# Why Do Corporate Charters Waive Liability for Breach of the Duty of Care?

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- Unified theory of duties of care & loyalty (continuum)

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    - extra info mediocre (courts $\neq$ business experts)
  - cost possibly high (opportunity costs of witnesses)

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    - signal *may* not be useful for all/nothing decisions
    - but not harmful either

# Basic Argument: Intuition

Two ways to think about additional signal:

- **Precision**: (weighted) average of two signals is more precise than either one of them
  - for same amount of information, less noise
- **Diversification**: two signals' noises partially cancel out

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    - court intervention only triggered by bad outcomes
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- **Calibration** is crucial: outsized liability not good
  - cf. Engert & Goldlücke 2014: BJR possibly optimal *if* size of liability fixed

# Cost-Benefit Analysis: Overview

Basic argument leads to cost-benefit trade-off: using free signal is optimal, but

- signals aren't free (court costs)
- their benefits may be small

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Contractual relationship!

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- ▶ Decision-making procedure
  - ▶ imperfect proxy
  - ▶ predicating liability on it invites window-dressing

# Costs: nothing special?

- [Direct ligitation costs]
- Indirect litigation costs: D/O time defending/preventing litigation
    - scales with firm size, but so do benefits!

# NB: General arguments for/against litigation

- Many.
- Apply to all litigation.
- Including litigation in contractual relationships (med mal etc.)
- But corporate litigation provides a larger bounty – attracts more bad litigation?
    - i.e., perhaps nothing particularly bad about corporate litigation, but with more at stake, more important to curb it?

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