscriminate of Hypothesis XI's significance considering the relationship between the frequency of employment arbitration and DE&I reporting. Indeed, AT&T – the most fervent frequenter of all the 2022 *Fortune* 100 – is not in retail or financials. Furthermore, the top 5.00% frequenters do not hold sector in common or unionization/CBA coverage, ROA% Net Averages, ROE% Net Averages, or LER Averages in common. All are held publicly with an average percentage of women on their Board of Directors of 25.53%, the only significant correlation with frequency is DE&I reporting from Hypothesis XI. In 2027's release of the AAA dataset, perhaps the average percentage of women on the Board of Directors will become significant by then in correlation to frequency. For now, the only confidence the present study declares is in DE&I reporting and frequency.

Despite companies experiencing remote work over the last three years of the period studied, labor costs continue to be an area of research, development, and funding with room for improvement, even for the *Fortune* 100. The health care sector had a near-perfect average direct labor efficiency ratio, despite median operating margins for health care companies falling from 5.60% to -1.40% between December 2021 and 2022 (*Report: Labor Costs Driving Hospital*

Expenses Up, Margins Down, 2022). Operating understaffed, with lean employees and increasing labor costs, the health care sector remains the most efficient in its bottom line relating to direct labor efficiency at non-managerial levels for the top frequenters of employment arbitration. Perhaps the LER Averages will be correlated with frequency as time progresses, outside the recessionary macroeconomic conditions.

The present study did not code for the changes in the *Fortune* 100 over time; in other words, the present study looked at the 2022 *Fortune* 100 list and those 100 companies' balance sheets, income statements, statements of cash flows, statements of retained earnings, Board of Directors seat numbers and gender breakdowns, unionization/CBA coverage, and more. Thus, the present study did not analyze the effect of all companies in the *Fortune* 100 from the years 2012 to 2022. With more time and resources, the current results open doors for an advanced analysis of the changing companies over the past decade about their frequency of compulsory employment arbitration.

When analyzing the Board of Directors' seat numbers and gender breakdowns for the 2022 *Fortune* 100 from 2012 to 2022, the factors not considered were age and race due to the lack of data. Due to the variability in reporting mechanisms among company 10-K reports, the data was varied, missing, or unclear depending on the company and its commitment to diversity, equity, and inclusion. Many 10-K annual reporting forms and S.E.C. proxy statements referred to diversity of gender and race together, without separation, while others only included gender. Others chose to include age while most did not. Due to inconsistencies with all races, ethnicities, or ages reporting for the Board of Directors, future research should consider the race and age of the Board of Directors in comparison to that of the race and age of those unionized and those

thus represented in employment arbitration. The focus on gender in the present study opens doors for age and race if the data can be standardized and vetted for the entire dataset.

Building upon Malin's (1993) idea from the literature review, the present study opens doors for the community whose question regarding whether the *Fortune* 100 cares more about efficiency or public justice remains unanswered. As the fit regression model and correlations uncovered, without similarities in industry, unionization, and more, simply being profitable and having high ROAs, ROEs, and more does not tie all the companies together. The exact connection between the utilization and frequency of employment arbitration remains disassociated with the *Fortune* 100's bottom lines, unionization or CBA coverage, or percentage of women on their respective Board of Directors. The most significant finding of the present study lies in Hypothesis XI's positive correlative results between the frequency of employment arbitration and DE&I reporting. One decade from now, it will be interesting to run the statistical analyses provided by the fit regression model and the correlations to note if the significance has grown as companies begin to release inaugural diversity, equity, and inclusion information through the means of a formal report in 2023 and onward. As the frequency of employment arbitration was unassociated with more variables than one, perhaps the legal strategy of the *Fortune* 100 companies could be a potential variable of significance not initially considered in the present study. The test uncovered that the respective ROA% and ROE% Net Averages have been above industry standard averages for the past decade. Although the correlation between bottom line financials did not yield statistical significance, an overall trend of efficient returns on financials lends itself to practical implications and future variables to test (i.e., legal strategy). LER Averages and the percentage of women on the Board of Directors remain areas to return to

one decade from today as potential correlative variables as the frequency of employment arbitration increase broadly among the *Fortune* 100.

Chapter 6 Limitations

The efficiency ratios of ROE and ROA can and are affected by factors that do not involve unionization, labor, law, arbitration, the Board of Directors, etc. Although management and investors can use ROA to determine whether a company effectively uses its assets to generate a profit efficiently, it is best to compare the ROA of companies within the same industry as they would then share the same asset base. Since the dataset of the *Fortune* (2022) 100 is not limited to one industry, the ROA for Apple, a technology company, will not necessarily respond to the ROA for Caterpillar, an industrial company. Thus, the overall trend of earnings generated from invested capital or assets from investors in support of the Board of Directors and its corporate governance should be considered, not compared against another company's previous ROA numbers. ROE reflects the company's management, specifically top-down from the Board of Directors, in generating income and growth from its equity financing. However, much like ROA, ROE's analysis is circumstantial depending on its industry's normalcy. In other words, Exelon should have a high number of assets and debt on the balance sheet and a small amount of net income because the expected ROE for a utility company should be under 10.00%, on average. Expectations should vary for a retail firm like Publix Super Markets, whose industry's normal ROE levels are, on average, around 18.00%. The data showing general trends of high ROAs and even higher ROEs over time does not mean companies with those positive ratios increase their frequency due to those financial ratios. Indiscriminate of sector, and when found to generally, on average, be on par with industry-standard, no correlation existed between frequency and/or ROA/ROE.

The Mergent Online (2023) database used to pull data among the 2022 *Fortune* 100 over the past decade, utilized company financial statements (i.e., balance sheets, income statements, statement of cash flow, and the statement of retained earnings) to generate financial ratios. In the database, some companies had histories of returns shorter than others, resulting in some incomplete datasets for a few companies. If all the 2022 *Fortune* 100 had the same founding date and financial history, there would be increased confidence in the results of the present study. As for the Board of Directors data collection, the information could be subject to human error in analyzing the 10-Ks, potentially for the Board of Directors gender coding. Self-identification was not considered amidst the Board of Directors data analysis, as the 10-Ks do not include that information. The LER Averages data collection explored beyond Mergent Online and SEC filings, and into Indeed, a reputable site for job salary and expectations. Due to this being the only source for average median salaries on a firm-by-firm basis as opposed to an industry basis like the U.S. Bureau of Labor Statistics, the data collection is subject to human error of false salary and/or hourly pay reporting.

Time series regression would have been the ideal form of statistical analysis for the study; however, due to the lack of data regarding month-to-month numbers to show seasonality on a micro level, the fit regression model and correlations were explored instead. With improved access to data regarding monthly or even daily changes in employment arbitration frequency, greater significance could potentially be found. The present study solely operated from a domestic standpoint of unionization and *Fortune* 100 ranking data in the United States explicitly found via NLRB dockets and 10-Ks (NLRB Case Search, 2023; Mergent Online, 2023).

Diversity and financials, however, could not be separated by domestic versus international operations, including a comprehensive global perspective.

BIBLIOGRAPHY

About. (2023). Walmart Corporate – US https://corporate.walmart.com/about#:~:text=Walmart%20operates%20approximately%2010%2C500%20stores,Walmart%20U.S

Akerman, A. (2008, July). Regulation: FINRA to Launch Two-Year Pilot Program on Dispute Arbitration. *The Bond Buyer*, 5. Retrieved from ProQuest database.

Alexander v. Taylor, 2019 U.S. Dist. LEXIS 211490 (W.D. Mich. Dec. 10, 2019)

AmEx terminates some employees for inappropriately pitching certain products. (2021, November 22). Reuters. https://www.reuters.com/business/finance/amex-pitched-business-clients-tax-break-that-may-have-skirted-laws-wsj-2021-11-22/#:~:text=AmEx%20terminates%20some%20employees%20for%20inappropriately%20pitching%20certain%20products,-Reuters&text=Nov%2022%20(Reuters)%20-%20American,with%20respect%20to%20tax%20benefits

Andriotis, A., Rubin, R., & Haddon, H. (2022, April 15). *IRS Investigating American Express Sales Pitches*. WSJ. https://wsj.com/articles/irs-investigating-american-express-sales-pitches-11650037221

Archer Daniels Midland Company (ADM) | National Labor Relations Board. (2014, December 15). https://www.nlrb.gov/case/25-RC-142796

Ashack, E. (2013, May 19). *Profiles of significant collective bargaining disputes of 2012: Monthly Labor Review: U.S. Bureau of Labor Statistics*. https://www.bls.gov/opub/mlr/2013/article/profiles-of-significant-collective-bargaining-disputes-of-2012.htm

Bargaining. (2023). AT&T Inc. https://about.att.com/pages/bargaining

Bhaimiya, S. (2023, January 4). *Microsoft recognized its first labor union in the U.S. after staff at $7.5 billion video game firm ZeniMax Studios voted to unionize*. Business Insider. https://www.businessinsider.com/microsoft-recognizes-its-first-labor-union-in-the-us-2023-1

Bonet, R., Cappelli, P., & Hamori, M. (2020). Gender differences in speed of advancement: An empirical examination of top executives in the *Fortune* 100 firms. *Strategic Management Journal*, *41*(4), 708–737. https://doi.org/10.1002/smj.3125

Brand, P. (2022, August 25). *Diversity Annual Report Examples from Fortune 500 Companies*. Purpose Brand. https://purposebrand.com/blog/diversity-report-examples-Fortune-500/

Bureau of Labor Statistics. (2022). *Union Members- 2021*. Retrieved from https://www.bls.gov/news.release/pdf/union2.pdf

Carlson, G. (2019, December 12). *Opinion | Gretchen Carlson: Fox News, I Want My Voice Back*. The New York Times. https://www.nytimes.com/2019/12/12/opinion/gretchen-carlson-bombshell-movie.html

Carlton, S. (2019, April 24). *The #MeToo Movement and the Shareholder Derivative Action*. https://www.americanbar.org/groups/litigation/committees/class-actions/practice/2019/me-too-movement-lawsuits-shareholder-derivative-action/#:~:text=To%20this%20end%2C%20waves%20of,harassment%20and%20gender%20bias%20issues

Citi | Diversity. (2023). https://www.citigroup.com/global/our-impact/diversity-equity-inclusion

Collective Bargaining Agreement Reporting Procedures: Private-Sector *Bargaining Units (OLMS Fact Sheet).* (2023). U.S. Department of Labor. https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/cba/private_/cbrp_2213_pri.pdf

Colvin, A. (2019). The Metastasization of Mandatory Arbitration. *Chicago-Kent Law Review, 94(1),* 3-26.

Colvin, A. J. S. (2003). The Dual Transformation of Workplace Dispute Resolution. Industrial Relations, *42* (4), 712-735.

Colvin, A. J. S. (2008). Empirical Research on Employment Arbitration: Clarity Amidst the Sound and Fury? *Employee Rights and Employment Policy Journal*, 11(2), 405-447.

Colvin, A. J. S. (2014). Mandatory Arbitration and Inequality of Justice in Employment. *Berkeley Journal of Employment and Labor Law,* 35(1), 71-90.

Colvin, A. J. S. (2018). *The growing use of mandatory arbitration: Access to the courts is now barred for more than 60 million American workers*. Economic Policy Institute. https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/

Colvin, A. J. S., & Gough, M. D. (2015). Individual Employment Rights Arbitration in the United States. *Industrial and Labor Relations Review*, *68*(5), 1019–1042. https://doi.org/10.1177/0019793915591984

Colvin, A. J. S., & Pike, K. (2014). Saturns and rickshaws revisited: What kind of employment Arbitration System has Developed? *Ohio State Journal on Dispute Resolution*, *29*(1), 59.

Commitment to Human Rights. (2023). UnitedHealth Group. https://www.unitedhealthgroup.com/people-and-businesses/standards/ethics-and-compliance/human-rights.html

Consumer. (2023). American Arbitration Association (AAA). https://www.adr.org/consumer

Court Orders CHS Hospitals Recognize and Bargain with Registered Nurses Union. (2016, July 28). National Nurses United. https://www.nationalnursesunited.org/press/court-orders-chs-hospitals-recognize-and-bargain-registered-nurses-union

CVS Caremark and the United Food & Commercial Workers. (2013, January 17). *CVS Caremark and United Food & Commercial Workers Union Announce Cooperation Agreement in 500 Stores*. https://www.prnewswire.com/news-releases/cvs-caremark-and-united-food--commercial-workers-union-announce-cooperation-agreement-in-500-stores-187320751.html

CVS Health Corporation Company Financials. (2023). Mergent Online. https://www-Mergentonline.comezaccess.libraries.psu.edu/companyfinancials.php?pagetype=ratios&compnumber=5395&period+Annuals&range=15&Submit+Refresh&csrf_token_mol

Damodaran, A. (2022). Return on Equity by Sector (U.S.). Retrieved March 31, 2023, from https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/roe.html

Delaney, K. J. (2022, December 2). *Why Walmart Workers Earn What They Do*. Time. https://time.com/charter/6238245/still-broke-rick-wartzman/

Directory listing of full indices. (2023). https://www.sec.gov/Archives/edgar/full-index/

Diversity Annual Report - Google Diversity Equity & Inclusion. (2022). https://about.google/belonging/diversity-annual-report/2022/

Diversity and Inclusion. (n.d.). FedEx. https://www.fedex.com/en-us/about/diversity-inclusion.html

Diversity and Inclusion | Abbott U.S. (2023). Abbott Laboratories. https://www.abbott.com/careers/diversity-and-inclusion.html

Diversity and Inclusion. (2023, March 22). Centene. https://jobs.centene.com/us/en/diversity-and-inclusion

Diversity at GE. (2023, January 4). https://jobs.gecareers.com/global/en/diversity-at-ge

Diversity & Inclusion. (2023, February 2). Lowes. https://talent.lowes.com/us/en/diversity-inclusion

Diversity & inclusion - Merck.com. (2023, March 27). Merck.com. https://www.merck.com/company-overview/diversity-and-inclusion/

Diversity, Equity, and Inclusion. (2023). AmerisourceBergen. https://www.amerisourcebergen.com/diversity-equity-and-inclusion

Diversity and Inclusion. (2023). Caterpillar. https://www.caterpillar.com/en/careers/why-caterpillar/diversity-inclusion.html

Diversity, Equity & Inclusion. (2023) AT&T. https://about.att.com/pages/diversity/dei-report

Diversity, Equity & Inclusion. (2023). Content Lab U.S. https://www.jnj.com/about-jnj/diversity

Diversity, Equity & Inclusion. (2023). https://www.exeloncorp.com/diversity-equity-inclusion

Diversity Report. (2023). PepsicoUpgrade. https://www.pepsico.com/our-impact/diversity/diversity-report

Diversity & Inclusion Report. (2023). Diversity & Inclusion Report. https://www.microsoft.com/en-us/diversity/inside-microsoft/annual-report?activetab=innovation-spotlights:primaryr4

Doe v. Virginia Dept. of State Police, 713 *F.3d* 745 (4th Cir. 2013).

Eigen, Z.J., Menillo, N.F., & Sherwyna, d. (2012). Shifting the Paradigm of the Debate: A Proposal to Eliminate At-Will Employment and Implement a "Mandatory Arbitration Act." *Indiana Law Journal, 87*(1), 271-288.

Elias, J. (2022, March 25). *Employees at Google Fiber contractor in Kansas City are first to unionize under Alphabet Workers Union*. CNBC. https://www.cnbc.com/2022/03/25/google-contractors-in-kansas-city-are-first-to-unionize-under-alphabet-worker-union.html#:~:text=Investing%20Club-,Employees%20at%20Google%20Fiber%20contractor%20in%20Kansas%20City%20are,unionize%20under%20Alphabet%20Workers%20Union&text=Employees%20at%20a%20Google%20Fiber,the%20National%20Labor%20Relations%20Board

Estlund, C. (2018). The Black Hole of Mandatory Arbitration. *North Carolina Law Review,* 96(3), 679-707.

Estreicher, S. (2001). Saturns for Rickshaws: The Stakes in the Debate Over Pre-Dispute Employment Arbitration Agreements. *Ohio State Journal on Dispute Resolution,* 16, 559.

ETHICON, A JOHNSON & JOHNSON CO., 360 N.L.R.B. 827 (N.L.R.B-BD 2014)

Facebook Diversity Update. (2023). Meta. https://www.metacareers.com/diversity-report

Flitter, E. (2020, October 7). *Citigroup is fined $400 million over 'longstanding' internal problems.* The New York Times.

Ford to Cut up to 3,200 European Jobs, Union Says, Vowing to Fight. (2023, January 23). U.S. News & World Report. https://money.usnews.com/investing/news/articles/2023-01-23/ford-job-cuts-plan-triggers-union-threat-of-europe-wide-disruption

Fortune 500. (2022, December 16). *Fortune*. https://Fortune.com/ranking/Fortune500/2022/search/

Fortune Editors. (2023, March 7). *About Us*. *Fortune*. https://Fortune.com/about-us/

FTC Says AT&T Has Misled Millions of Consumers with 'Unlimited' Data Promises. (2014, October 28). Federal Trade Commission. https://www.ftc.gov/news-events/news/press-releases/2014/10/ftc-says-att-has-misled-millions-consumers-unlimited-data-promises

Garefalakis, A., Dimitras, A. I., & Lemonakis, C. (2017). The effect of Corporate Governance Information (CGI) on banks' reporting performance. *Investment Management & Financial Innovations*, *14*(2), 63–70. https://doi.org/10.21511/imfi.14(2).2017.06

Gigante, E., Fant, L., & Morrison, D. (2022, December 7). *Federal Law Prohibiting Arbitration of Sexual Harassment Claims Not Retroactive*. SHRM. https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/arbitration-sexual-harassment-claims.aspx#:~:text=The%20EFAA%20invalidates%20pre-dispute,its%20enactment%20on%20March%203

Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991). (n.d.). https://www.law.cornell.edu/supct/html/90-18.ZS.html

Global Diversity and Inclusion. (2023, February 10). Lockheed Martin. https://www.lockheedmartin.com/en-us/who-we-are/global-diversity-inclusion.html

Global Diversity and Inclusion at American Express. (2023). https://www.americanexpress.com/us/company/global-diversity-and-inclusion.html

Global Equity, Diversity & Inclusion. (2023). https://www.boeing.com/principles/diversity-and-inclusion/index.page

Global Inclusion & Diversity - Bristol Myers Squibb. (2023). https://www.bms.com/about-us/global-diversity-and-inclusion.html

Goldman Sachs | Diversity and Inclusion. (2023). Goldman Sachs. https://www.goldmansachs.com/our-commitments/diversity-and-inclusion/

Goot, M. (2011, June 29). *GE unions OK new contracts*. The Daily Gazette. https://dailygazette.com/2011/06/29/0630_ge/

Gough, M. (2014). The High costs of an Inexpensive Forum: An Empirical Analysis of Employment Discrimination Claims Heard in Arbitration in Civil Litigation. Berkeley Journal of Employment and Labor Law, 35(1-2), 91.

Gough, M. (2016). Employment Lawyers as Gatekeepers: How Employment Arbitration Affects Employee Access to Justice. *Advances in Industrial and Labor Relations*, 22, 105-134.

Gough, M. (2018). How do Organizational Environments and Mandatory Arbitration Shape Employment Attorney Case Selection? Evidence from an Experimental Vignette. *Industrial Relations: A Journal of Economy and Society*, 57(4), 541-567.

Gough, M. (2021). Characteristics and Professional Practices of Labor and Employment Arbitrators. *Arbitration Law Review*, 12, 117-138.

Gough, M. (2021). Employment Discrimination Outcomes in Arbitration and Civil Litigation: A Tale of Two Forums. *Industrial and Labor Relations Review*, 1-23.

Gough, M., & Alpert, K. (2019). Who Supports Certification: Insights from Employment

Arbitrators. *British Journal of Industrial Relations*, 57(4), 850-869. https://doi.org/10.1111/bjir.12475

Gough, M., & Colvin, A. J. S. (2020). Decision-Maker and Context Effects in Employment Arbitration. *Industrial and Labor Relations Review*, 73(2), 479-497.

Gough, M., & Taylor-Poppe, E. (2020). (Un)Changing Rates of Pro Se Representation in Federal Court. *Law and Social Inquiry*, 1-23.

Greenhouse, S. (2012, August 17). *Striking Caterpillar Workers Ratify Contract Offer*. The New York Times. https://www.nytimes.com/2012/08/18/business/striking-caterpillar-workers-ratify-contract-offer.html

HCA Healthcare. (2023). *Diversity, Equity, and Inclusion*. https://hcahealthcare.com/about/diversity-equity-and-inclusion/

Henderson, I. (2022, March 24). *Lessons From the Seven Largest AML Bank Fines In 2021*. Forbes. https://www.forbes.com/sites/forbestechcouncil/2022/03/24/lessons-from-the-seven-largest-aml-bank-fines-in-2021/?sh=5874103f8ced

Hoenig, T. M. (2019). *The S&P 500: Just Say No*. FDIC Board of Directors Presentation. https://www.fdic.gov/about/learn/board/hoenig/sp500.pdf

Howell, A. (2020, December 21). *5 Tips to Help You Get Hired Right Now*. Harvard Business Review. https://hbr.org/2020/12/5-tips-to-help-you-get-hired-right-now

Hull, C. E., Rothenberg, S., & Vogt, S. (2019). The Financial Impact of High-Performance Work Practices: The Moderating Effects of Labor Market Flexibility and Labor Market Efficiency. *Contemporary Management Research*, *15*(4), 247–272. https://doi.org/10.7903/cmr.19623

IBEW Steps Up Organizing at Comcast. (2011, July). *The Electrical Worker Online*. http://www.ibew.org/articles/11electricalworker/ew1107/01.0711.html

IBM Diversity and Inclusion | Be Equal. (2023). https://ibm.com/impact/be-equal/

Intel Global Diversity and Inclusion. (2023). Intel. https://www.intel.com/content/www/us/en/diversity/diversity-at-intel.html

International Union, SPFP of America Local 238 (Exelon Corp) | National Labor Relations Board. (2012, July 30). https://www.nlrb.gov/case/25-CB-086179

Kolodny, L. (2020, December 5). *Tesla publishes its first-ever diversity report revealing leadership is 83% male and 59% White*. CNBC. https://www.cnbc.com/2020/12/04/tesla-publishes-its-first-diversity-report-here-are-the-key-numbers.html

Konigsburg, D., & Thorne, S. (2022, February 2). Women in the boardroom, 2022 update. *Deloitte Insights*. https://www2.deloitte.com/us/en/insights/topics/leadership/women-in-the-boardroom.html

Krishnan, J., & Lee, J. (2009). Audit Committee Financial Expertise, Litigation Risk, and Corporate Governance. *Auditing-a Journal of Practice & Theory*, *28*(1), 241–261. https://doi.org/10.2308/aud.2009.28.1.241

Krus, C. M., Morgan, L. A., & Ginsberg, T. (2012). Board Diversity: Who Has a Seat at the Table? *The Corporate Governance Advisor*, *20*(2), 1-7. https://ezaccess.libraries.psu.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Ftrade-journals%2Fboard-diversity-who-has-seat-at-table%2Fdocview%2F940887932%2Fse-2%3Faccountid%3D13158

LeRoy, M. H. (2005). Getting nothing for something: When women prevail in employment

arbitration awards. *Stanford Law & Policy Review, 16*(2), 573.

Levine, D. (2014, October 8). *Appeals court wrestles with secret U.S. demands for telecom records*. U.S. https://www.reuters.com/article/us-security-telecommunications-hearing/appeals-court-wrestles-with-secret-u-s-demands-for-telecom-records-idUSKCN0HX0IN20141008

Lipsky, D. B., Avgar, A. C., & Lamare, J. R. (2020). Organizational Conflict Resolution and Strategic Choice: Evidence from a Survey of *Fortune* 1000 Firms. *Industrial and Labor Relations Review, 73*(2), 431–455. https://doi.org/10.1177/0019793919870169

LOCAL 4-438 (BRISTOL MYERS SQUIBB) | National Labor Relations Board. (2012, June 18). https://www.nlrb.gov/case/22-CB-083416

Lynch-Morin, K. (2012, February 11). *Dow Chemical Co., United Steelworkers Local 12075 conclude contract negotiations*. Mlive. https://www.mlive.com/business/mid-michigan/2012/02/dow_chemical_united_steelworke_1.html

Malin, M. H., & Ladenson, R. F. (1993). Privatizing Justice: A Jurisprudential Perspective on Labor and Employment Arbitration from the Steelworkers Trilogy to Gilmer. *The Hastings Law Journal*, 44(6), 1187

Malin, M., Oldham, J., & Antoine, T. (2015, July 29). *A Brief Overview and Historical Background on Labor and Employment Arbitration by Professors Malin, Oldham, and St. Antoine (Part III)*. https://law.missouri.edu/arbitrationinfo/2015/07/29/the-legal-framework-for-labor-arbitration/

McIntyre, L. (2018, November 14). *Diversity and inclusion update: The journey continues - The Official Microsoft Blog*. The Official Microsoft Blog.

https://blogs.microsoft.com/blog/2018/11/14/diversity-and-inclusion-update-the-journey-continues/

Mergent Online. (2023). 10-K [Annual Report]. https://www-mergentonline-com.ezaccess.libraries.psu.edu/companyannualreports.php?compnumber=4396

Morgan Stanley. (2023). *Diversity & Inclusion | Morgan Stanley*. https://www.morganstanley.com/about-us/diversity

NLRB Case Search (2023). National Labor Relations Board. https://www.nlrb.gov/search/case

Page, S. (2013). How to Combine Long and Short Return Histories Efficiently. *Financial Analysts Journal*, *69*(1), 45–52. http://www.jstor.org/stable/23469455

Peluso, O. (2022, June 9). *The E.U. Will Soon Require 40% Gender Representation on Company Boards, But Where Does the U.S. Stand on Gender Equity in Boardrooms?* Forbes. https://www.forbes.com/sites/oliviapeluso/2022/06/09/the-eu-will-soon-require-40-gender-representation-on-company-boards-but-where-does-the-us-stand-on-gender-equity-in-boardrooms/?sh=5b388c2705b8

People of Diversity, Equity, and Inclusion | General Motors. (2023). https://gm.com/commitments/people

Peters Smith, B. (2012, May 8). *MAKE DEAL WITH HCA*. Sarasota Herald-Tribune. https://www.heraldtribune.com/story/news/2012/05/08/make-deal-with-hca/29097144007/

Procter & Gamble. (2023). *Equality & Inclusion | Procter and Gamble*. https://us.pg.com/equality-and-inclusion/

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 (n.d.) United

States Securities and Exchange Commission. https://www.sec.gov/Archives/edgar/data/899051/000120677419001263/all3474231-def14a.htm

Publix Super Markets, Inc. | National Labor Relations Board. (1999, October 18). https://www.nlrb.gov/case/12-CA-020429

Rankings. (2022). *Fortune*. https://Fortune.com/ranking/

Report: Labor costs driving hospital expenses up, margins down | AHA News. (2022, May 11). American Hospital Association | AHA News. https://www.aha.org/news/headline/2022-05-11-report-labor-costs-driving-hospital-expenses-margins-down

Robbins, K. (2021). Ethical Issues in Employment Arbitration. *Georgetown Journal of Legal Ethics*, *34*(4), 1261+. https://link-gale-com.ezaccess.libraries.psu.edu/apps/doc/A689599963/LT?u=carl39591&sid=summon&xid=e26d47c7

Sherman, E. (2021, September 28). *Wells Fargo Gets into Trouble Yet Again Over Alleged Fraud*. Forbes. https://www.forbes.com/sites/eriksherman/2021/09/28/wells-fargo-gets-into-trouble-yet-again-over-alleged-fraud/?sh=2d458e8b3572

Solon, O. (2016, June 30). *Dell dumps cleaners after they secure better pay and job conditions*. The Guardian. https://www.theguardian.com/technology/2016/jun/30/dell-dumps-service-workers-job-conditions-contract

Son, H. (2022, December 20). *Wells Fargo agrees to $3.7 billion settlement with CFPB over consumer abuses*. CNBC. https://www.cnbc.com/2022/12/20/wells-fargo-agrees-to-3point7-billion-settlement-with-cfpb-over-consumer-abuses.html

SPEEA Collective Bargaining Agreement between The Boeing Company and The Society of Professional Engineering Employees in Aerospace. (2012). Society of Professional Engineering Employees in Aerospace (SPEEA). https://www.speea.org/Bargaining_Units/Contracts/2012_Puget%20Sound/2012_SPEEA_Contract_Tech.pdf

Staszak, S. (2020). Privatizing Employment Law: The Expansion of Mandatory Arbitration in the Workplace. *Studies in American Political Development,* 34(2), 239-268. doi:10.1017/S0898588X20000061

Sternlight, J. R. (2019). Mandatory Arbitration Stymies Progress Towards Justice in Employment Law: Where To, #MeToo? *Harvard Civil Rights - Civil Liberties Law Review, 54*(1), 155. https://ezaccess.libraries.psu.edu/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fscholarly-journals%2Fmandatory-arbitration-stymies-progress-towards%2Fdocview%2F2269384672%2Fse-2%3Faccountid%3D13158

Stronger Together: New York Life Releases 2021 Diversity, Equity, and Inclusion Report. (n.d.). https://www.newyorklife.com/newsroom/2021-diversity-equity-inclusion-report

Sysco Corporation. (2012). *Form 10-K*: Annual report pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934. https://investors.sysco.com/~/media/Files/S/Sysco-IR/documents/annual-reports/2012-10k.pdf

Teamsters for a Democratic Union. (2013) *UPS Contracts*. Teamsters for a Democratic Union. https://www.tdu.org/old_ups_contracts

The Coca-Cola Company, & International Union of Foodworkers. (2010). *Coca-Cola Company*

and International Union of Foodworkers: Global Union Relations. https://www.coca-colacompany.com/content/dam/journey/us/en/policies/pdf/human-workplace-rights/human-rights-engaging-stakeholders/coca-cola-company-and-international-union-fieldworkers-global-union-relations-2010.pdf

Thermo Fisher Scientific | National Labor Relations Board. (2007, October 31). https://www.nlrb.gov/case/22-CA-028118

TJ MAXX | National Labor Relations Board. (2004, April 13). https://www.nlrb.gov/case/25-CA-029133

Tkaczyk, C. (2014, January 16). *They're hiring! Fortune*. https://Fortune.com/2014/01/16/best-companies-theyre-hiring/

Tyson employees ratify new union contract. (2011, December 15). The National Provisioner. https://www.provisioneronline.com/articles/97485-tyson-employees-ratify-new-union-contract

UAW Local Union 2075, Region 2B (General Dynamics) | National Labor Relations Board. (2005, November 8). https://www.nlrb.gov/case/08-CB-010465

United Food and Commercial Workers Union, Local 1529 (Kroger Retail Grocery Store) | National Labor Relations Board. (2008, June 25). https://www.nlrb.gov/case/15-CB-005771

United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, SFL-CIO-CLC v. ConocoPhillips Co., case No. CV 08-2068 PSG (FFMx) (C.D. Cal. May 5, 2009).

UPDATE 1-Phillips 66 Bayway refinery workers ratify new contract. (2012, September 10). U.S. https://www.reuters.com/article/refinery-operations-phillips-bayway/update-1-phillips-66-bayway-refinery-workers-ratify-new-contract-idINL1E8KA6BV20120910

U.S. Bureau of Labor Statistics. (2023, March 10). *Producer Price Indexes- February 2023.* Retrieved March 31, 2023, from https://www.bls.gov/news.release/pdf/prin2.pdf

U.S. Securities and Exchange Commission. (2001). *Final Rule: Revision of the Commission's Auditor Independence Requirements*; File No. S7-13-00. https://www.sec.gov/rules/final/33-7919.htm

U.S. Securities and Exchange Commission. (2017). *Exchange Act Reporting.* https://www.sec.gov/education/smallbusiness/goingpublic/exchangeactreporting

U.S. Securities and Exchange Commission. (2013, February 15). Raytheon Company 2012 Annual Report 10-K. *EDGAR.* https://www.sec.gov/Archives/edgar/data/1047122/000104712213000015/rtn-12312012x10k.htm

Ward, M. (2022, June 3). *Wells Fargo's first diversity report shows progress but also that work remains to make Wall Street look more like Main Street*. Business Insider. https://www.businessinsider.com/wells-fargo-diversity-report-shows-gains-but-that-challenges-remain-2022-6

Wayt, T. (2021, December 30). *Apple iPhone factory workers ate rotten food in rat-filled dorms: investigation*. New York Post. https://nypost.com/2021/12/30/apple-iphone-factory-workers-allegedly-fed-rotten-food-paid-under-5-a-day/

Women in the Boardroom: A Global Perspective – seventh edition. (2021). Deloitte Global.

https://www2.deloitte.com/content/dam/Deloitte/global/Documents/gx-women-in-the-boardroom-seventh-edition.pdf

Zaretsky, S. (2013, September 9). *Who Represents America's Biggest Companies? (2013)*. Above the Law. https://abovethelaw.com/2013/09/who-represents-americas-biggest-companies-2013/

ACADEMIC VITA

OLIVIA CORDANO

EDUCATION

The Pennsylvania State University | Schreyer Honors College & Paterno Fellows Program — **University Park, PA**
Smeal College of Business | B.S. in Finance, Minor in the Legal Environment of Business — *Class of May 2023*
College of the Liberal Arts | B.S. in Labor & Employment Relations | Spring 2023 College Marshal

- Supplemented educational funding by working part-time 15 to 20 hours per week in a sales role at Barnes & Noble Education, Inc.
- Interdisciplinary honors thesis: *Investigating Adoption of Compulsory Employment Arbitration Among the 2022 Fortune 100*

RELEVANT EXPERIENCE

The Goldman Sachs Group, Inc. — **Dallas, TX**
Summer Analyst, 2023 Campus Ambassador & Incoming Analyst | Global Markets Legal — *Jun. 2022 – Aug. 2022*

- Rotated through Global Markets Legal in Structured Products and its committee, ETFs, Marquee, and hedge-fund onboarding; supported live deal reviews and closings for MTN F/O, EMTN F/H, and CD Omnibus transactions with Sidley Austin LLP
- Devised a linear model beside two Summer Analysts regarding the Global Framework of Structured Products for Pillar I securities to ease the committee's trade approval process by assigning numerical values to abstract ideas from Origination and Sales

Caterpillar Inc. — **Peoria, IL**
Labor Relations Intern | Exceeded Expectations Rating & Third-Party Intervention (TPI) Training Certified — *May 2021 – Aug. 2021*

- Designed and implemented 24 risk mitigators through an Attrition Playbook (3.0) SharePoint created during a 12-week summer internship now used throughout Cat's Parts facilities, reaching 23 countries, 13,000+ employees, and over 70+ locations
- Participated in weekly central and local York, PA, collective bargaining agreement contract reviews, grievance procedures, disciplinary action hearings, and final-step meetings for bargained Caterpillar facilities in the U.S. and abroad
- Resolved the enterprise's backlog of attrition in three weeks by restructuring the Parts Interviewing SWAT Team for the unionized Atlanta, GA, facility, which served as the benchmark for SWAT Teams across five bargained warehouses since August 2021

Braathe Enterprises, LLC — **Saratoga Springs, NY**
Human Resources & Writing and Editing Intern — *Jul. 2020 – Nov. 2020*

- Researched EZHire and MyInterview recruiting platforms and made acquisition recommendations through weekly deliverables to the CEO regarding business model strategies on effective hiring methods, realistic job previews, and role fit
- Conducted an individual outreach project for the MLB amid the renewal of its collective bargaining agreement, proposing transparent negotiations and concessions to be considered in the next round of negotiations before the 2021 baseball season

VOLUNTEER & EXTRA-CURRICULAR

Nittany Lion Consulting Group — **University Park, PA**
Associate, VP of Finance and Administration & Tenured Member | Excellent Contributions Award Recipient — *Aug. 2020 – Present*

- Assisted Penn State's student-run consulting firm as a member of the Executive Board by leading MailChimp email server communications and facilitating Microsoft Forms for client and team reviews; increased feedback by 57% as of December 2020
- Developed a new product gamification plan and launched a student engagement portal with a LinkedIn certification system available in beta-version since 3Q2021 via iOS app as part of a four-person commercial business unit team for Navengage
- Chosen as one of four students for an independent study to develop a literature review and interview-based grounded theory on men and women in the workplace centered on the tenets of doubt, success, and mentorship for the Smeal business community

Penn State Asset Management Group — **University Park, PA**
Lead Analyst, Associate, Director of Operations & Senior Advisor | Energy Sector — *May 2020 – Present*

- Initiated the group's fight against childhood cancer with THON Dance Marathon, culminating in a match with the Halbrook family
- Improved the current female-to-male ratio of 1:10 to 1:5 within one semester by constructing recruiting initiatives for women
- Pitched and tracked options strategies through a ~20-page slide deck twice per semester evaluating the commodities of Brent, Coal, Natural Gas, RBOB, or WTI, and their macroeconomic risk, first-order Greeks, probability distribution, and trade breakdown

Bridges Outreach, LLC — **Summit, NJ**
Founder & President of School Chapter | Founder's Award Recipient — *Jun. 2014 – Present*

- Established and administered a school chapter serving ~65 homeless men and women of New York and New Jersey monthly on behalf of the largest club at the Academy of St. Elizabeth and the largest overall Bridges high school chapter in the nation
- Facilitated quarterly funding efforts directed towards COVID-19 pandemic relief and reform, which provides clothing donations, promotes remote student participation, and acquires local food and restaurant sponsors to help meet today's uncertain needs

Racing Towards Clear Waters — **University Park, PA**
Co-Founder | Water Initiative — *Aug. 2019 – Dec. 2019*

- Recruited into a competitive course for a choice group of 20 Schreyer scholars called Leadership Jumpstart; collaborated with three students to raise awareness of the dangers of unfiltered water in Mozambique, Africa, through a targeted sticker campaign
- Held deliberation with 80 people alongside Charity Water to produce, fund, and implement clean water ideas in Uganda by 1Q2020

ACTIVITIES & INTERESTS

Activities: Ralph H. Wherry Student Service Award, Ryan A. and Meredith L. Newman Family Honors Scholar, Wall St. Boot Camp
Interests: Capri, chai tea, *Harry Potter,* Liam Neeson, *Logan*, *1984,* Point Pleasant, Provolone, rap, tennis, *The Bachelor,* VSCO