



RESEARCH PAPER • LITIGATION & DISPUTE ECONOMICS

# THE ECONOMICS OF LITIGATION IN INDIA

When justice becomes an endurance game - how delay, litigation costs, and unequal staying power can change the economics of corporate disputes.

---

CORPORATE ADVISORY SERIES • 2026

## WHO CAN AFFORD TO REMAIN IN THE CASE LONGER?

Litigation is traditionally understood as a contest over facts, law and evidence. The economics of litigation can look very different.

A dispute may involve a straightforward contractual claim, strong documentary evidence, and a credible legal position - yet the commercial outcome may still be determined by the cost and duration of obtaining a judgment.

The defendant may have little immediate economic incentive to settle if the cost of defending is lower than the claimant's cost of pursuing. This creates **Litigation Endurance Arbitrage** - where the party with greater financial and organizational capacity can derive strategic value from the passage of time.

This does not mean every defendant deliberately delays, or that judges do not decide cases on merit. It means something more economically significant: where litigation is slow, expensive and uncertain, **time itself becomes an economic variable** in the dispute.

- THE QUESTION CHANGES

- Not just: "What are our chances of winning?"
- But also: "What will it cost us to win?"
- "How long will recovery take?"
- "Can the counterparty afford to wait longer than we can?"

- THE REFRAME

**Conventional model:**

Merits → Judgment → Recovery

**Corporate reality:**

Merits + Time + Cost + Liquidity + Management Attention  
+ Enforcement Risk → Economic Outcome

PART I · SECTIONS 01-04

# THE CENTRAL PROBLEM

WHY LITIGATION IS NOT FREE CAPITAL, AND WHAT IT ACTUALLY COSTS

## LITIGATION IS NOT FREE CAPITAL

A company may have a ₹10 crore claim assessed by its lawyers at an 80% probability of success. At first glance, expected legal recovery looks like ₹8 crore. But suppose obtaining that recovery takes four years - during which the claimant incurs legal fees, internal management costs, financing costs, opportunity costs, and enforcement costs. The claim may be legally strong. Yet economically unattractive.

Merits + Time + Cost + Liquidity + Management Attention + Enforcement  
Risk

→ **Economic Outcome**

THE CORPORATE REALITY OF LITIGATION

A ₹10 crore claim does not mean the company has ₹10 crore available to deploy. Until the dispute is resolved and effectively enforced, the amount remains economically constrained - the company carries ₹10 crore of disputed capital while simultaneously paying to recover it.

### ● KEY INSIGHT

The claimant is effectively financing the dispute. The longer litigation continues, the longer the capital remains unavailable. **Litigation duration has a carrying cost.**

# THE INDIAN LITIGATION CONTEXT

India has invested significantly in judicial digitisation and case management. The National Judicial Data Grid provides data on cases instituted, pending and disposed, analysable by type, age, stage and reason for delay.

DAKSH reports more than **4.88 crore disputes** pending in district courts as of May 2026. Its Access to Justice Survey, based on more than 9,000 litigants across 24 states, estimated annual litigation expenditure of approximately **₹30,000 crore** and wage/business losses of approximately **₹50,387 crore**.

These figures are not a measure of corporate litigation specifically - but they demonstrate the larger principle: **court delay imposes costs outside the courtroom.**

● THE CORPORATE LITIGATION COST MODEL - 8 COMPONENTS

01 · EXTERNAL LEGAL COST

Advocates, law firms, senior counsel, experts

03 · MANAGEMENT COST

CEO/CFO/COO time on strategy and instructions

05 · CAPITAL COST

Financing cost of receivables & disputed assets

07 · REPUTATION COST

Effect on investors, banks, customers, regulators

02 · INTERNAL LEGAL COST

GC, legal managers, contract & compliance teams

04 · OPPORTUNITY COST

Attention diverted from sales, M&A, product

06 · OPERATIONAL COST

Disruption to supply chains, vendors, JVs

08 · ENFORCEMENT COST

Execution, asset tracing, appeals, settlement

| The economic life of a dispute does not necessarily end when the judgment is delivered.

PART II · SECTIONS 05-09

# THE ENDURANCE PROBLEM

ASYMMETRIC CARRY COSTS AND THE ECONOMICS OF DELAY

## WHO HAS THE GREATER LITIGATION ENDURANCE?

Imagine Company A - revenue ₹50 crore, cash reserves ₹3 crore - suing Company B for ₹8 crore. The legal merits may strongly favour Company A. But Company B may be capable of carrying legal expenditure for years without materially affecting its operations. Company A may not. This is not a legal concept - it is a financial one, and it can materially influence settlement behaviour.

### COMPANY A - CLAIMANT

|                      |           |
|----------------------|-----------|
| Revenue              | ₹50 crore |
| Cash reserves        | ₹3 crore  |
| Claim value          | ₹8 crore  |
| Litigation endurance | Low       |

### COMPANY B - DEFENDANT

|                      |              |
|----------------------|--------------|
| Revenue              | ₹2,000 crore |
| Cash reserves        | ₹500 crore   |
| Claim exposure       | ₹8 crore     |
| Litigation endurance | High         |

#### ● ASYMMETRIC CARRY COSTS - WORKED EXAMPLE

|                                    |           |
|------------------------------------|-----------|
| Claim                              | ₹10 crore |
| Claimant's annual litigation cost  | ₹30 lakh  |
| Defendant's annual litigation cost | ₹20 lakh  |
| Expected duration                  | 4 years   |

**Claimant spends ≈₹1.2cr · Defendant spends ≈₹80L**

If the claimant has limited liquidity, the defendant may have substantially greater staying power - creating a strategic incentive for the claimant to settle earlier, even if the underlying claim is strong. The defendant does not need to defeat the claim immediately; it may simply need to make continuation sufficiently expensive.

## WHEN PROCEDURAL TIME BECOMES ECONOMICALLY MATERIAL

Adjournments are not inherently improper - courts require flexibility for legitimate reasons. Order XVII CPC restricts repeated adjournments and provides for delay-related costs; Section 35B CPC permits costs where a party causes delay. The Commercial Courts framework goes further, giving courts case-management powers with specific restrictions on adjourning case-management hearings.

The economic issue is not that adjournments exist. It is what happens when procedural time becomes economically material to one or both parties. A single adjournment may be insignificant. Twenty may be economically transformative.

### ● THE "SMALL COST, LARGE DELAY" PROBLEM

A ₹5 crore dispute: an adjournment may cost the defendant just ₹25,000 in fees - insignificant. But the claimant, carrying ₹5 crore at a 10% cost of capital, absorbs approximately **₹50 lakh** of annual capital carrying cost. The impact of time on the claimant can be dramatically larger than the immediate legal cost of any single hearing.

### ● TWO DIFFERENT COSTS

**Hearing Cost** - what the company spends attending court.

**Delay Cost** - what the company loses because the dispute remains unresolved. The second is usually much larger.

### ● THE CAPITAL-AT-RISK MODEL

Disputed Capital × Cost of Capital × Expected Delay

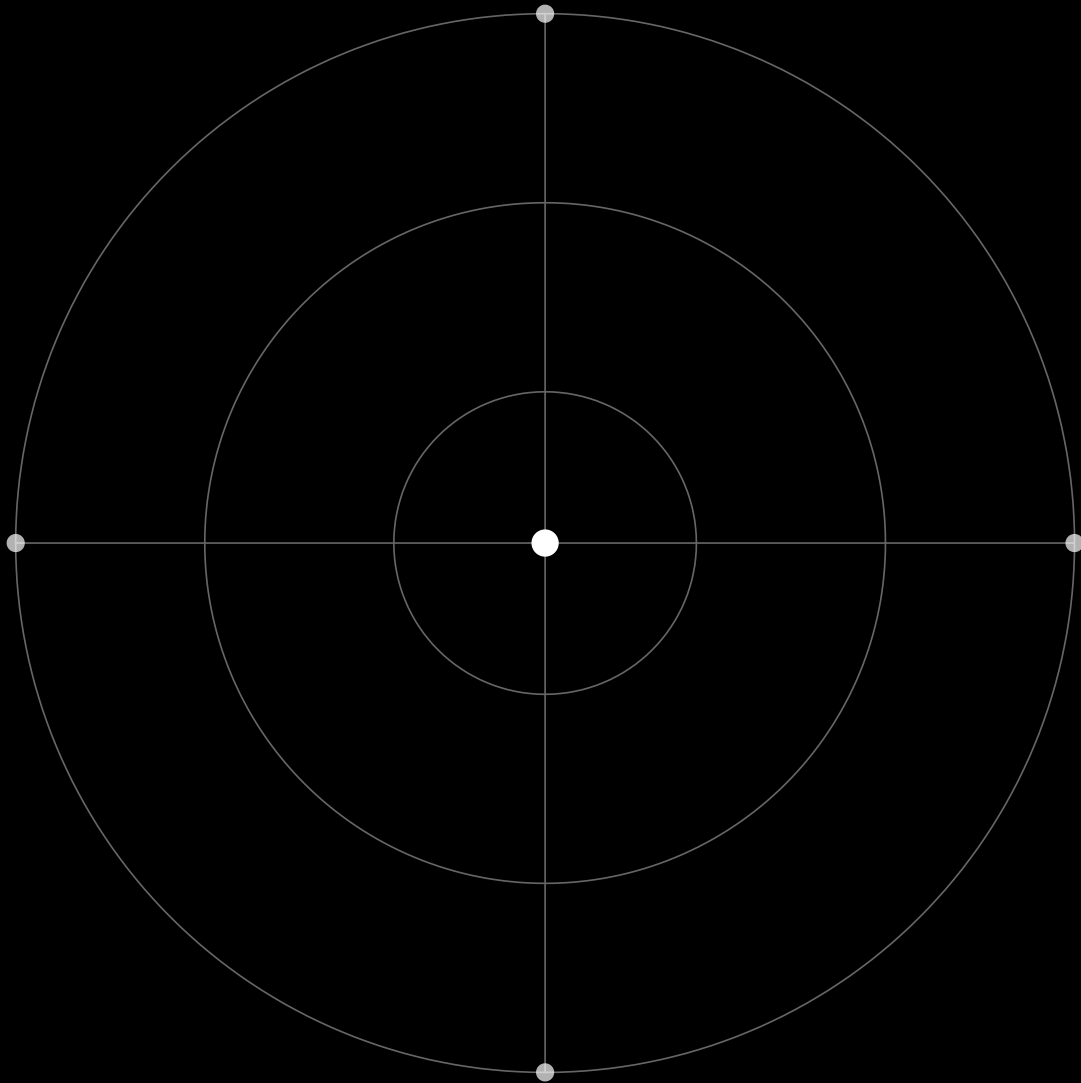
**₹20cr × 12% × 3yrs = ₹7.2 crore**

LITIGATION CARRY COST - ILLUSTRATIVE

This does not mean the company will necessarily lose ₹7.2 crore - it represents the economic value of capital remaining tied up. This calculation can radically change the board's view of litigation.

**“Where litigation is slow, expensive and uncertain, time itself becomes an economic variable in the dispute.”**

BLACKWATER ADVISORS



PART III · SECTIONS 10–16

# DECISION FRAMEWORKS

EXPECTED VALUE, SETTLEMENT LOGIC, AND ECONOMIC ATTRITION

## EXPECTED VALUE OF LITIGATION

"We have a strong case, therefore we should litigate" is an incomplete analysis. The better model weighs legal probability, recovery probability, duration, cost, capital carry, counterparty solvency, and strategic value together.

$$\begin{aligned}
 & \text{Prob. of Success} \times \text{Prob. of Recovery} \times \text{Claim Value} \\
 & \text{minus Legal Costs} + \text{Internal Costs} + \text{Capital Carry} + \text{Enforcement} + \\
 & \quad \text{Opportunity Cost} \\
 & \quad \quad \quad = \text{Expected Litigation Value}
 \end{aligned}$$

### ● WORKED EXAMPLE - ₹10 CRORE CLAIM

|                                                              |                           |
|--------------------------------------------------------------|---------------------------|
| Probability of success (80%) × Probability of recovery (90%) | ₹7.2 cr expected recovery |
| Less: Legal costs                                            | ₹1.00 cr                  |
| Less: Internal cost                                          | ₹0.20 cr                  |
| Less: Capital carry                                          | ₹1.50 cr                  |
| Less: Enforcement cost                                       | ₹0.30 cr                  |
| <b>Economic Value</b>                                        | <b>₹4.2 crore</b>         |

This is a far more meaningful board-level analysis than "we have an 80% chance of winning."

**The claim may be legally strong. Yet economically unattractive.**

THE PLAINTIFF'S FALLACY

## WHY STRONG CASES STILL SETTLE

Settlement is sometimes portrayed as an admission of weakness. For corporations, that is often incorrect - a company may settle because the dispute is consuming management attention, capital is locked up, the counterparty has greater staying power, or the opportunity cost has become unacceptable.

The claimant typically wants speed; the defendant often wants time. Where one party has significantly greater liquidity or organizational capacity, the dispute becomes a contest not only of legal positions but of **balance sheets**.

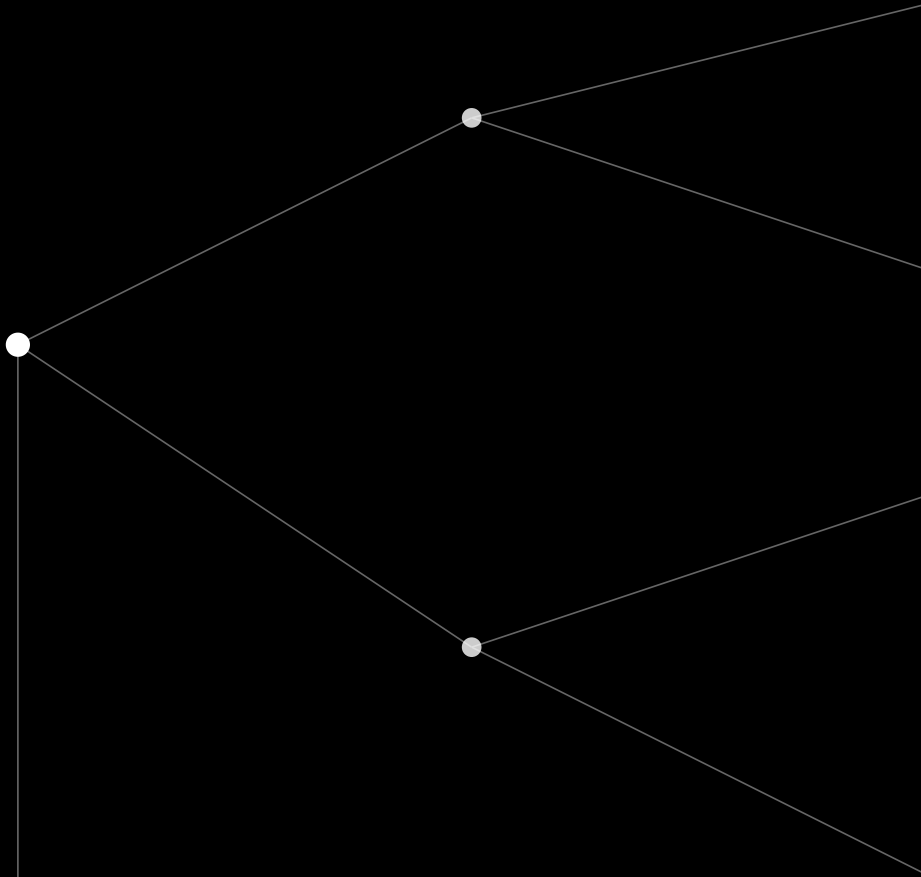
### ● THE DAKSH EVIDENCE

DAKSH's civil litigation research found that, within its surveyed sample, corporate plaintiffs were less likely than individual plaintiffs to have cases pending beyond five years, while corporate defendants were more likely than individual defendants to be associated with such long pendency. This does not establish deliberate delay - but it supports an important research proposition:

### ● ECONOMIC ATTRITION

A company can have a valid ₹10 crore claim, but if pursuing it costs ₹1 crore per year over four years, continuing can become financially irrational. The legal claim survives - the claimant's financial capacity does not.

**The identity and resources of the parties can affect the duration and economics of litigation.**



PART IV • SECTIONS 17–26

# MANAGING LITIGATION AS A PORTFOLIO

BALANCE SHEETS, PREVENTION, ESCALATION, AND DASHBOARDS

## LITIGATION AS A BALANCE-SHEET PROBLEM

The CFO should ask: how much capital is locked in the dispute (balance sheet)? How much are we spending every year (P&L)? When are we realistically likely to recover money (cash flow)? Is the disputed amount affecting liquidity (working capital)? How many hours are senior executives spending (management)? Is the dispute blocking a commercial relationship (strategy)?

This converts litigation from a purely legal issue into an **enterprise risk issue**.

### ● THE LITIGATION TAX

Legal Spend × Management Time × Capital Carry × Operational Disruption × Opportunity Cost × Enforcement Cost × Reputational Exposure.

The longer a dispute continues, the greater the cumulative tax.

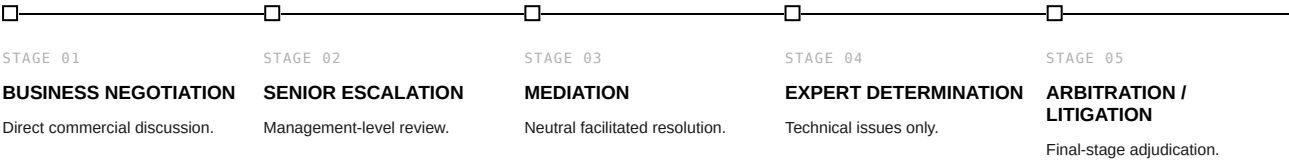
### ● WHY CONTRACT DRAFTING MATTERS - THE DISPUTE PREVENTION PREMIUM

The strongest litigation strategy is often contractual. Spending ₹1 lakh more during negotiation of a ₹50 lakh contract to clarify scope, acceptance, payment, liability and termination may appear expensive - but if the ambiguity later generates a ₹5 crore dispute, the initial legal spend becomes insignificant. Contract design is **pre-litigation risk management**.

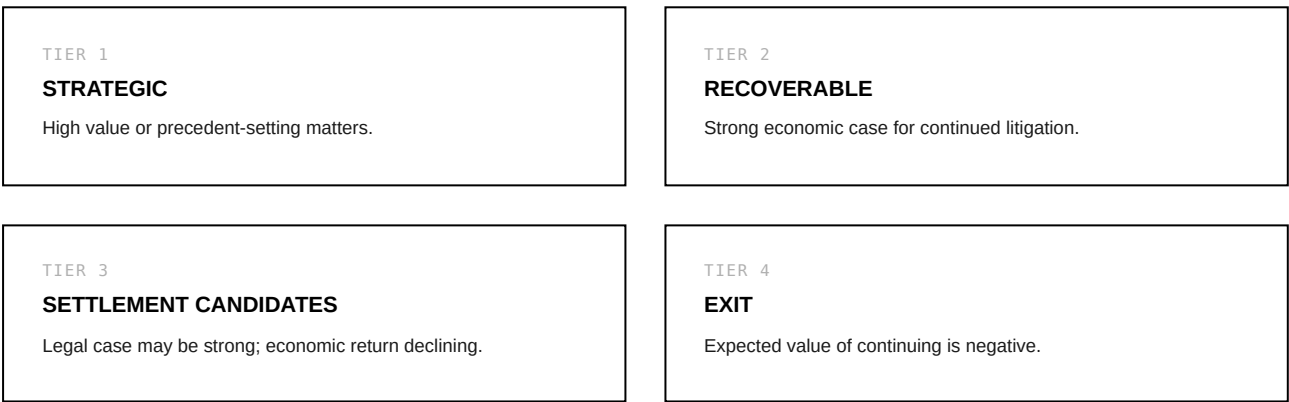
**Arbitration is not automatically the answer. The relevant question is which dispute-resolution architecture minimizes expected economic loss for this particular relationship.**

# THE TIERED DISPUTE RESOLUTION MODEL

Corporate contracts should build a structured escalation mechanism - creating opportunities to resolve disputes before the cost curve becomes steep.



● LITIGATION SHOULD BE MANAGED LIKE AN INVESTMENT - PORTFOLIO TIERS



## THE CORPORATE LITIGATION DASHBOARD

The General Counsel should be able to explain every material dispute in financial terms.

| METRIC                     | QUESTION                                            |
|----------------------------|-----------------------------------------------------|
| Total claims               | How much are we fighting over?                      |
| Probability-weighted value | What is realistically recoverable?                  |
| Legal spend                | What are we spending?                               |
| Cost-to-recover            | How expensive is each ₹ recovered?                  |
| Average age                | How long have matters remained unresolved?          |
| Capital locked             | How much cash is tied up?                           |
| Settlement ratio           | How often are disputes settled?                     |
| Enforcement status         | How much has actually been recovered?               |
| High-risk matters          | Which cases can materially affect enterprise value? |

### ● COST-TO-RECOVER RATIO = TOTAL LITIGATION COST ÷ AMOUNT RECOVERED

|                        |                            |                        |                                  |
|------------------------|----------------------------|------------------------|----------------------------------|
| Claim                  | ₹5 crore                   | Claim                  | ₹50 lakh                         |
| Litigation expenditure | ₹75 lakh                   | Litigation cost        | ₹20 lakh                         |
| Recovery               | ₹4 crore                   | Recovery               | ₹30 lakh                         |
| <b>Cost-to-recover</b> | <b>18.75% - acceptable</b> | <b>Cost-to-recover</b> | <b>66.7% - the win that lost</b> |

The legal team may have won the case. The business may still have lost the economics.



PART V • SECTIONS 32–37

# NEW METRICS & ENTERPRISE VALUE

ENDURANCE INDEX, BURN RATE, RUNWAY, AND M&A EXPOSURE

# THE LITIGATION ENDURANCE INDEX™

A proprietary framework scoring a company from 1–100 across seven weighted variables - allowing a board to understand not just "can we win?" but "**can we afford to win?**"



● OUTPUT CLASSIFICATION

**GREEN**

High endurance - the company can sustain the dispute on its own terms.

**AMBER**

Moderate endurance - timing and cost discipline become critical.

**RED**

Low endurance - settlement strategy should be prioritized early.

## LITIGATION BURN RATE & RUNWAY

### • ANNUAL LITIGATION BURN RATE

|                         |                 |
|-------------------------|-----------------|
| External counsel        | ₹40 lakh        |
| Internal legal          | ₹10 lakh        |
| Management              | ₹5 lakh         |
| Experts                 | ₹5 lakh         |
| Administration          | ₹2 lakh         |
| <b>Annual Burn Rate</b> | <b>₹62 lakh</b> |

Over an expected 4-year duration: **₹2.48 crore** direct burn - before adding the capital carry cost.

### • THE LITIGATION RUNWAY

Available Litigation Budget ÷  
Annual Burn Rate

**₹2cr ÷ ₹50L = 4-year  
runway**

If expected resolution is 6 years, the claimant has a funding gap. A company should not enter a five-year litigation process with a two-year financial runway.

### • M&A DUE DILIGENCE

A target with ₹100 crore revenue may also carry ₹30 crore of ongoing litigation. A litigation register without an economic assessment - claim, counterparty, probability of loss, age, spend to date, expected duration, injunctions, enforcement exposure - is incomplete due diligence.

**“A strong legal claim is an asset. But an asset that takes years and substantial capital to realize must be valued differently from cash.”**

BLACKWATER ADVISORS

## WHAT WILL WINNING ACTUALLY COST US?

For corporations, litigation is also a contest of time, money, liquidity, management attention, risk tolerance, and staying power.

A party may have the better legal position and still face an economically unattractive litigation journey. A party may have a weaker legal position but greater capacity to absorb the cost of delay. That does not make the legal system a contest of endurance - it means delay has economic consequences, and those consequences are not distributed equally between litigants.

### ● THE NEW CORPORATE LITIGATION PHILOSOPHY

**Old:** "We will fight because we are right."

**New:** "We will pursue the dispute when the expected economic value of doing so exceeds the cost of obtaining the outcome."

#### **Some disputes must still be pursued:**

- To establish precedent
- To protect intellectual property
- To deter misconduct and protect shareholder interests
- Because they carry systemic importance

That does not mean abandoning principle. It means those decisions should be conscious.

# LITIGATION IS A LEGAL PROBLEM. ITS CONSEQUENCES ARE FINANCIAL.

Blackwater Advisors helps organizations understand and manage the commercial consequences of disputes before, during and after litigation - combining contract strategy, dispute economics, due diligence, commercial risk, litigation portfolio management, and enterprise risk. We help management and boards move from "we have a case" to "we understand the economic value of pursuing the case."

● SIGNATURE OFFERING - CORPORATE LITIGATION ECONOMICS REVIEW™

A board-level assessment of major corporate disputes, evaluating claim value, probability of success and recovery, expected duration, litigation burn rate, capital carry, counterparty endurance, enforcement risk, settlement range, and strategic importance.

**EXPECTED RECOVERY**

Probability-weighted realistic recovery value.

**LITIGATION RUNWAY**

Available budget against annual burn rate.

**CAPITAL AT RISK**

Disputed capital tied up and its carrying cost.

**RECOMMENDED STRATEGY**

Settlement threshold and portfolio tier classification.

**The sophisticated corporate litigant does not merely manage the case. It manages the economics of the case.**

FINAL PROPOSITION

**BLACKWATER ADVISORS**  
RISK ARCHITECTS FOR BUSINESS

ADVISORY@BLACKWATERADVISORS.EXAMPLE  
BLACKWATERADVISORS.EXAMPLE