
Business Litigation in the Transition: A Portrait of Debt Collection in Russia

Kathryn Hendley

Russian firms are drowning in debt. Managers are increasingly turning to the courts for help. Drawing on a database of 100 non-payments cases decided by three courts in 2000, the article explores the parameters of this litigation and the motivations for filing lawsuits. The analysis shows that the docket is dominated by small-scale disputes between trading partners with short shared histories, suggesting that those who have long-term, trust-based relationships avoid the courts. Along with fear of disrupting ongoing relationships, the disinclination to use the courts is also motivated by a reluctance to open up transactions to state scrutiny. By contrast, the petty disputes that are brought to court tend to be simple and, therefore, managers are willing to risk exposure to the state. Indeed, in a world in which firms manipulate their financial records to create the impression of no income in order to avoid taxes (often putting bogus debts on the books), some of these managers bring cases even when there is little chance of recovering the debt because the decision provides convincing evidence to the tax authorities that the debt is bona fide.

Studies of business litigation have always been the neglected stepchild in the literature on dispute resolution. The research that is available is almost exclusively focused on the American case. Left mostly unexplored is how firms handle disputes in legal systems that are less well-entrenched and in economic systems where long-term relationships are harder to sustain due to macroeconomic disturbances. My research examines disputing behavior in the wake of the collapse of state socialism. In the decade since the

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Soviet Union broke apart, enterprise managers have had to make a remarkable set of adjustments. Not only have they had to figure out how to operate in a market context in which profits (not plan fulfillment) dictate success, but they have had to do so while weathering an economic decline akin to that experienced by the United States in the 1930s. Interenterprise debt has exploded (Caner & Mokhtari 2000). In this article, I explore what happens when Russian managers use the courts to collect debt. Russia's status as the largest post-Soviet state, as well as the one that has progressed furthest in market-related institutional reforms, makes it the logical case.

The departure point for my research is a recognition that Russian managers regard litigation as a viable option when faced with a contractual breach. A caveat is in order. My claim is not that legal remedies are the only or even the preferred option. In earlier research based on firm case studies in which I traced the evolution of disputes, I documented how a lawsuit is typically a last-ditch effort, resorted to when negotiations break down (Hendley 2001). Enterprise survey data offer additional confirmation of the pyramidal structure of business disputes in Russia, showing that only about 1% of all disagreements ever ended up in court.¹

My assumption of the viability of courts directly challenges the stereotype that Russian firms eschew the use of courts for debt collection in favor of appeals to organized crime groups (e.g., Volkov 2002). The popular image of Russian courts as inept and corrupt fuels this vision of mafia-led debt collection (e.g., Guseva & Rona-Tas 2001:624; Hay & Shleifer 1998; Greif & Kandel 1995). The stereotype has been perpetuated by research methods that rely heavily on anecdotal and attitudinal evidence and does not always reflect how enterprises actually behave. Empirical research has consistently shown that, notwithstanding their vociferous complaints about the legal system, managers are using the courts in ever-increasing numbers. The official data about the number of cases filed and decided (the "caseload data") document a steady increase in cases filed and decided in each year since 1994.² Table 1 confirms that the cases decided by the *arbitrazh* (or economic)

¹ In 1997, I collaborated on a survey of 328 industrial enterprises from six cities across Russia in which managers were queried about their strategies for handling the customers' failure to live up to their contractual obligations. For details, see Hendley, Murrell, and Ryterman (2000). On the "pyramid of disputing," see Felstiner, Abel, and Sarat (1980–81).

² Aggregate data about the *arbitrazh* court system is published annually in the journal of the Higher *Arbitrazh* Court (e.g., "Sudebno-arbitrazhnogo statistika" 2002). It is based on reporting forms submitted to the Higher *Arbitrazh* Court by the individual *arbitrazh* courts. Though these data remain unpublished, I have a set of forms dating back to 1992 for 12 courts, including the Moscow, Ekaterinburg, and Saratov courts. For more information on the trends in the courts' activities, see Hendley and Murrell (2002).

Table 1. Basic Information About the *Arbitrazh* Courts

	No. of judges (2000)	Monthly per judge caseload (2000)	Cases (2000) decided	Change in docket: 2000 cases decided as % of 1994 cases	Non-payments cases decided (2000)	Change in docket: 2000 non-payments cases decided as % of non-payments cases decided in 1994	Per-enterprise use of the <i>arbitrazh</i> courts for non-payments cases (2000)	% of non-payments cases won by plaintiff	Average amount of non-payments cases in rubles (dollars) ¹
All <i>Arbitrazh</i> courts	2,393	29.6	538,490	259.3	155,585	161	0.41	N/A	N/A
Moscow City court	147	32.1	40,012	229.6	11,737	190	0.16	71	4,257 (\$148)
Ekaterinburg regional court	54	36.6	17,158	218.0	5,131	139	0.41	68	1,772 (\$59)
Saratov regional court	34	38.0	11,630	315.5	2,148	131	1.03	82	804 (\$27)

Source for all *arbitrazh* courts: Sudebno-arbitrazhnaya statistika (2002).

Source for Moscow, Ekaterinburg, and Saratov courts: Annual Reports on Activities, submitted by *arbitrazh* courts to the Higher *Arbitrazh* Court for 2000.

¹ Assumes an exchange rate of 30 rubles to the dollar.

courts more than doubled between 1994 and 2000. The number of non-payments cases also grew, though at a slower pace than the overall docket. Survey data fill out the picture, demonstrating the willingness of enterprise management to pursue legal remedies when negotiations proved fruitless. Two large-scale enterprise surveys carried out in 1997 found that a majority of the respondents had recently initiated lawsuits against delinquent customers.³ This would be an unusually high level of litigation in a country where the legal system was thought to be functional, but is extraordinary and worthy of investigation in a country where both the popular press and the general social science literature regard going to court as a waste of time and money.

What sorts of Russian firms end up in court? What are they seeking? How do they approach the litigation process? I explore these questions in an effort to fill in the contours of business litigation in the climate of uncertainty that has characterized the post-socialist world, including Russia, for much of the 1990s. I take individual court cases as the unit of analysis. I focus on non-payments cases, because they are both the simplest and most common type of case⁴ brought to the Russian economic or *arbitrazh* courts over the past decade.⁵ By studying mundane cases, I am able to eliminate statutory uncertainties and the specters of political influence and corruption that hang over some more complicated cases involving questions of corporate governance or bankruptcy.⁶ The relatively small stakes (both in terms of money and power) of non-payments cases minimizes the incentives to bribe court officials.

³ The *arbitrazh* courts are the only state-sponsored institution empowered to resolve business disputes between enterprises; there is no administrative alternative. A 1997 survey showed that more than 70% of the enterprises surveyed had appealed to the *arbitrazh* courts for help in collecting from recalcitrant customers (Hendley, Murrell, & Ryterman 2000). Another 1997 survey of 269 Russian enterprises found a similarly high percentage of disputes (54.4%) being submitted to the courts (Johnson, McMillan, & Woodruff 2002).

⁴ Russian courts are hardly unique in having dockets dominated by debt. For a review of the comparative literature, see Kagan (1984:324–25).

⁵ These courts evolved from the institution charged with resolving disagreements between state-owned enterprises during the Soviet era (Pomorski 1977). As part of the transformation from state *arbitrazh* (or *gosarbitrazh*) to full-fledged courts, the jurisdiction court was expanded to include privately owned enterprises as well as bankruptcy, and the roles of the judges and litigants was rethought (e.g., Hendley 1998b; Hendrix 1997). One constant thread from the past to present is that only legal entities have standing; legal claims by individuals are shunted to the courts of general jurisdiction.

⁶ The Russian- and English-language mass media have roundly condemned the *arbitrazh* courts for political bias and incompetence in their handling of bankruptcies and disputes over the ownership of oil and aluminum conglomerates (e.g., Clark 2001). Much of the scholarly literature takes the same line (e.g., Lambert-Mogiliansky, Sonin, & Zhuravskaya 2001). It is worth noting that none of the journalists or scholars who have written about the shortcomings of the courts have actually spent any time in these courts.

I begin by reviewing the cases, detailing the amounts, the size and organizational structure of the litigants, and the pleadings. I then analyze what motivated creditors to initiate litigation. Finally, I turn to what happened once the case was filed, examining the costs involved, the role of the judges and the parties' representatives, and the outcomes. Though Russian creditors generally prevailed, the judgments did not always mirror the demands set forth in the complaint. I look at the impact of various factors on outcomes, including the predisposition of judges, the availability of legal assistance, and the size and organizational structure of the litigants. The findings highlight the emerging role of factors, such as judicial activism and legal expertise, that had earlier been dismissed as marginal. I conclude by exploring the Russian case in light of the prevailing theories of sociolegal behavior and reflect on what the future may hold for debtor-creditor relations in post-Soviet Russia as well as other countries in transition from state socialism to market democracy.

Methodology

The study is grounded in a set of 100 cases of unpaid interenterprise debt decided during 2000 by the *arbitrazh* courts for the city of Moscow and the regions of Saratov and Ekaterinburg. The *arbitrazh* courts were built on the foundation of the Soviet system of state *arbitrazh* (or *gosarbitrazh*), which were akin to administrative agencies and were charged with resolving disputes between state-owned enterprises (Pomorski 1977). In 1991, *gosarbitrazh* was abolished in favor of a system of *arbitrazh* courts that is distinct from the courts of general jurisdiction.⁷ Russia is a federation, and each of the 89 units within this federal system has an *arbitrazh* court.⁸ Decisions made by these trial courts can be appealed.⁹

The *arbitrazh* courts hear only disputes involving legal entities, although in contrast to *gosarbitrazh*, their jurisdiction extends to privately owned enterprises. They also handle bankruptcies and disputes between firms and the state (APK 1995: art. 22; Yakovlev

⁷ The courts of general jurisdiction handle all cases involving individuals (including debt collection). See Solomon and Foglesong (2000) for a thorough analysis of the challenges facing these courts.

⁸ These units are known as "subjects" (*sub'ekty*) in Russian and include republics, regions (*oblasty, okrugi, or kraya*), and the city of Moscow, which, because of its size, is treated as a separate subject of the federation.

⁹ Each trial court has a first-level appellate court that is affiliated with it. Upon request, these appellate courts review the decisions of trial courts *de novo*. Further appeals based on legal errors can be made to regionally based cassation courts. Final appeals can be made to the Higher *Arbitrazh* Court.

1999:40–66). A great premium is placed on speed. Cases are supposed to be resolved within two months of filing and, for the most part, this deadline is met (APK 1995: art. 114). Judges dominate the proceedings, questioning the parties about the evidence submitted. The parties have the right to question one another but rarely do so.¹⁰ Allegations must be substantiated with documentary evidence; testimonial evidence is seldom taken (APK 1995: art. 60). The judicial corps includes both carryover arbiters from *gosarbitrazh* and those who came into the system as fully fledged judges. As in other countries with civil law legal traditions, people generally come to the bench young and stay for their entire career.

The Moscow, Ekaterinburg, and Saratov courts present intriguing contrasts in many respects. Table 1 presents data that highlight some of the differences. The Moscow court is unique in that it is the only court for which the jurisdiction is limited to a single city. A separate court handles disputes that arise outside the city limits of Moscow but within the surrounding region. The Ekaterinburg and Saratov courts are typical of all the other *arbitrazh* courts in that they have jurisdiction over the surrounding regions (which are approximately the size of U.S. states).

Without question, the Moscow city court is the flagship of the *arbitrazh* system. It has more judges and hears more cases than any other *arbitrazh* court (see Table 1). Yet the number of cases is a bit deceiving. While the Moscow court was responsible for 8.4% of all of the cases decided by the *arbitrazh* courts in 2000, the high concentration of enterprises within Moscow means that the per enterprise use of this courts was actually substantially lower than the national average (as well as that for Ekaterinburg and Saratov).¹¹ Its authority is not, however, solely a function of its size, but stems more from its perceived competence. Unlike their counterparts in Ekaterinburg and Saratov, the Moscow judges reported hearing cases that had no connection to Moscow other than the parties' choice to cede jurisdiction to the Moscow court.¹² My observations confirmed that the Moscow court was qualitatively distinct from the Saratov and Ekaterinburg courts. The judges were uniformly more knowledgeable and professional and held litigants to a higher standard.

¹⁰ For example, in only four of the twelve cases I observed in the Moscow *arbitrazh* court in which both sides were represented was there any questioning of one party by another, and even then, it was mostly ineffectual.

¹¹ Moscow is the location of 18.8% of all enterprises registered in Russia.

¹² Though all of the cases in my Moscow sample involved at least one party from Moscow, I have encountered disputes that ended up in the Moscow court solely as a result of a forum clause in prior research.

The other *arbitrazh* courts, including those in Ekaterinburg and Saratov, operate in the shadow of the Moscow court. My choice of these two courts for detailed study was motivated in part by my familiarity with them as a result of prior research. Their contrasting sizes, as well as the differences in the political economy of the regions from which their cases are drawn, make them good comparative cases. The Ekaterinburg court is one of several (6) second-tier *arbitrazh* courts, with more than 50 judges, while the Saratov court is one of a majority (51) that has between 20 and 50 judges. Table 1 reveals the sort of loose correlation between the number of cases decided and the number of judges that would be expected but shows an inverse relationship between the total number of cases and the per judge workload.

The political economy of the three locales also differed dramatically and promised to yield a rich mix of cases. Table 2, which presents a snapshot of conditions in 2000, documents the contrast. The singular quality of Moscow stands out. Market reforms, which have facilitated Moscow's emergence as a glittering European capital, have only deepened the longstanding gap between Moscow and the rest of Russia. Muscovites tend to live longer and to have a better quality of life, i.e., they are safer, better paid, and more likely to have a job. Located more than 1,500 kilometers to the east at the edge of the Ural Mountains, Ekaterinburg is primarily an industrial region. Its abundant mineral resources fueled the expansion of heavy industry that was at the heart of the Soviet economy. Many of the enterprises in this sector have struggled for their very survival following the collapse of state planning. Saratov, located about 800 kilometers to the south of Moscow on the Volga River, has more of a mixed economy. Though the region has traditionally been known for its agricultural production, the urban centers (including the cities of Saratov and Engels) became linchpins in the Soviet military-industrial complex during and after World War II. These defense plants have fared no better in the transition than those devoted to producing machine tools in Ekaterinburg. As Table 2 shows, Saratov has experienced higher unemployment than Ekaterinburg, and those employed earn less. Life in both Saratov and Ekaterinburg was noticeably more difficult than in Moscow. Just as had been true in the Soviet and tsarist eras, resources continued to flow to the capital.

As the Methodological Appendix spells out, gaining access to the courts and assembling the database of cases was difficult. I spent a month at each of the courts during the first half of 2001. These courts have nothing akin to a "docket book," making a true random sample impossible. Thanks to my previous experience in the *arbitrazh* courts, I knew that I would have little control over case

Table 2. Basic Information About the Russian Federation, the City of Moscow, and the Regions of Ekaterinburg and Saratov (2000)

	Population (in millions)	Population density (people per square km)	% of population in urban areas	Average monthly income in rubles (dollars)	Number of telephones in apartments (per 1,000 persons)	Recorded crimes (per 100,000 persons)	Unemployment rate	Life expectancy
Russian Federation	145.6	8.4	73.0	2,281 (\$76)	206.8	1,750	10.1	65.3
City of Moscow	8.6	318.8	100.0	9,291 (\$310)	387.0	1,268	3.8	67.8
Ekaterinburg region	4.6	23.5	87.6	1,771 (\$59)	76.0	2,538	8.9	64.9
Saratov region	2.7	26.9	73.1	1,378 (\$46)	79.8	1,714	10.0	65.1

Source: Goskomstat (2000, 2001).

selection and so limited myself to two criteria. First, the case had to involve an unpaid debt from one enterprise to another.¹³ Second, the case had to have been decided during 2000, but at least six months earlier (in order to give the victor sufficient time to make some effort at collection).¹⁴

After collecting information about the cases, I sought out the petitioners to find out what had motivated them to file the lawsuit and whether they were satisfied with the outcome. In an effort to maximize response rates, I worked through local law-related nongovernmental organizations (NGOs) with which I had been loosely affiliated since the mid-1990s.¹⁵ Prior experience doing research in enterprises had taught me how skittish managers were when dealing with foreigners (especially Americans). Though my Russian is fluent, it is accented. I reasoned that native speakers would have better luck. In each location, I worked with law students affiliated with the NGOs. I trained them to work with a standard interview protocol. The interview was designed to take no longer than 30 minutes. Almost all (83%) of the conversations took place on the phone. The questions focused mostly on the specific case, but also asked about their prior use of the *arbitrazh* courts. Of the 100 petitioners in my database, 92 were willing to answer questions. Eight petitioners refused to participate.¹⁶

My data set is problematic in two respects. First, the limited control over the selection of case files left the representativeness of my sample open to question. I ameliorated this by contrasting the findings from my sample with the caseload data whenever possible.¹⁷ Second, I was not able to follow the cases in person

¹³ I framed the request in the language used in the statistical reporting forms (*rascheti za produkciiu, tovary, usluzhi*) in order to eliminate any uncertainty. A literal translation of the phrase is “calculations for production, goods, services.”

¹⁴ Another part of the project (not reported on in this article) deals with the enforcement of judgments obtained by the creditors in the database (Hendley 2004).

¹⁵ In Moscow and Ekaterinburg, I worked with public interest law firms that help citizens enforce their rights in civil courts (with a particular emphasis on labor rights). In Saratov, I worked with a broad-based legal reform center.

¹⁶ Only one of these nonrespondents was from Moscow. Four were from Ekaterinburg, and the remaining three were from Saratov. No easy explanations for why these enterprises refused to respond emerge from the data. The only distinguishing characteristic this group shared was a higher concentration of large enterprises as plaintiffs. While 45% of the cases in the sample were brought by large enterprises, five of the eight nonrespondents (62.5%) were large enterprises. It is possible that these enterprises had more bureaucratic controls than did smaller enterprises.

¹⁷ The somewhat stilted nature of the standard form on which the trial courts report these data limited my ability to put my sample into a broader context. Absent from the data is any clue into the identity of the litigants (e.g., size, organizational structure, propensity to litigate) or their use of lawyers. Instead, the data are geared to tracking the rise and fall of various types of cases and the extent of delays (as a crude indicator of efficiency). Those who study business litigation in the United States have noted the difficulty of sifting through corporate names to find patterns (e.g., Cheit & Gersen 2000:798; Dunworth &

from start to finish. My interest in studying already-decided cases made it impossible to watch the hearing(s). Fortunately, I was familiar with courtroom practices as a result of earlier research (Hendley 1998a, 1998b). I updated my knowledge by observing judicial proceedings in non-payments cases that were being decided at the time I was assembling my database. Even though these ongoing cases presented different fact patterns and parties, they gave me a more hands-on perspective on the roles of those involved than could be gleaned from paper records.

Why Do Businesspeople Turn to the Courts?

The literature on business disputing argues persuasively that businesspeople are reluctant litigants. Empirical research indicates that actual lawsuits represent a tiny portion of the disagreements that arise between trading partners. As Galanter and Rogers note, the decision to litigate “is best understood as *a choice among alternative governance mechanisms*” (1991:37, emphasis in original). Not surprisingly, most disagreements dissipate before reaching court, either because they are settled or because the allegedly wronged party decides that the potential costs of proceeding outweigh the potential benefits (Macaulay 1963:65). These costs take different forms, depending on the specifics of the trading relationship and the institutional framework within which the transaction has taken place.

Time and money are only the most obvious costs, and even these vary depending on the institutional context. These variations contribute to shaping litigation behavior among businesspeople. Long, drawn-out trials with teams of attorneys on both sides are a more common feature of legal systems with a common-law tradition (such as the United States) than of those with a civil law tradition (such as Russia and other continental European countries). The financial outlays for attorneys’ fees as well as the time lost from profit-generating activities tend to discourage litigation over unpaid debts (e.g., Priest & Klein 1984). By contrast, in other legal systems, the availability of quick summary procedures for collecting debt has been shown to spur litigation. In Germany, for example, a creditor need only submit an affidavit detailing the unpaid debt and, if uncontested by the debtor, will receive a judgment in its favor (e.g., Ruhlin 2000:260–67; Blankenburg 1994). Though the German experience has convinced other European countries to follow suit, this procedural mechanism has not always had the same stimulative effect, as Blankenburg’s (1994)

Rogers 1996). The challenges for researchers in Russia are of a different order, as the unpublished data include no names whatsoever.

comparison of Germany and The Netherlands demonstrates. He shows how a few key differences between the two legal systems give rise to dramatically different costs—measured in time and money—and result in different litigation patterns. He concludes that, in Germany, “courts appear to be too efficient and inexpensive to create incentives for plaintiffs to avoid them” (1994:806). The Dutch authorities have worked at, and succeeded in, discouraging litigation by raising the filing fees and creating a myriad of “filtering institutions” that help creditors collect extrajudicially.¹⁸

Just as important as tangible costs in shaping litigation behavior are the potential risks to the underlying relationship. Trading partners grow accustomed to dealing with one another and, over time, develop a shorthand that lowers transaction costs. Firms prize these long-term relationships and, when problems arise, prefer to work them out informally. Macaulay contends that “[t]hreatening to turn matters over to an attorney may cost no more money than postage or a telephone call; yet few are so skilled at making such a threat that it will not cost some deterioration of the relationship between the firms” (1963:64). Litigation is, after all, generally unpleasant. This is especially true in adversarial systems, where those involved are often called upon to make and substantiate accusations against one another in open court. Indeed, managers’ dread of getting involved in the legal process can act to discourage contractual breaches and certainly deters the use of courts when they arise (Macaulay 1977:518–20).

This distaste for litigation can diminish under certain conditions. Lawsuits may become more palatable in times of economic uncertainty. Whether this uncertainty results from increased sectoral competition or macroeconomic instability, the effect is to undermine the bilateral norms that have governed the relationship and, often, to increase litigation (e.g., Munger 1986). As Kenworthy, Macaulay, and Rogers argue in their study of the U.S. automobile industry, “[instability and uncertainty] reduce the likelihood of long-term stable relationships among familiar parties, and thereby foster opportunism and mistrust. The basis for reliance on informal dispute resolution is eroded” (1996:633). They find that these effects are short-lived. The firms they studied adjusted to the new conditions and reverted to type in relatively short order.

The propensity to litigate can also be affected by factors that are more specific to the relationships. Where the parties have remained

¹⁸ For example, the looser state controls over the bar allow nonlawyers to advise and assist Dutch creditors. Moreover, because these creditors need not obtain a court order to seek the assistance of bailiffs in collecting debt, many of them bypass the summary procedure (Blankenburg 1994).

relatively anonymous to one another, neither is likely to have much of a stake in preserving the relationship. Nor are they likely to have bothered to work out informal mechanisms for handling disagreements. When problems arise, their calculation of whether to pursue legal action centers on the time and money involved. The possibility (or even likelihood) that the relationship will not weather the lawsuit is a secondary concern. Cheit and Gersen conclude that “[w]hen long-term continuing relationships are not possible, neither is avoiding litigation” (2000:812). Even when the parties are embedded in a lengthy and durable relationship, the balance of power between them (which may shift over time) influences the use of the courts (Gordon 1985:570; Yngvesson 1985:628–33). For example, Kenworthy, Macaulay, and Rogers document the dominance of U.S. auto makers over their suppliers, likening the contracts to “statutes of a private government” that “give suppliers little or no recourse in the case of a dispute” (1996:654). Other firms may flex their muscles through the courts. By retaining the best lawyers, litigating regularly, and learning from their mistakes, they gain a comparative advantage over other firms. A reputation for litigiousness may be off-putting to some but sends a powerful signal to those who persevere that breaches will not be taken lightly. Though certainly repeat players in the literal sense, such firms depart from Galanter’s (1974) original conception in that they mostly sue each other, which leaves them with little incentive to “play for the rules.” As Cheit and Gersen put it, “[w]hat does it mean to play for the rule when you are as likely to be plaintiff as defendant next time?” (2000:812).

Though most of this literature focuses on the U.S. case, these same factors emerge as central to understanding the Russian case, though they play out differently. My research shows that the docket of Russian economic courts is dominated by small claims brought by creditors that share a short history with the customer-defendants. Both big-ticket claims and disputes between long-term partners are generally absent. Yet the reasons have little to do with fear of damaging the relationship as a result of litigation. The low-cost and nonadversarial nature of business litigation in Russia leaves few ruffled feathers in its wake. Rather, big firms bypass the courts in their dealings with one another in order to avoid opening up their transactions to state scrutiny. The mutual back-scratching that goes on between these big firms sometimes skirts the law, and their managers are reluctant to risk public disclosure. By contrast, the petty claims that monopolize the courts’ time are straightforward and, consequently, carry little risk of attracting unwanted attention from the tax authorities if disclosed. Indeed, the imprimatur of the state is often the goal. Debt-laden enterprises get judgments in order to prove the bona fides of existing debts to

the state (often in the form of the tax inspectorate or the bankruptcy court). Actually collecting on the judgment is a second-order concern.

Uncertainty has also contributed to the explosion in non-payments cases in the courts. The sharp downturn in the economy that accompanied the transition away from state socialism left most enterprises cash-poor. Rather than shut down when unable to pay their debts, they soldiered on by stringing along their creditors indefinitely (Caner & Mokhtari 2000). Creditors tolerated this behavior from long-term customers (typically drawing down the debt through barter arrangements) but grew impatient with newer customers (Yakovlev 2000). Credit-rating institutions have been slow to develop in Russia, leaving creditors in the dark when assessing the reliability of potential customers. If and when these customers renege, creditors have few compunctions about seeking legal remedies because the deals are aboveboard and lack the legally questionable flourishes that abound in transactions between long-term trading partners.

Who Sues Whom in Russia?

The most striking feature of non-payments cases brought to the Russian *arbitrazh* courts is their banality. They rarely presented cutting-edge issues of law. Nor was there much suspense about the outcome. The written agreements were straightforward and airtight. The petitioner prevailed in 99 of the 100 cases I reviewed, though the amount awarded did not always match that requested in the complaint. The results from my sample reflect the overall dominance of creditors in the *arbitrazh* courts. Table 1, which is drawn from caseload data, documents the solid winning record for petitioners in non-payments cases heard in the Moscow, Ekaterinburg, and Saratov courts over the past three years. Pinning down the precise reasons for the marginally better fortune of the creditors in my sample is not possible.

In most cases (80%), the dispute arose when the defendant failed to pay for goods supplied by the plaintiff. A small but significant group of cases (16%) presented the opposite situation, where delivery of goods had not followed prepayment.¹⁹ Almost all of the underlying transactions (85%) were grounded in a written contract. Although Russian law does not require a written document to establish an enforceable obligation between the parties, contracts can be helpful in clarifying the parameters of

¹⁹ This latter type of case was most prevalent among the subset of cases from Ekaterinburg, with ten cases, compared with only two and four cases in Moscow and Saratov, respectively.

these obligations.²⁰ Much like their counterparts elsewhere, Russian manufacturers develop form contracts that are then adapted to the needs of each deal. A clear majority of the cases originated with a form contract (rather than with a contract that was drafted specifically for the deal). Along with price and quantity, which obviously vary from transaction to transaction, Russian business contracts also anticipate the need to tailor payment terms, often using alternative language for prepayment (full or partial) and setting the number of days after shipment when payment is due and/or penalties in the case of delinquent payment. Control over the form indicates greater power in the relationship in that the drafter can use subtle language changes to craft a document that better serves its interests (Galanter 1974:98). Prior survey-based research showed that form contracts generally originate with the seller (Hendley, Murrell, & Ryterman 1999), and my sample confirms this. Of the 68 cases employing form contracts, only one did not emanate from the seller. The absence of credit-rating services and the reticence of bankers to take on the role of financial sounding board for enterprises clouds assessments of the creditworthiness of potential customers. Consequently, sellers see written agreements as a way of protecting themselves, often requiring prepayment or incorporating punitive remedies for non-payment that they would prefer not to invoke as incentives to encourage on-time payment from yet-untested customers.

About a quarter of the cases were grounded in barter transactions. To some extent, this could be expected given the widespread use of barter by cash-strapped enterprises as a survival mechanism.²¹ Yet it still surprised me because in my previous research, judges and litigants had expressed skepticism as to whether the *arbitrazh* courts could be used when in-kind exchanges went bad. In their experience, barter transactions were often based on a handshake and, therefore, lacked the paper trail required by the *arbitrazh* procedural code. Moreover, opening up such transactions to judicial scrutiny ran the risk of attracting unwanted attention from the tax authorities.²² The high incidence of in-kind exchanges within my sample suggests things may be changing. Virtually all (22 of 24) of the cases involving in-kind exchanges

²⁰ Absent a contract, the default rules laid out in the Civil Code govern the transaction.

²¹ According to Yakovlev (2000), in-kind exchanges accounted for more than half of all sales in industry by the end of the 1990s.

²² Enterprises involved in barter transactions sometimes artificially lowered the value of the goods involved in order to avoid taxes. A full discussion of the reasons why barter flourished in the 1990s in Russia is beyond the scope of this article. See generally Yakovlev (2000).

Table 3. Amounts of Petitions in Sample of 100 Non-Payments Cases (percentage of cases in region in particular category)

	Less than 5,000 rubles (\$167)	From 5,001 to 50,000 rubles (\$167 to \$1,667)	From 50,001 to 500,000 rubles (\$1,667 to \$16,667)	From 500,001 to 2.5 million rubles (\$16,667 to \$83,333)	Dollar demands (ranging from \$200,000 to over \$4 million)	N
All cases	11%	34%	36%	17%	2%	100
Moscow cases	12%	39%	24%	18%	6%	33
Ekaterinburg cases	15%	32%	41%	12%	0	34
Saratov cases	6%	30%	42%	21%	0	33

were memorialized in written form, allowing them to be enforced through the *arbitrazh* courts.

The amounts involved in the 100 cases I examined varied widely, ranging from a dollar equivalent of less than \$100 to more than \$4 million. With only two exceptions, plaintiffs sought ruble damages. Assuming an exchange rate of 30 rubles to the dollar (which was the average for the period when these claims were being brought), one-third of the claims fell between \$167 and \$1,667, with another third falling between \$1,667 and \$16,667 (see Table 3). These amounts may seem small but are actually substantially greater than the average non-payments case brought to these *arbitrazh* courts in 2000, according to the caseload data. The last column in Table 1 shows that the average petition varied from \$27 in Saratov to \$59 in Ekaterinburg to \$148 in Moscow. Unfortunately the caseload data cannot be disaggregated. As a result, neither the distribution of amounts nor the identity of the litigants can be ascertained. My suspicion, based on previous research, is that the averages for these three courts have been pulled down by the multitude of small-scale cases brought by utilities against slow-paying customers. Even accepting that my sample is skewed higher than the average, the amounts at stake still seem too insignificant to provoke litigation. When trying to understand why Russian enterprises bothered suing over such paltry sums, it is important to factor in the depressed economic conditions. Amounts that might seem trivial can be monumental to a Russian enterprise teetering on the brink of insolvency.²³ Moreover, the costs of initiating a lawsuit are negligible, and the chances of victory are excellent.

Just as intriguing is the question of why the more substantial claims, which surely exist, are not being brought to the *arbitrazh* courts. This pattern is reminiscent of what Hurst found in his study of the development of the Wisconsin lumber industry during the 19th century (1964:321–29). His review of the Wisconsin Supreme

²³ The average monthly wages, set forth in the fourth column of Table 2, provide some context.

Court's docket revealed that the amounts of the cases were modest, notwithstanding the economic boom being experienced by the industry. He concluded that the lumber giants had no need to resort to litigation because they "possessed a bargaining weight which would often substitute for lawsuits, and [had] gained experience in negotiation and administration which kept [them] out of court" (1964:327). Lawsuits were used sparingly as a signaling device to the industry. Just as in the 19th century in the United States, large-scale transactions in present-day Russia typically bring together enterprises with long trading histories and well-established traditions for sorting out problems. Like Hurst's lumber magnates, they seem to prefer to resolve disputes involving significant sums privately (though there is no evidence to suggest that, when they resort to litigation, it is intended to send a message). Consequently, my database is dominated by trading partners with minimal shared histories. Slightly less than half of the cases involved first-time transactions. The average length of the trading relationship for those who had interacted previously was about two years. Prior problems between them over payments had arisen for almost half, though only a few (three) had previously resorted to litigation.

The enterprises in my database were not novices. During 2000, each had, on average, filed 18 lawsuits in the *arbitrazh* courts. As Table 4 shows, most non-payments cases were brought by and against privately held corporations.²⁴ Most (82%) were between entities from the same region (*oblast'*), rendering moot any concern over preferential treatment for local parties.²⁵ Large enterprises (open joint-stock companies) were the most common plaintiffs, while smaller enterprises (closed joint-stock companies) were most likely to emerge as defendants.²⁶ These smaller enterprises also sued one another with some regularity.

²⁴ Whether they were former state-owned enterprises that had been privatized or had been created more recently and so had been private from the outset was impossible to determine. Given the realities of post-Soviet Russia, an assumption that most had a prior life as a state-owned enterprise is reasonable.

²⁵ Cases are heard in the *arbitrazh* court closest to the defendant, unless otherwise specified in the contract (APK 1995, art. 25). Within my sample, forum clauses had been included in twenty of the agreements. Most (fifteen) ended up being moot because both parties were from the same locale. In the five cases in which jurisdiction was established by the contract, it was always the plaintiff's local court. This suggests a skepticism of the ability to get fair treatment when away from home.

²⁶ Closed joint-stock companies emerged as the most frequently sued in all regions, though the thresholds varied. While 60% of the cases examined in Moscow and 53% of those in Saratov were brought against these smaller enterprises, it was only 39% of cases in Ekaterinburg (with larger enterprises not far behind with 30%). By law, closed joint-stock companies cannot have more than 50 shareholders, whereas open joint-stock companies can have an unlimited number of shareholders. Because privatization yielded stock ownership for workers in the majority of Russian enterprises, the number of shareholders can be taken as a crude proxy for the number of workers and, hence, for the size of the plant.

Table 4. Patterns of Litigation in Sample of 100 Non-Payments Cases (percentage of cases brought by that category of plaintiff against each type of defendant)

Plaintiffs	Defendants							N
	Large companies (open joint-stock companies)	Small companies (closed joint-stock companies)	State-owned companies	State agencies	Agricultural firms	Individual entrepreneurs	Unknown	
Large companies (open joint-stock companies)	18%	53%	0	13%	7%	4%	4%	45
Small companies (closed joint-stock companies)	21%	59%	6%	3%	0	6%	6%	34
State-owned companies	0	50%	38%	12%	0	0	0	8
State agencies	20%	0	20%	60%	0	0	0	5
Agricultural firms	100%	0	0	0	0	0	0	2
Unknown	40%	20%	0	20%	0	20%	0	5

The frequency with which plaintiffs in my sample used the *arbitrazh* courts suggests that Galanter's (1974) "repeat player" concept might be apt. But as I have elsewhere argued in more detail, the behavioral assumptions that underlie this concept do not translate well to the Russian context (Hendley, Murrell, & Ryterman 1999). It is not just that—like the Rhode Island businesses that comprised Cheit and Gersen's (2000) data set—these enterprises sue one another routinely in contradiction of Galanter's assumption that repeat players mostly sue less experienced litigators (the so-called one-shotters), thereby undermining any incentive to "play for the rules."²⁷ Russian repeat players also lack the aggression and innovativeness toward their trading partners predicted by Galanter (Hendley, Murrell, & Ryterman 1999).

When trying to make sense of the behavioral patterns found in my data set, it is, therefore, more productive to look to the realities of Russian economic life over the past decade, when survival often seemed to be an elusive goal and long-term stability was a pipe dream. Under such conditions, trust grew paramount. Companies with dense trading networks of mutual dependence had an advantage. Large companies, most of which had prior lives as state-owned enterprises during the Soviet era, were able to draw on reserves of trust built up over decades of working with the same customers and suppliers to get them through the tough times. Just as they had not sued one another during the Soviet period, they did not resort to legal action when payment was slow in coming.²⁸ Small companies were more vulnerable. Having been legalized only in the early 1990s, they had had little time to establish sturdy relationships with their creditors that could withstand an inability to pay on time. Moreover, they tended to be on shakier financial ground, and some compensated by dodging creditors and even reincorporating under different names in an effort to stay one step ahead of their debts. Not only did this make them frequent targets in court, but it also made them more desperate when dealing with their own customers. As Table 5 suggests, small companies were more likely to go to court over smaller amounts. For example, a majority (53%) of their claims were for less than 50,000 rubles (approximately \$1,667), while claims of this size accounted for 43% of those initiated by large companies.

²⁷ The nonprecedential nature of the Russian legal system, which translates into an inability to modify rules iteratively through court decisions, has made the very idea of "playing for the rules" foreign to Russian managers and lawyers.

²⁸ The basis for potential litigation changed with the collapse of state planning. During the Soviet era, late deliveries were the main problem for managers because they compromised the ability of enterprises to fulfill time-sensitive production targets established by the national economic plan. In the post-Soviet era, non-payments eclipsed late deliveries as the most serious problem.

Table 5. Impact of the Organizational Structure of the Plaintiff on the Amounts of Petitions in Sample of 100 Non-Payments Cases

	Less than 5,000 rubles (\$167)	From 5,001 to 50,000 rubles (\$167 to \$1,667)	From 50,001 to 500,000 rubles (\$1,667 to \$16,667)	From 500,001 to 2.5million rubles (\$16,667to \$83,333)	Dollar demands (ranging from \$200,000 to over \$4 million)	N
Large companies (open joint-stock companies)	13%	30%	41%	13%	2%	46
Small companies (closed joint-stock companies)	12%	41%	29%	18%	0	34
State-owned companies	12.5%	25%	25%	37.5%	0	8
State agencies	0	40%	40%	20%	0	5
Agricultural firms	0	0	100%	0	0	2
Unknown	0	40%	20%	20%	20%	5

Table 6. Motivations for Initiating Litigation in Sample of 100 Non-Payments Cases: Percent of Enterprises Responding Affirmatively¹

Did the petitioner file the lawsuit in order to . . .	
recover money owed to it?	95.6
get the judgment for accounting purposes?	38.5
get the judgment for tax purposes?	30.8
send a message to other customers that not paying is unacceptable?	14.3
punish the debtor because its behavior indicated an intolerable lack of respect?	7.7

¹Results exclude 9 enterprises that refused to respond to the question.

Why Do Russian Firms Sue One Another?

In Russia, as elsewhere, litigation is rarely the first course of action. Previous survey-based research supplemented by enterprise case studies demonstrates the widespread use of relational methods (e.g., Hendley, Murrell, & Ryterman 2000; Hendley 2001). In this article, I am purposefully focusing on enterprises that chose to litigate. These enterprises did not rush to file their lawsuits. On average, about 11 months passed from the time the debt arose until litigation ensued.²⁹ During this time, most creditors made some effort at resolving the case, usually starting with phone calls and ratcheting up to telegrams, letters, and personal visits over time.

In a series of follow-up questions to the victorious plaintiffs posed to the person who had handled the lawsuit, I explored motivation. Not surprisingly, repayment of the debt served as inspiration for virtually everyone (see Table 6). More interesting are the less obvious catalysts. Some issues that would probably emerge as significant in an adversarial setting, such as the United States, fade in importance in Russia. Very few creditors reported using litigation as a signal to other customers of the parameters of acceptable behavior. This makes sense given that case decisions are mostly unpublished and apply only to the parties involved. Third parties (including customers) are unlikely to learn of the outcomes and, if they do, they would not take them as a warning because variations in fact patterns might yield different results. Only a few creditors regard litigation as a mechanism for punishing an undisciplined trading partner.

Factors that are specific to Russia turn out to be more relevant. The uncertainty of the economic transition left the rules about

²⁹ Article 196 of the Civil Code gives creditors three years to collect their debts.

when debts could be written off in flux.³⁰ The vagaries of the tax code in effect during the 1990s, which some managers believed resulted in a tax rate of over 100% of income, created a powerful incentive to hide income (Berkowitz & Li 2000). One popular method was to pad financial records with fictitious debts in order to create the impression of no income (and, therefore, no taxes due). In conversations predating the study, some enterprise managers had reported that they preferred to have a court judgment in hand before writing off debt because it lessened the chances of challenges from the tax inspectorate. Along similar lines, I was also told that they occasionally resorted to the courts—even when the chances of collecting on a judgment were slim—in order to prove to the state authorities the genuineness of a debt. According to managers, an *arbitrazh* court judgment was viewed as definitive proof that a debt was not illusory. In a macabre twist on this logic, it seems that some organized crime groups insist on an *arbitrazh* court judgment before involving themselves in debt collection (Volkov 2002:46).

Table 6 shows that concerns over tax and accounting implications motivated a significant group of plaintiffs. A closer analysis indicates that these worries may be concentrated in Saratov.³¹ While only about a quarter of the Moscow and Ekaterinburg enterprises reported being influenced by accounting, two-thirds of the Saratov enterprises declared it to be a catalyst (chi square = 15.02, 2 d.f., $p < 0.001$). The situation is even more lopsided vis-à-vis tax issues. While only 13% of the sample in Moscow and Ekaterinburg reported being motivated by tax concerns, 67% of the Saratov creditors claimed to be spurred into action by such concerns (chi square = 27.08, 2 d.f., $p < 0.001$). Given the small sample size, reading too much into these results would be premature, though they certainly warrant further investigation.³² What is inescapable is that state policies that seem unconnected to debt collection have influenced firms' strategies when faced with delinquent customers.

What similarities emerge among litigants motivated by a desire to obtain certification of debts for tax or accounting purposes? An

³⁰ Although the specific nature of the instability within the financial system is unique to Russia, Kagan (1984:339–43) shows that analogous instability in the U.S. financial system in the late nineteenth century contributed to a predisposition on the part of creditors to go after debts via the legal system.

³¹ The postjudgment interviewing was carried out by students associated with NGOs in each city. There is a danger that the student interviewers in Saratov somehow encouraged respondents to respond affirmatively to these questions.

³² Particularly surprising is the relative lack of concern about tax implications on the part of Ekaterinburg enterprises. A comparative analysis of the caseload data demonstrates that the Ekaterinburg authorities are unusually aggressive in their pursuit of alleged tax dodgers (Hendley 2002).

analysis of my sample provides some provocative leads as well as some dead ends. Having access to legal expertise turns out to have little effect, probably because neither tax issues nor accounting matters are within the purview of in-house lawyers (even when they would seem to have legal implications) (e.g., Hendley, Murrell, & Ryterman 2001). More telling is the length of the relationship between the parties. Petitioners involved in first-time transactions tend not to report tax or accounting concerns but, as the length of the relationship grows, such concerns become more pressing. This makes sense. As the lifespan of business relationships increases, so too does the likelihood of having side arrangements that might not stand up to scrutiny. When cash dried up during the 1990s, barter arrangements proliferated, often involving questionable valuations of the goods exchanged. Organizational structure turns out to matter, though not equally everywhere. Its effect is strongest in Saratov, where large enterprises (open joint-stock companies) emerged as the most uneasy over tax and accounting consequences. I had thought that the amount of the case would matter, hypothesizing that management's desire to have debts recognized as legitimate would intensify with the size of the debt. The data reveal a murkier picture. Once again, there was regional variation. My hypothesis was borne out only in Moscow, where the odds of being motivated by tax or accounting issues spiked for cases in excess of 500,000 rubles (approximately \$16,667). In Saratov and Ekaterinburg, such concerns were most likely to be manifested for smaller cases, e.g., cases ranging from 50,000 to 500,000 rubles. Precisely why they were absent from the larger cases is a puzzle.

The oddest aspect of business litigation in Russia is its persistence and, indeed, growth in the face of the well-known difficulties in collecting on judgments. This is one area where the stereotype mirrors the reality. A 1997 enterprise survey confirmed that managers regard enforcement as the single largest impediment to using the *arbitrazh* courts (Hendley, Murrell, & Ryterman 2000). Though the institution responsible for assisting in the collection of judgments underwent a wholesale reform in 1998, little had changed by the time of my 2001 study.³³ Among my sample of 100 non-payment cases, only six of the debtor-defendants paid court judgments voluntarily (Hendley 2004). Most (64%) of the petitioners ultimately ended up getting some of what the court awarded them, but only after expending considerable effort to get the bailiffs or judicial enforcers (*sudebnye pristavy*)

³³ A full discussion of the system of enforcing judgments and of the reforms undertaken to that system is beyond the scope of this article (see generally Yukov & Sherstyuk 2000).

to do their job. So why bother suing? This seemingly pointless act makes sense only in context. The Russian firms that regularly turn to the *arbitrazh* courts believe themselves to have few alternatives. They are sure that the customer-debtor is not going to pay on its own. Through a lawsuit, they can get a court order that attaches to the debtor's bank account. If and when funds appear, the creditor will be paid automatically. If the bank account has been drained (as is often the case), then they can seek help from the bailiffs who are empowered to liquidate the debtor's assets to satisfy the judgment.³⁴ Though litigation may bring no guarantees, it provides some hope.

How Much Does Business Litigation Cost in Russia?

The cost of litigating can serve as a powerful deterrent to creditors (e.g., Silver 2002; Heise 2000; Priest & Klein 1984). The reduction of tangible costs, such as the time and money expended in pursuing a judgment, can spur litigation (e.g., Ruhlin 2000; Blankenburg 1994). A full accounting of costs, however, ought to take into account not only the tangible but also the intangible, such as damage to the relationship with the delinquent customer (e.g., Galanter & Rogers 1991). In Russia, the institutional structure yields different reactions. To be sure, no firm relishes the prospect of going to *arbitrazh* court. It is always less disruptive to find a solution through negotiations, which helps explain why firms with long histories together rarely take their disputes to court. Those who have experienced the judicial process complain about the inconvenience and absurdity of procedural rules, like their counterparts elsewhere. But the extent to which the process is punishing is qualitatively different. *Arbitrazh* courts generally eschew testimonial evidence, preferring to rely on documentary evidence, which means that top executives need not worry about having their character impugned through vigorous cross-examination. Nor is there any shame attached to being judged delinquent in fulfilling business responsibilities. The industrial downturn during the 1990s gave rise to an almost-universal lack of liquidity. The trick was staying in business with little or no cash flow. Managers almost took pride in accumulating debts that took them to the very tipping point for bankruptcy without falling into the

³⁴ The law allows the *sudebnye pristavy* to go after both real property and equipment. The mechanisms for doing so are underdeveloped. Further complicating matters is the sad reality that few Russian manufacturers have equipment that is in saleable condition.

abyss.³⁵ Those who turned to the courts cared little about preserving their relationships, regarding them as fleeting.³⁶ For these firms, the main deterrents to litigating are the time and money involved. Although the *arbitrazh* courts have been much maligned on both counts (e.g., Hay & Shleifer 1998; Greif & Kandel 1995), a careful review of the data shows that such criticisms have little foundation and likely reflect the inevitable complaints of litigants disappointed by the outcomes in their cases.

Litigating in the *arbitrazh* courts is surprisingly cheap for creditors. Unlike creditors elsewhere who are weighed down by the ever-increasing cost of legal counsel, Russian creditors rarely hire lawyers to represent them in *arbitrazh* proceedings. Instead, they either rely on in-house counsel or forego counsel and send an accountant or other manager as their representative, thereby incurring no out-of-pocket costs.

The law does require petitioners to pay an up-front filing fee (*gosposhlina*) based on a percentage of the amount sought.³⁷ This might seem to shut out many potential claimants, but insolvent enterprises are allowed to postpone this obligation until the conclusion of the case (“O nekotorykh voprosakh” 1997). If they prevail, the *gosposhlina* is simply tacked onto the judgment owed by the defendant. The cases I studied were fairly evenly split between those who paid up front and those who sought relief. All of those who petitioned for a deferment received one. This is not surprising. The requirements are straightforward; the plaintiff has to submit an affidavit from its bank confirming its lack of funds. The plaintiffs in my sample were typical of the larger population of *arbitrazh* court plaintiffs, both in terms of their propensity to petition for deferments and their success. There was some regional variation. Reflecting the stronger local economy, Moscow enterprises were better able to pay up front. Within my sample, 17.9% of the Moscow enterprises sought a deferment, which is in line with the percentage (18.2) of all plaintiffs in non-payments cases

³⁵ Macaulay’s (1963:64) expectation that welshing on deals would blacken the reputation of the welsker was turned on its head in the 1990s in Russia. The unavailability of credit rating services and the relative atomization of enterprises muted the effects of gossip networks. The cash-poor condition of most industrial enterprises and the resulting explosion in non-payments made welshing so commonplace that it was almost expected. Though creditors made every effort to guard against it, they did not blacklist welskers, either formally or informally.

³⁶ Along similar lines, Cheit and Gersen (2000) found that the anonymity among the U.S. businesses they studied facilitated litigation.

³⁷ *Gosposhlina* is assessed at 5% of the amount sought for the first 10 million rubles, with a sliding scale for amounts in excess. Given that most of my cases are only a small fraction of this cutoff figure, the petitioners can be assumed to have paid 5% (“O vnesenii izmenenii i dopolnenii” 1996: art. 4, pt. 2). The law does not require state organs to pay *gosposhlina*.

decided by the Moscow court in 2000 (as reflected in the caseload data) that sought relief. The percentage of plaintiffs seeking deferments in Ekaterinburg and Saratov (both in my sample and in the caseload data) was more than double that in Moscow, demonstrating the effect of tougher regional economic conditions.

Quite logically, the likelihood of asking for a deferment grew with the size of the case. While about two-thirds of all plaintiffs who were seeking less than 50,000 rubles (approximately \$1,167) paid their filing fees with no complaint, the situation was reversed for those with claims in excess of this amount. Two-thirds sought deferments, which were typically granted by the courts. Because the explanation of how to go about delaying filing fees was contained in a decree of the Higher *Arbitrazh* Court (rather than in the procedural code), I had hypothesized that enterprises with access to legal professionals would be more likely to use it. Oddly enough, when I isolated this as a factor, it turned out that enterprises with in-house legal departments were slightly less likely to petition to have the fees postponed. This indicates that knowledge of this strategy has now spread beyond legal insiders.

The financial precariousness of most Russian enterprises makes managers even more anxious to get problems resolved promptly than their Western counterparts. Though in interviews they routinely grouse about how long it takes to get a judgment, the process is relatively quick, especially in comparative terms. The procedural rules dictate that cases be resolved within two months of filing. The cases in my sample reflected the commitment of the *arbitrazh* courts to speed—84% were decided within the two-month deadline.³⁸ Most (71%) were resolved in only one hearing. When additional hearings were required, it was typically because one of the parties' representatives was sick or unprepared. In only two of twenty-six cases were the additional hearings needed to resolve some substantive issue.

This expeditiousness is possible because judges maintain tight control over every aspect of the process, as is the norm in countries with civil law traditions. Their penchant for control is evident from the outset. Since 1995, when a new procedural code was passed, the burden of assembling evidence relevant to their claim (or defense) has ostensibly been placed on the litigants (APK 1995: art. 53; Yakovlev 1999:116–23). My earlier research documented the

³⁸ The cases I sampled from Saratov showed a greater tendency to get bogged down than those from Moscow or Ekaterinburg. The percentage of cases that violated the two-month deadline in Saratov was 18.2%, compared with 12.9% in Moscow and 11.8% in Ekaterinburg. This runs counter to the aggregate results for the Saratov court. The caseload data shows that only 1% of cases resolved by the Saratov courts violated the statutory deadline, which indicates that my Saratov sample had an unusual concentration of delayed cases.

minimal impact of this change in the law by showing how *arbitrazh* court judges persisted in their Soviet-era practice of listing the documents that should be produced at the hearing in the decree (*opredelenie*) notifying the parties of the time and place of the hearing, effectively assuming the burden of proof themselves. In interviews, judges rationalized their behavior on grounds of efficiency and justice (Hendley 1998a). They argued that if left to their own devices, the parties would show up empty-handed and, even though dismissal is called for in such cases, doing so would only add to the burden of the appellate courts. They further contended that the need for their helping hand would dissipate as the new rules worked their way into practice. My data suggest that the learning process has stagnated, due in no small part to the judges' enabling behavior. In more than 80% of the cases I reviewed, the *opredelenie* contained a detailed list of evidence to be presented. Thus, in practice, the parties continue to lean on judges and to dodge responsibility for their own cases. Behavioral changes will come only if trial judges are tougher and appellate judges are inured to the pleas of those whose claims have been dismissed peremptorily. But my conversations with judges leave me dubious of the likelihood of such a behavioral change in the near future. At this point, helping litigants through the process is clearly central to the self-image of *arbitrazh* judges.

Who Wins When Russian Firms Sue One Another? What Does It Mean to “Win?”

The petitioners in my sample uniformly prevailed in the courts. But what does it mean to win? Table 7 provides more insight by differentiating cases in which the plaintiff's demands were fully satisfied from those in which it got less (or even more) than was requested in the original complaint. Also delineated are cases in which the parties reached a settlement after the lawsuit was initiated³⁹ as well as those that were dismissed due to the failure of the plaintiff to appear for trial.⁴⁰ The table shows that plaintiffs received exactly what they asked for in a majority of the cases that proceeded to judgment. Does this mean that they are being

³⁹ Settlements (*mirovoye soglasheniya*) typically followed on the heels of the complaint being filed, indicating that initiating legal action served as a stimulus to action for some defendants. In all the cases that were settled, the defendant paid the full amount of the debt.

⁴⁰ The *arbitrazh* courts cannot hear a case in the plaintiff's absence unless the plaintiff has specifically authorized the case to go forward without the plaintiff (APK 1995: art. 87). Plaintiffs resist doing this, but when litigating in regions far from home are sometimes forced to allow hearings to proceed without them because they cannot afford to send a representative.

Table 7. Case Outcomes in Sample of 100 Non-Payments Cases

	Less	Same	More	Settled	Dismissed	N
All	36%	48%	6%	6%	4%	98
Moscow ¹	29%	55%	6.5%	3%	6.5%	31
Ekaterinburg	35%	47%	9%	6%	3%	34
Saratov	42%	42%	3%	9%	3%	33

Chi square = 3.78, 8 d.f., n.s.

¹Results exclude two Moscow enterprises for which information was unavailable.

processed in a rote manner? Though the emphasis on speed and the pro forma nature of most opinions⁴¹ lend superficial credence to such a view, my review of the decisions made in the cases convinces me that the outcomes generally followed the dictates of the law. The parties evidently agreed, as did the appellate courts. Only seven of the cases were appealed, and the lower court was upheld in five of them.

A majority of plaintiffs got precisely what they wanted. This outcome was most likely when the petition was limited to debt (excluding penalties or interest). Of cases in which the outcome mirrored the complaint, 63% involved only debt.⁴² Yet the courts do not act as a rubber stamp for creditors (see Table 7). More than a third of the petitioners received less than the amount originally requested. The reductions were not overwhelming, averaging about 15%. How representative these results are is difficult to determine. The caseload data lump all non-payments cases together, including those that were dismissed. Thus, taken at face value, it would seem that the petitions are routinely reduced by 50% or more, but these results are spurious and misleading.⁴³ It is impossible to segregate those cases that proceeded to judgment from the aggregate figures in the caseload data.

Within my sample, reductions usually turned on arithmetic rather than on cutting-edge legal issues. Most petitioners were able to document the existence of the debt to the courts' satisfaction, but their efforts to obtain penalties or interest were more unpredictable. Reductions occurred in 45% of the claims involving penalties and 60% of claims involving interest. In most instances, the

⁴¹ The opinions produced by *arbitrazh* judges tend to be terse, as is the style in countries with civil law traditions. The procedural code requires them to explain the reasoning for the decision, but more than half of the opinions (60%) I read gave short shrift to that requirement.

⁴² This strategy was most successful for creditors in Saratov, where 79% of those receiving the amount of their petition had only asked for debt, compared with 69% in Ekaterinburg and 44% in Moscow.

⁴³ The caseload data for 2000 indicate that petitioners in non-payments cases received, on average, 54% of the amount requested in Moscow, 35.5% in Ekaterinburg, and 61% in Saratov.

Table 8. Impact of Size of Petition on Outcome in Sample of 100 Non-Payments Cases¹

	Less	Same	More	N
Less than 5,000 rubles (~ \$167)	22%	56%	22%	9
From 5,001 to 50,000 rubles (~ \$167 to \$1,667)	42%	48%	10%	31
From 50,000 to 500,000 rubles (~ \$1,667 to \$16,667)	36%	60%	3%	33
More than 500,000 rubles (~ \$16,667)	53%	47%	0	15

Chi square = 7.55, 6 d.f., n.s.

¹Excludes cases that were dismissed (eight) or settled (twelve) as well as two cases for which information was unavailable.

impetus came from the judge rather than from the defendant. Judicial activism is not the norm in Russia but has crept into the *arbitrazh* courts thanks to a key section of the Civil Code (article 333), which the Higher *Arbitrazh* Court has interpreted as authorizing trial court judges to take up the question of the fairness of penalties on their own initiative (“Obzor” 1997). Some judges have extended the reasoning to include interest. Thus, the predisposition of the judge, which is not supposed to matter in civil law systems, is beginning to play a role in determining the parameters of judgments.

What else influences outcomes? Certain factors that intuitively would seem to matter turn out to be largely insignificant. For example, size and organizational structure have almost no impact. Large enterprises (open joint-stock companies) turned out to have the same odds of getting more, less, or the same amount as petitioned for, as did smaller enterprises (closed joint-stock companies). Likewise, the amount of the petition has only limited explanatory power. Irrespective of the amount involved, the most common outcome was an award in the amount originally requested (see Table 8). Yet petitions ranging from 50,000 to 500,000 rubles (\$1,667 to \$16,667) stood the greatest likelihood of ending up with what they wanted. Increases over the amount petitioned for were fairly unusual, occurring most often in cases involving small amounts (less than 5,000 rubles, or \$167). Often they came at the behest of the plaintiffs that upped the ante after the case was filed. This was also the group least likely to have the court reduce their requests. Such curtailments were most common among those with more ambitious designs, e.g., petitions in excess of 500,000 rubles, which typically included demands for either penalties or interest.

Pleadings seem to be growing in importance. Traditionally, complaints filed with *arbitrazh* courts have been succinct, rarely exceeding more than two pages (including the list of attached documents). My data indicate that this may be changing. Although a majority persisted with the familiar cryptic style, devoting more space to the calculations than to the textual argument, a significant

(27%) percentage filed petitions with detailed arguments supporting their claims. Their efforts paid off at the margins. Plaintiffs who went the extra mile showed a slightly greater tendency to get more than their original complaint, whereas those who did the bare minimum seemed to get the amount originally petitioned for or less.⁴⁴ Plaintiffs appear to benefit when they lay the groundwork for the court by weaving together their factual situation with the relevant legal standards.

The role of legal expertise is more ambiguous than in adversarial legal systems, where advocates play a crucial role in determining outcomes. The procedural rules do not mandate that firms send a lawyer as their representative or, indeed, that they send any representative. In the early 1990s, lawyers were more the exception than the rule. More often, the general director would go himself or send a top lieutenant. This has changed over the years. Petitioners typically send a lawyer to represent their interests at the hearing. Usually it is an in-house lawyer, though firms specializing in *arbitrazh* practice have emerged in Moscow (the development of this sort of specialized bar has lagged outside Moscow).

The time I spent sitting in on *arbitrazh* proceedings over the years left me skeptical as to whether lawyers represented a value added for enterprises. The lawyers I observed were often poorly prepared and unable to answer basic questions about the underlying transaction. Perhaps this lack of knowledge can be explained by the fact that in-house enterprise lawyers are not part of the inner circle of management and only become involved when a transaction goes sour.⁴⁵ More unsettling was the lack of basic legal knowledge among some. For example, a Moscow case I observed was quickly dismissed when it emerged that the defendant was located in another jurisdiction. Questioning from the judge revealed that the lawyer for the plaintiff was unaware of the 1995 APK provision ceding jurisdiction to the court closest to the defendant. More striking was the complete absence of embarrassment on the part of this lawyer for not knowing this elemental rule. The Moscow judge did not chastise the lawyer, though some judges are less charitable. One Ekaterinburg judge dressed down the lawyers in a case involving a debt owed to the phone company

⁴⁴ Experience with the legal system played a role. Enterprises with legal departments (which were mostly made up of people with university-level degrees in law) were more inclined to file a well-reasoned complaint. Pro forma complaints tended to come from enterprises without legal specialists on staff.

⁴⁵ In field research in the Ekaterinburg court in 1997, the judge grew so exasperated with the inability of the lawyer to respond that she suspended the hearing and ordered the lawyer to bring her general director with her for the resumption of the hearing the next day. For more on the limited role of in-house counsel in Russia, see Hendley, Murrell, and Ryterman (2001).

when they showed up without the relevant documents, telling them that such behavior helped explain why the state was always broke. A dispute like theirs ought to have taken just one hearing, but now they would all have to reassemble, at additional expense. The absence of any sense of shame when their ignorance was exposed indicates a low level of professionalization among these in-house lawyers who inhabit the *arbitrazh* courts. In private conversations, judges regularly excoriated the quality of lawyering but felt they had no mechanism for remedying the situation. The law allowed them to fine those who showed up unprepared, but they resisted doing so because it only created more work for them.⁴⁶

The quality of legal expertise provided in the cases in my database remains somewhat elusive because my information was gleaned from the case file and not from observing the proceedings.⁴⁷ What emerges inescapably from these case files is the ubiquity of representation for plaintiffs. Eighty-four of the 100 plaintiffs sent someone to the *arbitrazh* court on their behalf. Most of them (67 of 84) sent someone with legal training. As might be expected, local plaintiffs (88%) were more likely to send someone than were plaintiffs from other regions (50%).

The very fact that almost all of the plaintiffs sent representatives made isolating their effect difficult. Their impact comes into sharper focus when the outcomes in cases in which the plaintiff representative had the field to itself and those in which both parties were represented are compared (see Table 9). The category of cases in which the plaintiff got more than originally requested is most striking. The plaintiff was represented in all these cases and, in five out of six cases, was the sole advocate present. At the other end of the scale, among the cases in which the plaintiff ended up with less than desired, the influence of representatives is apparent. When only the petitioner was represented, the odds favored getting the amount requested rather than less. But when both sides had representation, getting less emerged as the most likely outcome. This suggests that being able to present their side, even when some liability is a foregone conclusion, inures to the benefit of debtor-defendants.

Yet a majority (55%) of defendants did not participate in the cases filed against them. They neither filed responses of any kind to

⁴⁶ The 1995 APK authorizes fines (art. 54), but no judge in Saratov or Ekaterinburg imposed fines in any case brought in 2000 or 2001. Fines were imposed in only one case (out of more than 40,000 decided annually) in Moscow in 2000 and 2001. Unlike with civil contempt in the United States, where the judge can levy fines in the course of a trial, *arbitrazh* judges would have to hold a separate hearing with all the attendant paperwork.

⁴⁷ *Arbitrazh* courts have no court reporters. A summary (*protokol*) of each hearing is prepared by the judge (APK 1995, art. 123).

Table 9. Impact of Representation on Outcomes in Sample of 100 Non-Payments Cases¹

	Less	Same	More	N
Both sides had representation at the hearing	62%	34%	3%	29
Only the plaintiff had representation at the hearing	27%	63%	10%	48
Only the defendant had representation at the hearing	50%	50%	0	2
Neither side had representation at the hearing	25%	75%	0	8

Chi square = 11.554, 6 d.f., $p = .0726$

¹Excludes cases that were dismissed or settled.

the complaint nor appeared at the hearing.⁴⁸ Indeed, if the cases that were dismissed or settled are excluded, the percentage rises even higher (53 of 89, or 60%). Both providing a written answer and participating in the hearing were optional for defendants. Participation correlated with locale, though not as strongly as expected. Local debtor-defendants were only slightly more likely to take part than were those who had the added hardship of distance. Larger enterprises showed a greater tendency to participate in hearings than did other types of defendants. Interestingly, the propensity to send a representative was not linked with the presence of a legal department. State-owned enterprises, which uniformly had legal departments, sent a representative in only one of six cases (17%), compared with large privately owned enterprises, where eleven of twenty (55%) sent representatives, even though not all of them had in-house legal departments. The amount of the cases did not serve as much of a motivation for defendants. The odds of having a do-nothing defendant were about the same for all of the ruble-denominated cases. The two cases in which the damages were dollar-denominated were fully contested.⁴⁹

But ultimately, the most important question is whether participating affects outcomes. Does it matter? The evidence is mixed. As Table 9 shows, do-nothing defendants were most likely to end up owing the amount originally set forth in the complaint, which was the most common result for the sample as a whole. The fact that participation by the defendant appeared to improve the chances of having the court reduce the petition is undercut by

⁴⁸ Of the thirty-eight defendants that sent representatives, only twenty-one also provided the court with a written answer. Relatively few (three) defendants provided an answer without also sending a representative. Two of these can easily be explained on cost grounds, given that they were located in regions distant from the courts.

⁴⁹ The two dollar-denominated cases, both of which involved amounts in excess of \$2 million, arose in Moscow. The parties were well-established and successful subsidiaries of foreign corporations and likely followed the policy of their parent corporations in sending representatives to the *arbitrazh* court. It is worth noting that in neither of these cases was the petitioner motivated by tax or accounting concerns. No doubt their affiliation with foreign corporations made it unlikely that they would be accused of booking illusory debts.

the similar result for having the court increase the amount, leaving open the question of whether participation is worth the time and effort.

Contextualizing the Russian Experience

Russian industrial enterprises are turning to the courts for assistance in recovering overdue debt in ever-increasing numbers, but they are not suing indiscriminately. Several patterns are clearly discernible. For the most part, creditors are using the courts to go after relatively small amounts and are doing so routinely. Almost without exception, they prevail, often receiving the full amount demanded in the original complaint. These lawsuits tend to involve trading partners with minimal histories together. It follows that the big-ticket disputes between long-term partners are being handled with informal relational methods. Most of the creditors were represented in the *arbitrazh* proceedings, and the data indicate that being represented was beneficial.

Certain aspects of creditors' experience in the *arbitrazh* courts stand out as well. Perhaps the most striking are the low costs associated with commercial litigation in Russia. Few participants bother to hire outside lawyers, preferring to rely on in-house counsel or to forego the use of lawyers entirely. The up-front filing fees are less of an obstacle than they first appear to be. The need to master the procedural intricacies of the system is mitigated by the willingness of *arbitrazh* judges to help uninitiated and even incompetent litigants through the process. This coddling may hamper the growth of the *arbitrazh* courts institutionally, but it unquestionably acts to even the playing field between experienced and inexperienced players. As a result, size and financial wherewithal do not play the decisive role that might be expected.

The patterns found in Russian business debt litigation are basically consistent with what is predicted by the literature, though the specifics of the Russian case illustrate some of their limitations. Priest and Klein (1984) argue that creditors will go to court when the anticipated judgment exceeds the costs of going to court. Given the low cost of litigating in Russia and the virtual certainty of victory, the mystery is not why creditors are using the courts, but why they are not flocking to the courts in even greater numbers. Part of the explanation is provided by Galanter and Roger's (1991) critique of the failure of Priest and Klein's cost-benefit model to take strategic behavior into account. Not all costs can be monetized. Litigation brings with it a danger of rupturing an ongoing business relationship. Though the nonadversarial nature of *arbitrazh* proceedings mutes this risk, it does not eliminate it entirely. A

dispute is inherently contentious and, especially when large sums and/or friendships are involved, the relationship is unlikely to emerge unscathed. Thus, the reluctance of suppliers to U.S. auto assembly plants to bring their disputes to court for fear of severing the relationship is mirrored in the singular absence of Russian creditors with long-term relations from my sample (Kenworthy, Macaulay, & Rogers 1996:653).

Instead, my sample is dominated by enterprises without much shared history. Anonymity tends to lower inhibitions to litigation (Cheit & Gersen 2000). When dealing with new customers that are delinquent, Russian managers see litigation as a no-lose proposition. After all, if customers renege at the outset—when they should be trying to make a good impression—then there is little chance that their behavior will improve (especially if the creditor tolerates it). As Macaulay has noted, when a relationship is irrevocably shattered, resorting to the courts can be “used for scavenger purposes to salvage something from the wreckage” (1977:513). Russian creditors have learned through painful experience that waiting around to be paid by these new customers yields nothing. While litigation offers no guarantees, it does open the possibility of recovering all or part of the debt.

The literature highlights economic instability and uncertainty as factors that tend to stimulate litigation. The argument is that “[t]hey reduce the likelihood of long-term stable relationships among familiar parties, and thereby foster opportunism and mistrust. The basis for reliance on informal dispute resolution is eroded” (Kenworthy, Macaulay, & Rogers 1996:633). But the sort of instability experienced by the U.S. auto industry during the second half of the twentieth century, which was the reference point for Kenworthy, Macaulay, and Rogers, pales in comparison to the economic collapse experienced by Russia after the disintegration of the Soviet Union. Confounding Macaulay’s (1963:62) prediction (which drew on Mentschikoff’s work on the Uniform Commercial Code) that truly profound uncertainty would be a death knell to commercial litigation because of the general inability to satisfy judgments, the pace of business litigation in Russia actually accelerated during its depression. And it increased even though those involved knew that collecting on judgments was a dicey proposition. To be fair, the prosperity of the Western world in recent decades has offered few opportunities to test Macaulay’s prediction. The Russian case suggests that deep economic depression does not necessarily extinguish the desire to litigate.

At a more basic level, the Russian case confirms that uncertainty can retard the development of long-term relationships, which, in turn, can facilitate litigation. Initially, Russian managers found

freedom of contract exhilarating, but the thrill wore off as interenterprise arrears mounted. Not paying became the norm, and one's reputation seemed to be enhanced by an ability to pile on more and more debt without tipping over into bankruptcy. The ability to shirk debt became a source of pride rather than shame. Moreover, the efforts of creditors to prevent delinquency fell flat. In the absence of reliable credit rating agencies and/or a workable system of collateral, creditors were limited to demanding prepayment. But the existence of competitors willing to underbid on the percentage of prepayment required limited the ability of creditors to mitigate risk by insisting on full prepayment. Absent prepayment, only the existence of long-term relationships provided some minimal insurance that payment would be forthcoming. They came with a safety net of interpersonal relations among mid-level managers that had been forged over decades in oppressive conditions of constant material shortages. Not surprisingly, enterprises valued these long-term relationships and were loathe to risk them through litigation. Instead, they took their newer customers to court, reasoning that they had little to lose if the relationship soured, though most indicated in the interviews that they did not expect that outcome. Much like their counterparts in the United States in the late 19th century who did not have access to reliable credit ratings (Kagan 1984:339–40), contemporary Russian manufacturers have no choice but to sell their goods to new and untested customers and hope for the best. Like their predecessors, they use the courts aggressively to collect these debts. Whether the emergence of a more stable financial system will bring an end to the practice of bringing petty debts to the courts (as happened in the United States) remains to be seen.

Looking beyond bilateral relationships, the distaste for litigation among some is no doubt motivated by the lingering skepticism toward law and legal institutions that persists as a legacy from the Soviet era. Notwithstanding the efforts at reform since the late 1980s, many enterprise managers remain openly dismissive of the capacity of the legal system to resolve disputes. The common wisdom that the courts are unusable reflects their contempt. Those who pursue legal remedies seem to do so without any expectation that they will actually collect the full amount owed, but with a sense that a lawsuit may marginally improve their chances of collecting some fraction of it. The low levels of voluntary compliance with the judgments of *arbitrazh* courts speak vividly to the lack of respect of most litigants for these courts. In such an environment, going to court is inevitably just one of a multitude of strategies that enterprises employ to encourage their customers to pay their debts.

Although the willingness of creditors to bring their complaints to the *arbitrazh* courts can fairly be seen as a hopeful sign in the struggle for the “rule of law” in Russia, the use of the *arbitrazh* courts for small-scale debt collection is hardly the most efficient use of limited judicial resources. As my data indicate, most of the cases are disputes in name only, in that the debtor has either explicitly acknowledged the debt or has done so implicitly by not challenging the creditor’s petition. Under the new procedural code, these cases will no longer receive full-fledged hearings, but will be diverted into a “summary” process (*uproshchennoe proizvodstvo*) (APK 2002: arts. 226–229), akin to the mechanism already in place in much of Europe (e.g., Ruhlin 2000; Blankenburg 1994). According to the Chairman of the Higher *Arbitrazh* Court, the new procedure will be “shorter and simpler” (Proskuryakova 2002). Whether the expectations of Russian policy makers that judges will be liberated from processing these petty debt cases will be met remains to be seen. Blankenburg’s (1994) study of how such a regime worked in West Germany and The Netherlands demonstrates the powerful influence of the institutional structure in which the regime is embedded. The existence of a dense network of litigation alternatives diverted most Dutch creditors before they got to court. By contrast, the low cost and expeditiousness of the German system had the effect of promoting litigation. Given the current institutional environment in Russia, the German outcome seems more likely. Russian economic actors have been slow to embrace alternative dispute resolution. Given the novelty of the legislative change (which became effective only in September 2002), precisely how creditors will respond is unclear.

Conclusion

Russia’s experience shows how deeply intertwined the processes of legal and economic reform are for countries making the transition from state socialism toward market democracy. The uneven development of institutions that are integral to the smooth functioning of business has given rise to unexpected patterns of behavior. Yet when studied carefully, the logic behind this seemingly irrational behavior comes into focus. Russian managers operate in a dog-eat-dog world and, absent reliable credit rating agencies and a workable system of collateral, they have limited tools at their disposal for guaranteeing payment. The *arbitrazh* courts offer a cheap, quick, and nonconfrontational way of collecting on ever-mounting debt. The basic functionality of these courts is certainly an achievement, but one that rings somewhat hollow due to the limited ability to collect on judgments. To be sure, a reliable

system of law and adjudication may be a significant factor in abetting economic development, but it is far from the only one. An effective contract law regime may come to matter only in an economy in which creditors can effectively demand meaningful collateral and debtors have enough wealth to provide it.

Methodological Appendix

Access is a perennial problem for researchers in Russia. No longer are we reduced to drawing inferences from the placement of furniture, as was Hazard (1962) due to the uncooperativeness of Soviet court personnel in the 1960s. But neither has the collapse of the Soviet Union blown open the doors to courts, firms, or other institutions. Information continues to be tightly controlled. Officials—whether in the private sector or in state institutions—are loath to grant outsiders permission to observe how their organizations operate or to study their records. When presented with a request for access, their instinct is to turn it down. This is the safe response. If a researcher uncovers information that puts the organization in a bad light, the person who gave permission is likely to be held responsible. Though the consequences are no longer life-or-death as in earlier decades, the likely outcome of dismissal and disgrace is hardly desirable. If access is denied, the only consequence is a disgruntled researcher, who is unlikely to be able to cause much of a ruckus. The researcher can, however, press his or her request up through the hierarchy. In the post-Soviet era, top officials have proven themselves more willing to look at the larger picture and tend to be less threatened by in-depth research. Oddly enough, organizing research aimed at understanding behavior from a bottom-up perspective often requires a top-down strategy.

The legal system conforms to this basic pattern. Indeed, the almost complete absence of any tradition of studying “law in action” made gaining access to the *arbitrazh* courts particularly difficult. Nor was it possible to carry out such research surreptitiously. Though the constitution proclaims the courts to be open to the public, they are not. Armed guards sit at the entryway. In order to get past them, visitors must show a court order (*opredelenie*) documenting their participation in an ongoing case. The guards are more vigilant in Moscow than in the hinterland but, even if I had succeeded in talking myself into the courthouse, I could not have slipped unnoticed into the back of a courtroom. The reason is simple: there is a dearth of courtrooms. Most *arbitrazh* cases are heard not in large courtrooms with ample seating for spectators, but in the cramped offices of judges. As a matter of course, judges ask everyone in the room to identify themselves and, without some

prior arrangement, would ask anyone not connected with the case to leave. Trial judges are skittish about sanctioning research in their court. Even the chairmen of individual courts are reluctant to allow access to researchers without the imprimatur of Moscow. I learned this the hard way when I began my research into these courts in the mid-1990s. With the help of local notables, such as respected law professors and factory managers, I was able to get permission to observe a few cases in Saratov. But my requests to undertake more systematic research were resisted by judicial officials in Saratov. Fortunately, I had made the acquaintance of a justice of the constitutional court, who was an old friend of the chairman of the Higher *Arbitrazh* Court. One phone call opened the door just enough for me to talk my way into the sort of access needed for my research.

Thanks to the intervention of this constitutional court justice, I was able to set up a meeting with an advisor to the chairman of the Higher *Arbitrazh* Court. I asked for two things. First, I wanted to be able to obtain the annual caseload data sent to Moscow by individual courts. Second, I wanted to be able to carry out sociological research in *arbitrazh* courts in Moscow, Ekaterinburg, and Saratov. Based on advice from Russian colleagues, I prepared the text of a letter permitting my research and asked it to be prepared on the letterhead of the Higher *Arbitrazh* Court and signed by the chairman. In a deliberate effort to maximize my latitude at these courts, the proposed language was vague, opening up the possibility of observing cases, talking with courthouse personnel, and reviewing case files. The letter was to be addressed to the chairmen of the courts where I planned to do research, asking them to facilitate my work. The advisor agreed to these two requests, which set the stage for my first foray into the *arbitrazh* courts in 1996. In subsequent years, this decision served as precedent, allowing me to obtain the caseload data and the introductory letters, though never without a struggle. To my knowledge, I am the only person—Russian or foreign—who has obtained this sort of access to the *arbitrazh* courts.

When embarking on the study reported on in this article, I began by asking for introductory letters from the Higher *Arbitrazh* Court. With these in hand, I was able to set up appointments with the chairmen of the three courts. The frosty tone of their secretaries melted instantly when I explained that I was calling at the behest of their bureaucratic superiors. What transpired varied at each of the courts, due in large measure to the size of the court and its organizational structure. None of the chairmen showed much interest in my research. Perhaps their lack of concern stemmed from their familiarity with me. I had previously spent time in their courts without incident, and this seemed to mark me

as harmless. At the same time, each was quick to ask for the letter, and I had the sense that, notwithstanding their cordial feelings toward me, they would not have allowed me access to their courts without the letter.

Without exception, the meetings with the chairmen were brief. In Moscow, the chairman grilled me on U.S. procedural norms for about 10 minutes and then turned me over to one of her deputy chairmen. After a short explanation of what I needed, he shunted me off onto his secretary, who set me up in a vacant office. It was her responsibility to pull cases from the central archive and to facilitate my observation of case proceedings. She was a young woman in her early 20s with no legal training. Not surprisingly, she took no interest in the research. I explained my criteria—interenterprise debt cases resolved at least six months earlier—and she brought me case files. When deciding a case, the judge is required to complete a file card that details the key dates in the judicial process as well as the category in which the case falls. I was not allowed to review these file cards or to interact with the archivist. But these cards, which are kept on file at the archive, allowed cases that fit my demands to be pulled together. Occasionally the cases were miscoded and I ended up with files for cases that did not involve interenterprise debt. When this happened, I requested substitute cases. This secretary also acted as a go-between with trial judges. I was keen to observe and talk with as many judges as possible. Every few days, I would move on to a different judge. During down time, I would review the assembled files of already-decided debt cases.

The chairman of the Ekaterinburg court was more expansive when we met. We had a lengthy discussion of the challenges facing the court, including its rapidly increasing delay rate. Like her Moscow colleague, she was too preoccupied with her own problems to take much interest in my research. Initially she turned me over to a trial judge whom I had befriended during an earlier visit to the court. I pulled up a chair to the side of her desk and made a work space for myself. To be sure, the quarters were less spacious than in Moscow, but the payoff was an opportunity to watch this experienced judge in action. I sat through all of her cases for about a week. She was extraordinarily generous with her time, kicking me out only when she was writing opinions (during which time she is statutorily obliged to be alone). The Ekaterinburg court does not have a central archive. Instead, each judge stores his or her own case files, which gives rise to offices that are literally stuffed to the rafters with packets of case files that have been tied together with twine. This trial judge rifled through her cases and did the same with the files of other judges. After a week, however, she went on vacation. I went back to the chairman, who asked her secretary

to take over the task of gathering cases and intervening with judges to allow me to sit in on debt-related proceedings. Like her counterpart in Moscow, this secretary was a young woman with no legal training who was indifferent to my research. She got cases by going around to different judges and asking them for cases that fit my criteria.

Of the three courts, I have spent the most time at the Saratov court over the past decade, primarily because I would often combine visits to the court with ongoing research at a local factory. As a result, I know the chairman and many of the judges well. The atmosphere is less formal than in Moscow or Ekaterinburg. The chairman answers his own phone, and I am usually able to talk my way past the guards without any sort of escort or pass being required. When I first began coming to his court, the chairman paid fairly close attention to what I was doing. He would call me into his office periodically and ask for updates. But my methods and my commitment to studying mundane cases puzzled him, and he gradually lost interest. When I arrived to carry out this most recent research, he showed only a perfunctory interest in my work. As in Ekaterinburg, I had grown close to several judges in Saratov in the course of my prior visits. I was quickly turned over to these judges. Like Moscow, the Saratov court has a central archive. These judges would intercede with the archivist to get cases that met my criteria. I was given the office of a vacationing judge in which to work. My efforts at observing cases were less successful here than elsewhere. The judges charged with helping me tended to get caught up in their own work and to forget about their promise to fetch me when a case began (even though the office I had been given was adjacent to theirs). Whether this was a deliberate strategy was unclear. They were unfailingly courteous, but just as unfailingly neglectful in this one matter.

Although the manner in which the cases were pulled together varied among the courts, my methodology was consistent once I had the case files in hand. I prepared a standard form for taking notes that facilitated the subsequent coding process. The across-the-board similarity in the organization of the case files made this easy. As a rule, a file includes the pleadings and the supporting documentary evidence, e.g., contracts, shipping documents, and correspondence, but not transcripts of the proceedings. The only record of what transpires is a one-page handwritten “judicial protocol” (*sudebnyi protokol*), which, because it is prepared by the judge while he or she is simultaneously running the hearing, typically provides only a bare-bones (often handwritten) record of who was present, the petitions put forward, and any orders issued by the court. Based on my notes, I later coded the cases for a number of basic issues, such as the locale and organizational

structure of the parties, their use of lawyers, the amount of the petition and the issues raised therein, the elapsed time between the filing of the petition and the issuance of the opinion, the outcomes, and the presence or absence of an appeal. I took detailed notes on the pleadings, the supporting documents, and the judicial rulings in order to familiarize myself with the merits of the cases.

The general lack of familiarity with the “law in action” approach made it difficult to organize. But once I got my foot in the door, the fact that judges were unfamiliar with the approach actually worked in my favor. Most Russian legal scholarship is doctrinal and, to these judges, the idea of studying how courts handled routine cases was a waste of time. As a result, no one saw me as a threat but, rather, as a pest. My gender as well as my accented and sometimes syntax-challenged Russian also contributed to their perception of me as harmless. For many of the judges I observed and interviewed, I was the first person who had ever shown any interest in their activities. At the outset, some were unsettled by the presence of an American in their chambers and, because few of them had ever met a foreigner before and had many questions, we often had to begin with a conversation focused on the United States. This rarely lasted more than a half hour and typically had the effect of loosening the reserve of the judge. I was usually able to transition the conversation into a discussion of the pluses and minuses of the job and the current state of the *arbitrazh* courts.

Whether sociological approaches to studying law will become more common in Russia and other former Soviet republics remains to be seen. For foreigners, access remains a formidable obstacle, and the reinvigoration of conservative political forces in recent years suggests that these difficulties are unlikely to diminish in the near future. Although domestic scholars also face access issues, these are not the primary motivation for their failure to undertake empirical research on how law operates. There is simply no tradition of doing this sort of research. Neither the law faculties nor any of the social science faculties (which have undergone significant reforms over the past decade) have embraced legal sociology. Established scholars stick with the tried-and-true approach of analyzing the black-letter law and, absent role models, younger scholars do the same. Given the constantly shifting legal landscape, the need for empirical research is compelling, but remains largely unperceived by both scholars and policy makers in these countries.

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