

EXTRACTING VALUE FROM THE NEGOTIATION PROCESS WITH SUPPLY  
CHAIN MANUFACTURERS AND SUPPLIERS

by

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## Abstract

The purpose of this research was to measure whether or not executives who decided to invest company assets in the process of negotiating contracts were realizing any return on those assets. Executives who were entrusted to manage the operations of the company were expected by their Board of Directors, to do so with a discipline that supported increasing revenues to the company year over year. Unfortunately, there was no method or design within the companies sampled, which indicated any strategy to determine if entering into contract negotiations with existing business partners or new partnerships was of any value. As a matter of course, companies often engaged in protracted negotiations with little to show and less support that the final contract would significantly mitigate risk for the parties involved in the negotiations. The researcher focused upon a sampling of publicly traded companies within two key business sectors: General Warehouse and Storage, Construction Machinery and Manufacturing. The researcher assumed that these two groups had a long history of developing and managing partnerships within the supply chain manufacturer and supplier design. The researcher determined that there was significant opportunity for executive management to expect more from the process of contract negotiation. The literature on the subject of negotiation and contracts was rich in testing for the various strategies used by negotiators, identifying behaviors, which counter parties could leverage, emulate, or build a strategy around, and recognizing what executives should expect from the attorneys who developed and prosecuted contracts; however, little discussed what they could or should expect in return. The results of this dissertation intended to act as an encouragement to leaders of companies to assign a greater value to the process of negotiation as an additional avenue

to guard the shareholder value of the company through the deployment of a more sensible and measured response to the process of negotiating contracts between supply chain manufacturers and suppliers.

## **Dedication**

The achievement of this dissertation would not have been possible without the support and sacrifice of my beloved wife, Bianka Karger. In fact, she pushed me towards the pursuit of this degree from the precipice, which I had stood looking down from for so many years. Thank you, Bianka, for all of the time you have given up, which we would normally have spent together, so I could pursue this objective.

## Acknowledgments

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I also owe a debt of gratitude to my committee members: Dr. William J. McKibben Ph.D., for demonstrating that statistics has a reason to exist and there really is intrinsic value to be realized from getting it right; and Dr. Mary F. Whitman DBA, for opening doors for me to go through when I did not even see the walls which contained them.

I also would like to express my appreciation to Catherin Myburg at Precision Consulting, for her invaluable assistance, patience, and terrific listening skills used in supporting my hypothesis testing extracted through SAS and helping me to make sense of the results, as well as to their distinguished team of editors who scrupulously unraveled what I may have done to the English language. Finally, I wanted to recognize Dr. Jane Yank who rescued me from the conundrum of the world of variables by helping me to solve the great mystery that they had presented for me in this dissertation.

## Table of Contents

CHAPTER 1. INTRODUCTION	1
Introduction to the Problem	1
Background of the Study	3
Statement of the Problem	4
Purpose of the Study	6
Rationale	6
Research Question	7
Significance of the Study	8
Definition of Terms	9
Assumptions and Limitations	10
Nature of the Study	11
Organization of the Remainder of the Study	12
CHAPTER 2 LITERATURE REVIEW	13
Theoretical Framework	13
Supplier Manufacturer Negotiations	25
Cost and Risk Management	40
Conclusions	57
CHAPTER 3 METHODOLOGY	58
Research Design	59
Population	60
Sample	64
Data Collection	64
Hypothesis	66



Data Analysis	67
Validity and Reliability	67
Ethical Considerations	67
CHAPTER 4: DATA ANALYSIS AND RESULTS	69
Introduction	69
Description of the Sample	70
Summary of the Results	75
Chapter 4 Summary	80
CHAPTER 5: DISCUSSION, IMPLICATIONS, RECOMMENDATIONS	81
Discussion	81
Implications	84
Recommendations	87
REFERENCES	91
APPENDIX A. RESEARCH DATA STATISTICS	100
APPENDIX B. RESEARCH DATA FROM NAISC	101
APPENDIX C. COMPANY INFORMATION	102

## List of Tables

Table 1. Sample Size.	64
Table 2. Data Extracted from 10K Securities and Exchange Reports for Sample Population.	65
Table 3. Scale of Input.	66
Table 4. Results of NAICS Data Extraction for NAICS 333120 and 493110.	70
Table 5. Results of NAICS Data Extraction for Corporations for NAICS 333120 and 493110.	71
Table 6. Descriptive Statistics of Gross Profit Margin for 2012, 2013, and 2014.	72
Table 7. Descriptive Statistics of Revenue Growth for 2012, 2013, and 2014.	72
Table 8. Descriptive Statistics of Operation Margin for 2012, 2013, and 2014.	73
Table 9. Descriptive Statistics of Gross Profit Margin, Revenue Growth, and Operation Margin Averaged over 2012 to 2014.	73
Table 10. Descriptive Statistics of Operational Risk (Lawsuits Filed).	74
Table 11. Frequency Table of Operational Risk (Measured as Lawsuits Filed or Not).	74
Table 12. Shapiro-Wilk's Test of Normality for Dependent Variables.	76
Table 13. Mann-Whitney U ranks for Hypothesis 1.	77
Table 14. Mann-Whitney U test Statistics for Hypothesis 1.	77
Table 15. Mann-Whitney U ranks for Hypothesis 2.	78
Table 16. Mann-Whitney U test Statistics for Hypothesis 2.	79
Table 17. Mann-Whitney U ranks for Operation Margin.	79
Table 18. Mann-Whitney U test Statistics for Operation Margin.	79

## List of Figures

Figure 1. Effect of contracts on company profitability and effects of negotiation on firm profitability.	11
Figure 2. Effects of contract requirements on company assets.	13
Figure 3. Average frequencies of bargaining steps and the duration of negotiations.	31
Figure 4. Effects of completed contracts on profitability.	40
Figure 5. Population sources.	62
Figure 6. Frequency table of grouping variable and lawsuits filed (none vs. one or more).	75

## CHAPTER 1. INTRODUCTION

### Introduction to the Problem

The supply chain had become a standard operating process, requiring suppliers and manufacturers to form networks in various markets in order to serve customers (Rief & Van Dinther, 2010). The inclusion of many unaffiliated companies, trying to serve the same customer, could create variability, which could have an economic impact on the entire supply chain, as well as the companies within that chain. The use of contracts, negotiated between supply chain members, were designed to apply a governing framework to these relationships. Brandon-James, Ramsay, and Wagner (2010) viewed the relationship between these multiple parties as having a common understanding of firm goals, including governance of intercompany operations, cost reduction, and eliminating the risk of companies acting in self-interest from the information gained in the supply chain relationship. The process of negotiating contracts continued as a standard tool for recording agreements between companies. Companies employed negotiators to ensure that the flow of knowledge between parties, during the negotiation process, would be sufficient to build trust between the parties. Trust, as suggested by Skandrani, Triki, and Baratli (2011), could reduce the costs necessary to achieve agreements and improve the time and effort required to carry out the agreed actions between parties (Chow, 2008; Dyer & Chu, 2003). However, was this investment in the contract negotiation process worth the cost of salaries, risk of delays in production, rising commodity costs, and the loss of market share due to delays in delivery, as the negotiation process dragged on? Anderson and Dekker (2009) contended that manufacturers negotiated for assurances from suppliers for goods delivered on time and

to meet the manufacturers' requirements for quality and accuracy, while suppliers negotiated to lower costs for those goods and services directed at creating the product or delivery of services. In the case of the manufacturer and supplier, both parties were negotiating contract requirements for economic self-interests as the core strategy of their alliance. Parkhe (1993) defined these strategic alliances, as "relatively enduring interim cooperative agreements, involving flows and linkages that utilize resources and or governance structures from autonomous organizations, for joint accomplishment of individual goals linked to the corporate mission of each sponsoring firm" (p. 581).

Contracts between manufacturers and supply chain partners covered a wide variety of services and commodities. The strategies pursued by companies during contract negotiations might be less clear, according to Zachariassen (2008), whose research suggested that the amount of literature on commercial strategies in commercial negotiations remained "sparse" (p.770).

The rationale for this dissertation built upon seminal research from Anderson and Dekker (2009), Davison, Sebastian, and Harley (2011), Nystén-Haarala, Lee, and Lehto (2010), Swinney and Netessine (2009). Anderson and Dekker (2009) evaluated the strategic importance of contracts upon the cost management structure of companies. The authors identified a core metric, which managers could refer to when determining the economic gains or losses from protracted negotiations. Managers of supply chain companies must be able to determine whether the resources, which they committed to the process of negotiating contracts with other supply chain relationships, resulted in increasing revenue or whether negotiating contracts had a marginal or no effect at all upon revenue.

## Background of the Study

The research for this study included searches in the Business Source Complete and ABI/INFORMS Global databases and utilized the keywords of negotiation, contracts, supply chains, behaviors, relationships, cost, and managers. The volume of research available on negotiation was an excess of 9000 articles, covering the period of 2009 to the present. This research concentrated primarily on negotiation strategy, contracts used as a tool for companies to manage risk, the behaviors of negotiators, and the role relationships played in buyer seller transactions. Wagner, Coley, and Lindemann (2011) referred to the conclusion of Dwyer, Schurr, and Oh (1987) when considering relationships between firms, which “benefit from attention to conditions which foster relational bonds leading to reliable repeat business” (p.12). Wagner et al. (2011) considered the basis for the concept of developing long-term relationships in supply networks as an asset, which could lead to measurable performances of those suppliers. Wagner et al. (2011) used the conclusion by Dwyer et al. (1987) to develop a framework to test the effects of buyers’ perceptions and suppliers’ reputations’. Wagner et al. (2011) concluded that buyer’s perception of supplier reputation was the start of collaboration. The research of Mortensen (2012), Malshe, Al-Khatib, and Sailors (2010) developed models that changed the paradigm of negotiations from an adversarial to a collaborative approach. Mortensen (2012) summarized the research by recognizing the significance that emotion could have on the negotiation process.

An opportunity existed for lawyers to step back from their traditional role of providing order, through the application of contract law, and provide simple solutions for opposing parties in business (Barrett, 2012). Dimatteo (2010) considered transactional

law as a significant way by which companies could gain competitive advantage, and he considered the way a contract was utilized as a strategic tool of businesses.

### **Statement of the Problem**

Marinescu (2006) noted that a cost could be applied to the human interaction, where participants took actions and made decisions, which resulted in gains or losses. These transactions, according to Marinescu (2006), could have a cost ascribed to them. What Marinescu (2006) described as the costs of transactions was built around the investment necessary by participants to obtain the necessary information to effectively participate in this course of interaction. This was the process of negotiation: to accept one set of advantages or disadvantages in tradeoffs for another.

The cost of this process, according to Marinescu (2006), included not only obtaining the information necessary to engage in the transaction, but also the costs for writing the final contract, protecting intellectual property rights, and enforcing agreements (Marinescu, 2006). The impact of these costs on a company could affect profitability. Marinescu (2006) referenced Nobel Laureate Ronald Coase (1960) to support the reasonableness of this approach in controlling costs through utilizing a negotiation strategy:

The argument has proceeded up to this point on the assumption . . . that there were no costs involved in carrying out market transactions. This is, of course, a very unrealistic assumption. In order to carry out a market transaction, it is necessary to discover who it is that one wishes to deal with, to inform people that one wishes to deal and on what terms, to conduct negotiations leading up to a bargain, to draw up the contract, to undertake the inspection needed to make sure that the terms of the contract are being observed, and so on. These operations are often extremely costly, sufficiently costly at any rate to prevent many transactions that would be carried out in a world in which the pricing system worked without cost. (p.144)

Nystén-Haarala et al. (2010) also referenced Coase (1960, p.119) when they suggested that the transaction costs, generated from entering into and defending contracts, was a target of cost reduction for the companies engaged in these transactions. According to Nystén-Haarala et al. (2010), there were two schools of research on contracts; the first treated the process as a part of contract law, while the second was based on the economics of transaction costs, and they concluded that “*Research that combines both contract law and economics is rare despite the clear need to study the functions and use of contracts from a multidisciplinary approach* (emphasis added)” (p.464).

The cost of negotiating contracts between firms should be of interest to executive management, whose responsibility was to deploy capital into the business to increase the Return on Assets (ROA). The amount of academic research on whether executive managers were realizing value from the use of company resources when negotiating contracts remained limited. The objective of this dissertation conducted research, which could provide managers with information they could use when determining the level of resources they should commit to the negotiation process. The research surveyed the experiences of managers in the contracting process and evaluated whether the efforts and resources expended satisfied the participants and yielded any positive (negative) financial outcomes for the company they represented. The research in the area of negotiations was pervasive, regarding how behavior effected negotiation, the need to share information, and to develop collaborative relationships, but fell short when contributing to the manager’s abilities to make decisions on how they engaged in the negotiation process,



and whether the company should view negotiations as part of a longer term strategy with a place in the company's business plan.

### **Purpose of the Study**

The purpose of this research analyzed the relationship between supply chain managers' commitment to the negotiating process and levels of firm revenue. This study attempted to achieve an understanding of managements' level of commitment during contract negotiations. The research determined if the negotiation of contracts, by a company, could be considered a cost of doing business and could test the theory of Anderson and Dekker (2009), who suggested that firms should consider strategic cost management as a method by which firms could align cost structures with strategy. A contract consisted of an obligation of standards between companies, which bound them to the activities of the agents, who were the subject of the contract (Sergeevich, 2012). Sergeevich (2012) stated that these obligations had an impact on costs with the parties; this was a result of companies making decisions based on the economic value of those relationships and the information collected during the course of those relationships. Sergeevich (2012) underscored that the processes of accumulating resources could take time to yield results, which could help or hurt a company; however, the knowledge gained from this process would always have some value for the company.

### **Rationale**

The research on the value of negotiations remained important because of the effect that contracts had in business on the revenue of the organization. Camén, Gottfridsson, and Rundh (2012) considered that contracts remained a critical element in developing relationships in business. Camén et al. (2012) suggested that a contract was

not only a way for companies to communicate their information, but also was a means to mitigate risk during that relationship. In addition, Flamholtz and Randle (2012) viewed contracts as a strategic weapon for a company. Although these views supported the need to have contracts, they did not address the value of the process and whether the relationship building, risk management, and information sharing provided management with guidance on how to commit the company resources during contract negotiations. The research must be conducted to extend the discussion on contracts, which could provide data to support the decisions of managers in the supply chain.

Davison et al. (2011) reviewed the top issues, which influenced the negotiation process, and how flexibility could affect the outcome. Eliminating or reducing these issues could help management reduce costs through establishing negotiation timelines. Nystén-Haarala et al. (2010) considered how flexibility effected contract negotiations. Swinney and Netessine (2009) engaged in the study of the supplier manufacturer game theory to evaluate the preferences of long or short-term contracts. Swinney and Netessine (2009) presented a model, which provided a basis for research to determine the length of time managers would want to commit the company to during the course of contract negotiations. These works formed the basis of this research.

### **Research Question**

The question researched in this dissertation was as follows: “To what extent does the use of company assets by executive management, for the purposes of contract negotiation, affect the profitability, revenue, and risk management of the company?”

The use of profit, ROA, revenue, and costs as a dependent variable would be contrasted against the independent variable of executive role for contracts, regulatory

actions, and operational risks. A sampling of companies was separated into two groups. This was in order to test the hypothesis of whether the use of company assets by executive management, in the process of contract negotiation, had any effect on the financial performance of the company.

### **Significance of the Study**

The existing research considered the value of a contract to enforce commitments between parties, but did not comprehensively address whether managers could use the negotiation process as a means to control costs and add revenue to the company. Anderson and Dekker (2009) labeled this approach as a “deliberate decision by management aimed at aligning cost structure with managing the enactment of strategy” (p. 202). The objective of this dissertation focused on providing research that could assist managers in evaluating whether they should commit resources to the negotiation process.

Nystén-Haarala et al. (2010) argued for intensifying the research on the use of contract negotiations to reduce operating costs in business, and they argued to have managers consider the economics of negotiating contracts by supporting methods to establish globally accepted practices. On the other hand, Buvik and Andersen (2011) called for research into how investments, which were made in the purchasing process, might lead to more strategic decision making. In addition, Marinescu (2006) underscored the importance of collaboration on economic cost controls in supply chain management.

A large part of the design of the contract, argued Barrett (2012), was to put companies into a better defensive position in the event of a breach; however, Barrett (2012) argued for a change in strategy from companies funneling assets into this process without recognizing the effect on labor and impact on the financial statement.

Camerinelli (2008) pointed out that the use of contracts to dictate payment terms was, in fact, a strategy that companies could use to improve cash flow, and it would be a financial boost to banks if they collaborated on an all-business process to improve profitability and take greater responsibility.

This study would present, to executives of supply chain companies, the cause and effect that could affect their firms' financial performance through the deployment of those assets, which were intended to deliver a workable contract. Would the investment in the negotiation process return greater value to shareholders or detract from revenue by pursuing a course of contract negotiations, which might be confrontational, one-sided, and increase operational costs from managements' unwillingness to share information with partners, or would it reduce costs and deliver higher returns?

### **Definition of Terms**

***Return on Assets (ROA):*** The ratio between operating income and total assets (ROA=Operating Income/Total Assets) (Seong-Jong, Nixon, & Stoeberl, 2011).

***Breach of Contract:*** A failure by either party to maintain their responsibilities under the contract (Wilkinson-Ryan & Hoffman, 2010).

***Operating Expense (OpEx):*** Cash required to cover the operational needs of the company (Dreyer, Erasmus, Morrison, & Hamman, 2013).

***Operational Risk:*** The ability of a company to identify and manage risks created within the organization and through business practices (Enescu & Enescu, 2010).

***Profit:*** Profit was equal to income less expenses (Barker, 2010).

**Regulatory and Compliance:** Programs and processes implemented by companies and audited for compliance by state, local, and federal agencies to mitigate contract fraud and elevate ethical standards (Weber & Wasieleski, 2013).

**Revenue:** The inflow of economic benefits during the period that arose during the course of ordinary activities of an entity, when those inflows related to contributions from equity participants (Nobes, 2012).

### **Assumptions and Limitations**

Assumptions for the research were that (a) suppliers and manufacturers, as a routine course of business dealings, entered into contracts. Fehr, Hart, and Zehnder (2011) noted that companies found it difficult to write long-term contracts, due to the uncertainty of such time frames; however, these same companies expected that they would be able to reap the benefits, which they felt were owed to them from entering into contracts in the first place. Other assumptions were that (b) suppliers and manufacturers negotiated the terms and conditions between parties, as a requirement for entering into contracts with one another; (c) contracts, which were near the expiration of the term, were not always renegotiated; (d) managers, at supply chain companies, had an objective to increase revenue for the company; (e) companies would incur a cost to engage in negotiations; and (f) companies did not have a line item on financial statements to account for the cost of contract negotiations.

The limitations of the research were: (a) An inability to determine if all managers focused on profitability of the company as an objective; (b) it would not be possible to break out the financial costs of the negotiations for both parties, and, as a result, these costs would not be extracted from the company's financial statements; however, OpEx

could be extracted as a surrogate for these costs; and (c) information, regarding a company's overall strategy, might not be available.

### Nature of the Study

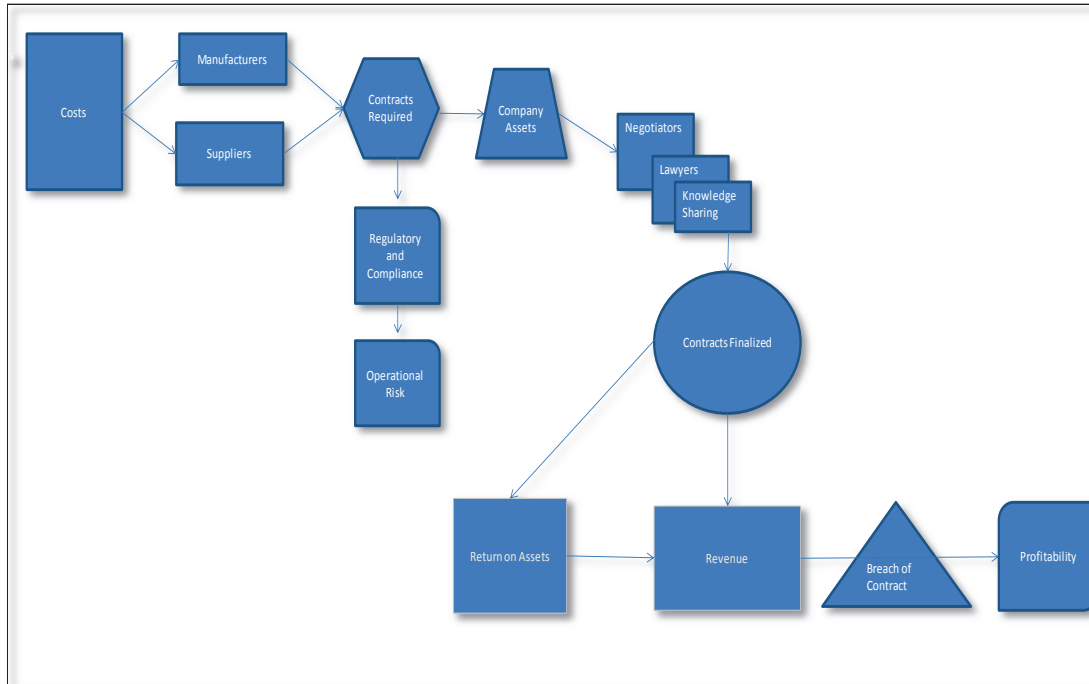


Figure 1. Effect of contracts on company profitability and effects of negotiation on firm profitability.

The study utilized a quantitative design for this dissertation, which included an analysis and comparison of two groups of publicly traded companies from the NYSE, NASDAQ, or the AMEX. Each of the two groups were identified by the corresponding North American Industry Classification System (NAICS) assigned to them through the United States Government. The first sampled group was the public storage and warehouse division. In the second group, the researcher's sample was drawn from the construction machinery and manufacturing division. The researcher deleted, from the sampling, any company that was not publicly traded or did not issue a 10K Report to the

Securities and Exchange Commission. The 10K Securities and Exchange Commission filings for each company, within this population, was used to compare the revenue, ROA, profit, and OpEx for three consecutive years from each company selected for the sampling.

The researcher also analyzed the exposure to operational risk for the publicly traded companies in the samples. Legal actions, which were brought against companies for allegedly breaching contracts, could present a monetary and reputational cost to a company. Lastly, as a means to test the level of commitment of the sampled companies to contract negotiations, the executive management of these suppliers and manufacturers, using the 10K reporting structure, were reviewed to identify any instances where negotiations could be shown to have importance by assigning these responsibilities to an officer of the company.

### **Organization of the Remainder of the Study**

Chapter 2 reviewed the relevant literature in order to establish a foundation for the proposed research. The review of the literature examined the seminal authors in the field of negotiations, contracts, supply chain strategy, and the cost of self-interest directed negotiations between parties. The literature review intended to demonstrate the effect that the prevalent research had in furthering the results of the proposed research questions. Chapter 3 presented the design, which would be deployed to address the research questions and test the hypothesis.

## CHAPTER 2 LITERATURE REVIEW

### Theoretical Framework

The literature review, conducted for this dissertation, identified a significant amount of research on the negotiation process, the behaviors of negotiators, lawyers, managers, and how their actions affected the outcome and timing of negotiations. Strategy in the negotiation process was also surveyed, as a review of firm tactics, including how collaboration and knowledge sharing could affect outcomes and the role of contracts, as an approach to cash management.

#### Purpose and Intention of Contracts between Buyers and Sellers

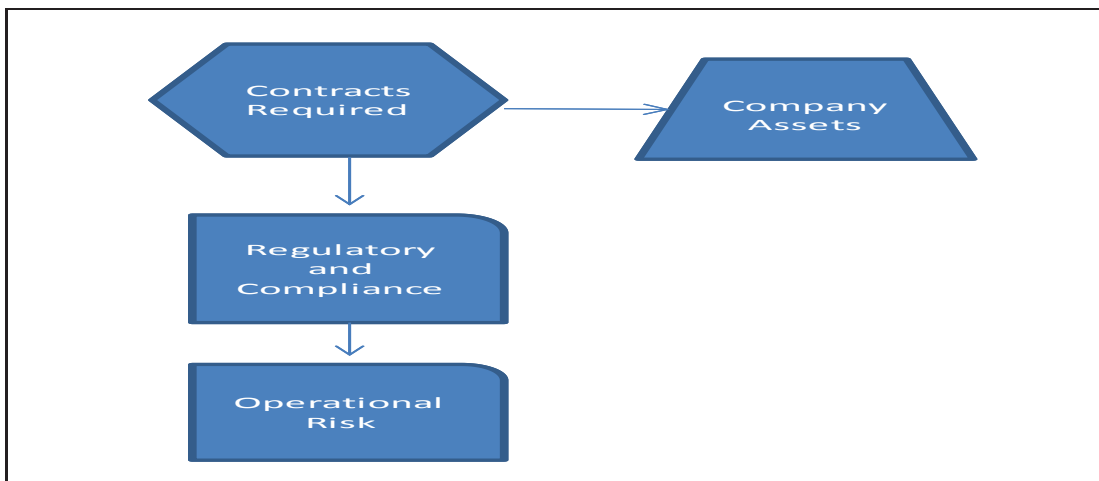


Figure 2. Effects of contract requirements on company assets.

In today's supply chains, negotiating contracts between suppliers and manufacturers had become standard procedure amongst firms, conducting business with one another. Oftentimes, contracts were initiated to support new working engagements; at other times, contracts were a renewal or an update of commitments between established partners, which they felt was necessary to memorialize in another contract. Achieving these goals for companies could bring significant obstacles and costs for each party.



Davison et al. (2011) identified the top ten problems that arose out of completing contracts, which included supplies, small purchases, capital expenditures, professional services, contract services, software, leases, and construction. Davison et al. (2011) had an objective to measure the probability of problems and consequences, arising out of the process to gain signed contracts for these services. Davison et al. (2011) sent out 436 surveys directed to managers and supervisors of U.S. and Canadian public works departments; they received a 24% response rate. What Davison et al. (2011) learned from that survey was that the value of advanced knowledge, given to negotiators, had the ability for participants to anticipate and solve problems when negotiating contracts. When companies helped one another prepare, collaboration increased and unfavorable consequences were reduced. This return on their efforts formed a basis for the value that collaboration between parties could have on ensuring successful outcomes from the negotiation process.

### **Collaboration and other Behaviors between Negotiators**

The work of Davison et al. (2011) aligned with the wide volume of literature, which encouraged collaboration between supply chain manufacturers and suppliers and remained an important basis for the research of this dissertation. The authors suggested that there existed a series of objectives or must haves for contract negotiators, which involved obtaining the right product, at the right place, at the right time, with the right quality, price, and source.

An important theme in the literature of negotiation was whether negotiators viewed themselves as representatives of the company strategy and the guardians against any risks that might befall their company. This perception by company negotiators could

have an ill or favorable effect on the probability of success. In addition, these reciprocal elements set up the push and pull relationship between these same partners, where the behaviors of suppliers, the flexibility that they exhibited, and the support of management of the companies that they represented might influence the value they could ascribe to the contract process. This aligned with the survey results obtained by Davison et al. (2011), where respondents claimed that the greatest difficulties encountered in obtaining a finished contract remained with professional and contract services; they concluded that increased efforts were necessary to ensure that the company resources, including the involvement of managers in the negotiation process, would return a higher probability of reaching agreements.

Managers had an opportunity to affect favorably the contract negotiation process. Davison et al. (2011) saw an opportunity for the entire process to improve through collaboration, information sharing, and utilizing the contract as an overlay to enforce the right behaviors and performance measurements. In addition to the modification in strategy of the standard contract changing because of the marketplace, the researchers argued that the purpose of contracts evolved from a document presented to the court, to a strategy for companies to deploy. In research by Barrett (2012), he commented on the need for updated perceptions of contracts; he argued that the language in a business contract must be changed because only lawyers understood the language, which contracts contained. Barrett's (2012) view represented yet another historical perspective of the role for contracts, as was the role of contracts to manage risk in business, which Barrett (2012) suggested was intended to bring order into the transaction by establishing rules of engagement between the parties of the contract.

The traditional role of lawyers utilized the language of contracts to manage risks associated with the business relationships on behalf of clients. Barrett (2012) saw a disconnect from the courts' experiences with contracts, which were intended to apply a level of consistency between parties to a contract, and suggested that the courts might have failed to consider how society had changed, and the law, which applied to contracts, would need to change as well. Barrett (2012) argued that judges, at one time, used the instances of common law to decide disputes, but today's business lawyers relied on legal precedent to obtain a favorable decision. Barrett (2012) argued that the problem existed that in these precedents, which lawyers relied on to make their cases, were outdated. These practices suggested a reason why traditional contracts excluded more important contemporary attributes for successful business relationships, such as the ability to share information, access information systems within a supply chain, foster collaboration, and ensure that metrics were agreed to within a contract to manage effectively the relationship. Barrett (2012) was concerned about the value of a contract being useful in contemporary business because it was constructed upon an antiquated framework.

The perception of the value of the contract itself was decided by Macneil (1980) who considered the contract valuable because of the flexibility, which it offered to business partners, to apply the framework of the document between a buyer and a seller. Macneil (1980) argued in favor that, once a contract was signed, the seller could impose on the buyer whatever means the contract allowed to enforce any of the claims by the seller, and the buyer had similar power to enforce rights afforded under the contract. The idea of developing relationships between parties was a more contemporary use of a

contract that was preferred by the corporate lawyers, which Barrett (2012) argued against, negatively.

Mortensen (2011) discussed the value of developing relationships. He considered fostering relationships as an alternative that companies should recognize as an attractive feature they could offer to one another. The gains, under this structure, appreciated the commonality of interests and afforded companies a competitive advantage through swifter negotiations with far more collaborative partnering, leading to increased revenues. Mortensen (2011) acknowledged that the increase of attraction between companies resulted from businesses having increased dependency on one another. Mortensen (2011) drew an analogy between the value of attractiveness in partnerships between companies and their ability to form successful relationships, supporting supply chain activities. Mortensen (2011) concluded that successful companies could be identified by the way company representatives conducted themselves throughout the negotiation process.

The idea of collaboration and relationship building as a pathway to trust continued to occupy the literature of contract negotiations. The role played by relationships in inter-firm negotiations was explored in the qualitative research of Camén et al. (2012). They examined how four companies approached this issue. The authors agreed with the conclusions of Barrett (2012) that the purpose of a contract was simply to apply a framework to business relationships, and once parties signed an agreement, it was rarely reviewed.

This idea of the frequency contracts were referenced suggested that companies might want to consider the amount of resources they committed to the negotiation of future agreements. Why not simply retain the original agreement and avoid the cost of

negotiation of agreements with existing partners? In fact, the establishment of longer-term relationships and the infrequency, which the contracts that supported these relationships were reviewed or renegotiated, suggested that sufficient trust had been established, as was the case with Krishnan, Miller, and Sedatole (2011). Camén et al. (2012) interviewed management of the company and sample criteria, which was established and culled from contracts that the company had entered into. The authors came away affirmed that contracts played a critical role in the relationships with inter-companies in the supply chain. Camén et al. (2012) noted, “In the private sector the relationship forms the contract” (p. 208). The authors developed a foundation for the value of a contract in business when they cited Blois (1998), Liljander and Strandvik, (1995), who posited that a “business relationship exists if there is repeated business transaction and contracts between parties” (p. 208).

The value of developing and maintaining relationships between suppliers and manufacturers found additional support from Camén et al. (2012); they cited three reasons for companies to use contracts; contracts (a) functioned as a communication tool for the transmission of information from one party to another; (b) reduced uncertainty and risk by stating each other’s contribution to the relation; or (c) the contract fulfilled the requirements of an accepted practice in a given business setting (Roxenhall & Ghauri, 2004). This was meant to record the agreements between buyers and manufacturers within a framework of expected behaviors and metrics. Although Camén et al. (2012) did not suggest any priority based about the reasons for utilizing contracts, in general, contracts remained an accepted and expected business practice. The idea of the necessity of a contract, in order for companies to engage one another safely and profitably, had

been the impetus for attorneys, negotiators, and managers to engage in the costly act of creating contracts in the first place. Camén et al. (2012) saw the purpose of a contract, as governing the business relationship, and that it was a structure for the business to follow. Camén et al. (2012) noted that the document intended to support the changes in the growth of companies and their relationships, that the legal framework held the document in place, and that the understanding the companies reached guided them.

This was where the authors introduced the idea of trust. Camén et al. (2012) recognized that a contract was only the foundation and that only trust could guide the relationship between companies. The authors outlined five steps in the negotiation process: (1) pre-negotiation stage, (2) specifying stage, (3) bargaining stage, (4) agreement, and (5) post-negotiation stage. According to Camén et al. (2012), the contract should legally commit the parties, provide enforcement, and define requirements.

### **Determining the True Value of a Contract**

Camén et al. (2012) concluded that the contract could have questionable value as a document in some cases, while, as the authors concluded,

In other cases the contract is seldom or never used once it has been drawn. The contract just exists as giving the formal structure in which the relationship exists and develops. In other cases the contract becomes the instrument by how the relations between the parties are managed and regulated. (p.213)

In these cases, was there any value in repeating the process? Was the risk to these well acquainted partners any greater that they should have considered a contract to manage potential risk? The intention of the contract, as a backstop to behaviors, intended to be a tactical weapon in the courtroom, with one of the strongest testaments to the

effectiveness of this design, the decision by a judge as to which of the parties would prevail when the contract was determined to have been breached.

The summary of the qualitative data collected by Camén et al. (2012) indicated that contracts served a fundamental purpose of providing confidence to inter-company participants and allowed participants to further their relationships with host companies. One other criterion, which was set forth by Camén et al. (2012), was for contracts to function as a communication tool for the transmission of information from one party to another.

In what was considered for the purposes of this dissertation as seminal literature, Nystén-Haarala et al. (2010) pointed out that business people viewed business contracts as having been designed by lawyers and were meant to keep the company and its management out of problems. They also believed they were meant to position strategically the company to defend itself in the event of a dispute. The authors contended that this view of contracts set up an adversarial stance between parties, as the document was considered to have served the interest of one party over the other. Nystén-Haarala et al. (2010) argued that the changing business dynamic, as represented by the design of the supply chain, encouraged collaboration over self-interest of these parties. In theory, argued Nystén-Haarala et al. (2010), the nature of relationships, within the supply chain, called for flexibility. Nystén-Haarala et al. (2010) wanted to see companies become more flexible, and these same companies should agree upon the need of adding “softer terms” (p. 463) to agreements. Nystén-Haarala et al. (2010) contended that “hard terms” (p. 463) of a contract, where a result of economic inevitability, profit maximization, cost savings, and soft elements were connected to flexibility, “taking partners into consideration for

mutual benefit” (p.463). The authors recommended that companies used soft terms to ensure that risks were equally balanced and relationships strengthened. Nystén-Haarala et al. (2010) cited a gap in the literature of contracting, which they claimed was “*no comprehensive theory on contracting*” (p. 464) (emphasis added). Nystén-Haarala et al. (2010) identified two approaches to contracts; the first was a neo-classical one, which attempted to solve issues with clauses in the contract and with principles (good faith, notice), and the second was what they termed, relational.

With a reference to Macneil (1980), the authors encouraged the use of the relational approach because they felt it had the flexibility and softness necessary to encourage relationships. Nystén-Haarala et al. (2010) gathered data from eight companies through a qualitative review process, and they conducted 60 interviews throughout the course of the research. In their research, Nystén-Haarala et al. (2010) examined the process of contract negotiation from the initial engagement of partners to the termination of the relationship. Nystén-Haarala et al. (2010) wanted to determine how different contracting abilities could develop into a competitive advantage. They examined eight Finish companies, who initiated projects, which the authors could track to conclusion (utilizing the more common “lifecycle approach,” which followed a transaction from the beginning to the end). The interviewed employees covered the full scope of management. Nystén-Haarala et al. (2010) also collected extensive in house materials, including copies of contracts, agreements, and related documents.

The results proved inconclusive as to whether soft elements in contracts were dominant, which the authors attributed to firms transitioning on the structure of contracts. However, the firms indicated to Nystén-Haarala et al. (2010) that they were open to more



flexible or soft terms in the contracts used with suppliers. Also noteworthy, was their conclusion that firms tended to start the contract process based on sales orders and not in the planning and scope of the product. Here again, firms tended to approach the contract more as a necessary evil of conducting business for protecting their interests against partner behaviors, then as a competitive tool, which could drive costs down. Nystén-Haarala et al. (2010) concluded that no definitive view existed as to what constituted a good contract, and management tended to hide values and not assess the losses against the contract. According to Nystén-Haarala et al. (2010), companies did not utilize a consistent and strategic approach when negotiating agreements. Managers, at the companies surveyed by Nystén-Haarala et al. (2010), failed to align the use of a contract with the entire life cycle of a transaction, and, as a result, they might have lost a competitive advantage. The findings of Nystén-Haarala et al. (2010) suggested an ad hoc approach to the process of negotiating contracts between buyers and sellers, pasting the terms and conditions necessary into agreements, as attending to the practice of developing contracts, but not necessarily a concerted strategy to encourage the right behaviors and results enforced by a contract.

## **The Reliance on Contract Law and Risk in Supply Chain Manufacturer Relations**

Jalil (2011) discussed the rules behind business contracts and when the acceptance became binding between parties. Jalil (2011) cited the effect that time could have on parties in achieving acceptance during the course of negotiations. Jalil (2011) concluded that the method of communicating acceptance of a contract must be communicated properly and could only be rescinded after acceptance. The risks presented by poor communication of contract terms, intentionally or unintentionally misconstruing an agreement, presented a situation where negotiators tried to hedge against the use of rigorous contract language. Managers must ask whether this approach remained the most effective use of company assets.

Dimatteo (2010) argued that the contract could be used as a hedge against attempts by business partners to deal on a self-serving basis, apply limits to behaviors, and ensure that the responsibilities of parties remained well defined. According to Dimatteo (2010), this included creating contracts, which limited competitors from replicating a company's innovative product or processes. Dimatteo (2010) continued this line of reasoning when he suggested that the role of negotiators and contract attorneys was to protect their companies, from the other parties' use of shared information and advance their own revenues from gains realized through the collaboration. As a solution, Dimatteo (2010) suggested that lawyers insert reciprocity clauses into contracts in order to achieve this. When negotiators added such additions, they offered assurances to one another that any shared information was for mutually agreed upon purposes. According to Dimatteo (2010), the use of such additions was the responsibility of negotiators and not a requirement of contract law. Dimatteo (2010) recommended that contract law

support the strategy of developing collaborative relationships and sharing behaviors, and argued for a strategy, which would guide executive managers to enter into contracts which supported the profitability objectives of the company.

This remained well understood by Dimatteo (2010). Dimatteo (2010) excerpted from contract law that “there is no good faith duty to negotiate. A party is not liable under contract law for negotiating in bad faith or for breaking off prolonged negotiations without providing a viable reason for the termination” (p. 759). Dimatteo (2010) suggested that the use of standard or “boilerplate” (p. 759) language supported the common expectations that the negotiating parties would have based on their experiences with contracts. The use of these standards comforted those tasked with creating the formal contracts and signals, which the parties at the table enjoyed some level of sophistication. By the time a contract was signed off by the responsible parties, numerous hands had been involved in the process.

In fact, Dimatteo (2010) called the contract an “amalgamation of private and public inputs” (p.781), underscoring that despite any one participant’s strategy for satisfying self-serving goals, the contract at the end of negotiations was more likely to have something for everyone included in the document. Who gets what and when they get it, during the course of the negotiation, whether through persuasion, bargaining, or the selective distribution of data, remained backstopped by what Macneil (1980) suggested as the ability to “impose ones will on others irrespective of their wishes”(p.909).

## Supplier Manufacturer Negotiations

### The Process of Negotiating Contracts between Suppliers and Manufacturers

The process of negotiation where representatives from companies, desiring to enter into a business alliance, sat down and memorialized their terms and conditions, which were necessary before business commenced, had gone through numerous iterations over the years. The supply chain design required that companies developed successful working relationships with a wide array of partners. This process should encourage those representing supply chain partners to achieve an agreement, which would allow the business to compete successfully. Oftentimes, negotiators, acting on their own or on orders provided by their management, would exhibit a wide array of behaviors to accomplish these objectives. However, were any of these behaviors successful in achieving firm goals? Malshe et al. (2010) suggested negotiators acted in ways that were “opportunistic” (p.173). The actions and behaviors of negotiators or the companies, which they represented, did not build trust, mutual respect, or a sense of collaboration between parties. Malshe et al. (2010) considered these actions as having a profound effect on how companies viewed one another during the process of developing agreements. This lack of trust, and operating solely for advantaging positions of bargaining, led to increased demonstrations of deceit and coercion between firms. The authors saw this model as contributing to behaviors, which would have a negative effect on the operational relationships. Malshe et al. (2010) concluded that these behaviors led to a breach of trust and to deception, as participants pushed one another to uncover as much about the others’ strategies, operational competencies, and market positions, which would allow negotiators to improve their positions.

The concept of flexibility in relationships and terms, returned this review to the work of Nystén-Haarala et al. (2010), which elected to explore the relationship of contracts that were negotiated to include intractable terms and conditions and how introducing flexibility between negotiators might improve the process. The authors reviewed the contracts of eight companies to determine the best practices used. Nystén-Haarala et al. (2010) found that the personalities of the negotiators was the single most likely factor to produce softer terms in contracts and that overall companies were heavily reliant upon existing contracts. This led to the more common view of contracts that companies were unable or unwilling to conduct business without a contract, regardless of the value of the contract in controlling risks and achieving objectives. This resulted in companies reacting to developing contracts in harsher terms, while the overriding consideration was managing risk through the addition of terms to reconstituted templates that were used in countless other transactions. Nystén-Haarala et al. (2010) contrasted this view with that of Williamson's (1985). Williamson (1985) suggested that businesses often made decisions without the value of information and with a lack of knowledge, but they knew that opportunism was always in play, and the role of the other party, in such negotiations, should be one that endeavored to develop an agreement to protect against such behaviors, while protecting the assets of the company.

Certainly, supplier manufacturer negotiators considered this strategy and saw a duty to prevent one company taking advantage of the other. This adversarial approach, which was still applied in negotiations today, was noted by Krishnan et al. (2011) as encouraging the use of controls on behaviors to ensure that the risk, which was created when following this course of action, could become more balanced and managed to the

point where the benefits were not completely in the favor of one party at the expense of the other.

According to Malshe et al. (2010), partners could be ruthless in obtaining what they needed and through whatever means available. The research of Malshe et al. (2010) concentrated on how the personality of the negotiators can affect the outcome of a contract, including the role, which culture, gender, and language could have during the course of concluding a contract. Malshe et al. (2010) listed these behaviors as (a) inappropriate bargaining, (b) making false promises, (c) misrepresenting positions, (d) attacking the other party's position, and (e) gathering inappropriate information. Reactions to these approaches, by those on the negotiating team, varied based on the constructs of gender, culture, and language. These methods, according to Malshe et al. (2010), were what Murphy and Laczniak (1981) referred to as either "deontological or teleological" (p. 173). These were theories of behaviors, which evaluated the correctness of an alternative (deontological) based on one's personal standard of ethics. The other approach, teleological, represented where the alternatives were considered, and the effects (consequences) on the stakeholder groups represented the measurement. The researchers suggested that these elements recognized a darker, less productive side, and the approach of deontological or teleological ethical theory could afford companies the opportunity to move closer to one another by finding commonality, as opposed to exceptions, as part of the contract process.

The authors noted that these practices presented a concern to academics and ethicists who found these behaviors unethical and out of sync with the more collaborative approaches to negotiations, encouraged by Camén et al. (2012), Cotter and Henley

(2008), Collins, Worthington, Reyes, and Romero (2010), and Tapiero and Kogan (2007). Each of these researchers considered the value of fair dealing and honesty in supplier manufacturer negotiations, as an approach with greater returns for participants, rather than questionable behaviors the adversarial negotiation processes used. This aligned with the more contemporary approach to negotiation of contracts, where counterparties collaborated to develop operating agreements, which allowed one another flexible working environments. This meant inventory could be managed, in relation to shared information on customer trends, and systems could be accessed throughout the supply chain to ensure prompt delivery of high quality products to customers. Companies would benefit, the authors suggested, if they considered the periods involved when negotiating contracts. The dynamic nature of supply chains required that parties had the necessary maneuvering room in order to respond to the rapid changes in customer product demands, the management of the costs associated with meeting customer delivery demands, and the leveraging between companies of the value relationships.

Companies could understandably be wary about the effects of sharing too much with partners. Krishnan et al. (2011) considered the way various types of risk could affect the relationships and outcomes of collaboration between companies. Krishnan et al. (2011) argued that in order for firms to manage risks, such as the hoarding of information and the failure to produce at anticipated volumes, it would be necessary to apply performance metrics that companies could monitor. Krishnan et al. (2011) suggestion acted as a substitute for the more formal and punitive recourse of a business contract and updated it with the use of performance framework to instill discipline, rigor, and moderate behaviors between suppliers and manufacturers. In order to achieve this, the

authors suggested that only the discipline that accounting brings to business would be an effective tool. Krishnan et al. (2011) considered it vital to determine where the risk factors were between collaborating companies. They identified two areas, which created the greatest exposure for partners; the first was in the demand and uncertainties created through management of inventory, and the second was the actual tasks that employees of companies were asked to perform. The quantitative research, conducted by the authors on the design of supplier contracts, found supporting examples of agreements; metrics tied to the risk factors of demand and tasks performed were enforced through effective monitoring and application of accounting metrics. Their work further substantiated that contracts could be used as a strategic tool to manage relationships, mitigate risks, and ensure that companies were more willing to exchange information once they were comfortable that all parties were interested in collaborating.

The growth of interfirm relationships, through information sharing and time on the job together, could have a salutatory effect on the partners; however, it could also have longer lasting effects. Contracts between interfirm companies increased in complexity as the requirements expanded. Filzmoser and Vetschera (2008) considered the effect that changes in a contract, even a single issue, could have on the scope of negotiations. Next, the authors evaluated the impact of different negotiating strategies, because of multiple demands on companies. Filzmoser and Vetschera (2008) characterized the environment between negotiators as one where exchanges, threats, concessions, and influence was largely the order of the day. Their research specifically focused on the process of negotiation and not the outcome.



## **Outcomes Generated from Certain Negotiation Behaviors and Strategies**

The problems addressed in this dissertation focused on the value of the outcome, but considered the expense of the process that related to that outcome. Within the bargaining process, Filzmoser and Vetschera (2008) observed two structures. The first was the static model, which encompassed the standard requirements already discussed, such as performance, responsibility, and costs. The other model was the dynamic model, where requirements and expectations were constantly changing. Filzmoser and Vetschera (2008) cited the “level of aspiration theory” (Siegel & Fouraker, 1960, p. 422) and the “graduated reciprocation in tension reduction approach” (Osgood, 1962, p.422). For examples of the dynamic model, the authors cited “exponential decay approach” (Kelly, Beckman, & Fischer, 1967, p. 422), “action-reaction-system,” (Bartos, 1974, p.422), and Pruitt (1981, 422) who inserted aspiration level, initial offering, and concession rate into the negotiation process.

The research design, carried out by Filzmoser and Vetschera (2008), developed a list of “mutually exclusive bargaining steps and tested the impact of those steps on outcomes as well as characteristic of the negotiations” (p.423). When the authors considered the models for negotiations, they found that concessions were the only form of bargaining in a static model. However, in the dynamic model, the complexity changed as the issues piled up. Negotiators would make concessions on one issue, but not on others. Next, Filzmoser and Vetschera (2008) hypothesized that “one group which considers just the occurrence of certain steps and the other group, which takes into account relative frequencies of steps” (p.427). The end results from patterns discerned in negotiation steps, complexity of issues in dynamic models, and time spent in the process

led them to three results: the first, consisted of high opening offers and slow concessions making agreements less likely and increasing the time it took to reach an agreement; the second, consisted of low opening offers and fast concessions, making agreements faster and reducing the outcome of the negotiations if an agreement was reached; and lastly, negotiators, in between these positions, achieved a better expected outcome.

Filzmoser and Vetschera (2008) utilized data collected from an Internet based negotiating system (NSS) from 1996-2004, covering 2,880 negotiations based on the case study, Cypress-Itex (p. 432). This supported their hypothesis, as 79% of the negotiators who employed a tradeoff in the bargaining process reached an agreement, compared to 68%, who made no tradeoffs and concessions were even greater (75 vs 9%).

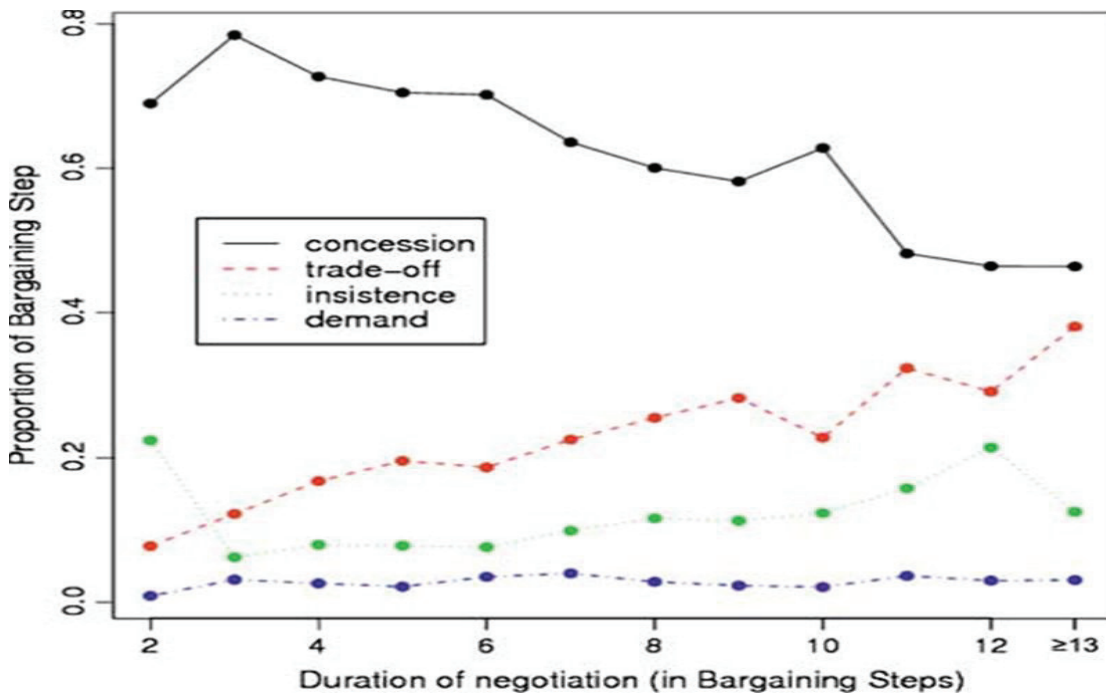


Figure 3. Average frequencies of bargaining steps and the duration of negotiations.

The authors concluded, as the chart in Figure 1 reflected, that the longer the negotiations, the less likely the other side would see concessions. Based on the research

of Filzmoser and Vetschera (2008), it might be in the best interest of managers to curtail negotiation teams for a better result. Furthermore, Filzmoser and Vetschera (2008) postulated that as the concessions offered in longer negotiations decreased, additional steps were added into the bargaining process.

Managers dedicating resources to the negotiation process between suppliers and manufacturers should consider the returns from the process and the costs of delays, which could result. The research from Filzmoser and Vetschera (2008) suggested that information sharing and reasonableness in the intent and purpose of requests between negotiators could shorten the time necessary to reach an agreement.

Cotter and Henley (2008) examined these outcomes as they related to first offers by negotiators against counteroffers made by the opposite side. Cotter and Henley utilized ten different negotiation models with a population of 1,621 negotiations. The results were that the person making the initial offer was less successful than the person making the counteroffer (Cotter & Henley, 2008, p. 25). What the authors hypothesized was that this outcome was only true when the other party was less experienced in negotiation techniques. The authors commented on how many decisions must be made during the course of negotiating with minimal information. Cotter and Henley's (2008) findings paralleled Krishnan et al. (2011), who found a similar challenge in contracts with language to manage risk and innovation; both were events that had not happened yet.

Both sets of researchers agreed that observing behaviors, having knowledge, and experience in the process and the subject matter would produce better outcomes. This

remained significant in deciding the value managers could realize by investing in training, education, and knowledge sharing to develop the best negotiators.

It was Cotter and Henley (2008) who introduced the concept of “anchoring” (p. 50) to the negotiation process. They referenced Tversky and Kahneman (1974), who defined anchoring as “a judgment bias where previously digested information impact the numerical estimate of what a person considers reasonable” (p. 27). The application of an anchoring based approach to negotiations led the researchers to conclude that those, who used this approach and were given positively based information, reached more favorable conclusions than others, who did not have access to the same information. Other instances showed that negotiators failed to consider the perspectives of others based on the information that they anchored.

Outcomes, such as these, addressed the need for managers to consider the flow of information, as well as the preparedness of company negotiators. If companies were willing to support an even flow of information, which was current and distributed equally amongst negotiating partners, as Cotter and Henley (2008) suggested, the outcomes could improve. The use of anchoring had utility in a variety of areas in negotiations, especially when one party knew about production delays or product changes. Cotter and Henley (2008) suggested that the work of Mussweiler, Strack, and Pfeiffer (2000) found that the anchoring effect was overcome when negotiators had a chance to consider the information.

This would be another instance where avoiding the pressures of time reflected a strategy that might have a favorable effect. Other examples, which overcame the anchoring effect, were those instances that negotiators incentivized with bargaining

targets. The research design for Cotter and Henley (2008) consisted of a quantitative approach with 11 hypotheses, which was tested on a population of 1,621 and covered the reactions by the participants to offers and counter offers. They concluded that, without proper experience and training, the novice negotiators would not enjoy the same returns as those who had the background and the patience to manage information and employ flexibility in the process.

### **Business Relations and Contract Negotiations**

Camén et al. (2012) studied the effect of contracts on business relationships. They cited Blois (1998), and Liljander and Strandvik (1995) as the basis for when contracts were used as a communication tool, from one party to the other, to reduce uncertainty and risk in relationship, or to comply with existing business practices. Camén et al. (2012) studied the relationships behind business, which ran from evaluation to the parties being familiar with their roles and responsibilities. The authors' comments resided from the Ford model (1980), which claimed that the concept of distance, as a parallel to the stages of the business process, because of time in that process, closeness would take place amongst the parties. The authors saw this establishment of trust, over the reduction of distance, as supporting the negotiation process through its stages of pre-negotiation, specifying, bargaining, agreement, and post negotiations (Camén et al., 2012). Camén et al. (2012) identified the significance of contracts to build relationships. The authors conducted interviews and reviewed documents that the companies used in the contract negotiation process. Camén et al. (2012) confirmed that contracts had an important role in fostering relationships.

However, researchers, such as Fawcett, Watson, and Magnan (2012), recognized that gains from collaborative initiatives fell below expectations. The authors conducted over 50 interviews to determine the firm's perceptions of the collaborative process, determining what strategies were successful and not successful. Fawcett et al. (2012) discussed the use of resources by supply chains to create customer value. As previously presented in the work of Collins et al. (2010), firms could be successful or, at least, have an expectation that the collaborative process of knowledge sharing could lead to certain successful strategic advantages. Fawcett et al. (2012) reached a similar conclusion to the value of collaboration and value creation for customers, citing faster fulfillment of product and reduction in manufacturing costs. Van de Vijver, Vos, and Akkermans (2011) conducted a study to review the way the buyer-seller relationship developed. Van de Vijver et al. (2011) suggested that socialization between the seller and supplier did not necessarily improve communication between parties.

Van de Vijver et al. (2011) also noted that any residual effects from previous conflicts could have an effect on current relations between the parties and if either party perceived that the other party had lost viability as a partner. The authors drew on the literature of organizational behavior (Feldman, 1981; Van Maanen & Schein 1979), which surveyed how employees integrated into a company. The authors concluded that social interaction remained important in supply chain management. The authors' research was designed to study how the relationships between the seller and buyer could change over time. Van de Vijver et al. (2011) gathered data from two companies; one was a logistics provider, and the other was a buyer. They conducted 157 interviews, including interviews with executive management. Van de Vijver et al. (2011) added to the

summary of the results that socialization did not necessarily lead to improved communications between buyer and suppliers, and “If relationships are in decline, or when negative historical ties exist, managers should avoid using socialization as a tactic to influence the relationship since it is likely to be ineffective.” (p.37). In addition, Cole and Teboul (2004) studied the effect relationships could have on negotiators’ willingness to engage in reciprocal actions, and they supported a strategy for management to invest in creating long term relationships to build trust amongst the parties in contract negotiations.

### **Economic Alliances through Contract Negotiations**

Xie and Zhou (2012) identified two tracks, which negotiations could take; the first involved an objective track that could resolve economic considerations, and the second involved a subjective idea, which addressed the emotions of negotiators and the behaviors exhibited when negotiations concluded. The research generated in relation to the early behaviors and willingness of negotiators to work with one another. The study was essential to reducing the time and costs associated with reaching agreements.

Similarly, once these relationships were in place, renewal of existing relationships between firms, supported by contracts, which had not been breached, suggested that new agreements should not be necessary. Furthermore, companies that still elected to engage in the negotiation process for the sake of historical process might proceed with little or no competitive advantage to the company, with excess drag of lost time, and questionable allocation of company resources.

The value of such alliances was underscored in the work of Tjemkes and Furrer (2010), representing a reason for success in today’s competitive firms. The authors suggested that alliances could lead to an unlocking of value in a company, which offered

economic returns not as easily achieved in companies that competed on their own. While Tjemkes and Furrer (2010) cited the benefits of alliances to interfirm companies, they also outlined the risk of failure of these alliances, as a result of internal and external pressures on the alliances, citing, “working relationships, performance measurements and lack of attractive alternatives” (p. 1104).

To overcome these situations, Tjemkes and Furrer (2010) recommended an “integrated vision and a response strategy for managers involved in the development and maintenance of such alliances” (p. 1104). This left management, according to Tjemkes and Furrer (201), an alternative to going at the market alone, where the costs could lower and could provide the ability to match the competition by providing direction and purpose to teams’ negotiating contracts on their behalf.

In addition, Huang, Gattiker, and Schwarz (2008) considered trust between companies as a measurement of how the company itself could be trusted. Huang et al. (2008) focused their research on developing trust between a buyer and a seller. Huang et al. (2008) concentrated on purchasing a portion of supplier and buyer relationships for their research. Huang et al. (2008) discovered the identification of five key areas, which could lead to approaches to build trust in buyer-seller relationships, including (1) non-verbal cues, (2) token control efforts, (3) shared group membership, (4) rapport, and (5) socializing. The researchers developed a hypothesis for each of these five areas to test by using a pre-test design, testing before and after, and applying a 2x3 design, covering communication, purchasing complexity, and utilizing multivariate analysis of a covariance (MANCOVA). Huang et al. (2008) concluded that trust in relationships



between buyers and sellers could grow, before and after the negotiation, depending on the level of complexity and social interactions.

### **Managing Risk through the Contract Negotiation Process**

The relationships between companies could become complicated. Swinney and Netessine (2009) highlighted the potential for risk in relationships with suppliers, which they suggested was not always as collaborative. The authors noted that many suppliers were not well capitalized; as a result, manufacturers had a concern about supplier's ability to fulfill their contracted commitments. Swinney and Netessine (2009) suggested that the risk of losing a supplier through a default could affect the decisions buyers made when prices and terms were evaluated as part of contract decisions. Swinney and Netessine (2009) viewed the role of a supplier as smaller and less capitalized, while the buyer was larger and better capitalized.

In addition, Swinney and Netessine (2009) noted that the expense and time needed for the buyer to change suppliers could be significant, and buyers considered this during the course of development of terms with suppliers. Swinney and Netessine (2009) drew from their research, three points that they tested:

(1) analyzed the performance of long and short term contracts between buyers and suppliers and which was preferred (2) surveyed the use of short term contracts as preferred approach, and (3) whether the use of dynamic contracts between the two parties for the realized value of production costs were preferred. The authors noted that even when buyers do not have a financial stake in a seller, often an indirect relationship existed which linked one another's financial condition to the supply chain. (p. 111)

The authors designed a model with two identical suppliers and a single buyer. The assumptions were that demand was constant and that the buyer needed a component in two separate periods. The buyer would contract with one of the sellers for the component

(they rejected dual sourcing, due to the high costs it represented to the buyer). Both parties knew the costs, and the model assumed that both suppliers had a level of financial difficulty. The authors compared this model against one with little probability of default. The model ran for both static and dynamic contracts. Swinney and Netessine (2009) concluded that since the buyer was not risk adverse, the dynamic contract with longer terms and a contract, which did not require the buyer to compensate for losses over the course of the agreement, were preferred.

Wakolbinger and Cruz (2010) viewed supply chains as facing two types of risk; the first risk involved supply-demand coordination, and the second risk involved disruption. For each of these instances, the authors suggested a short and long-term financial impact as well. Wakolbinger and Cruz (2010) suggested that the same framework of collaboration, which was intended to ensure success in the supply chain design, could also function collaboratively to manage risk to the supply chain. Wakolbinger and Cruz (2010) cited Tang (2006), who divided these operational risks into supply management, demand management, product management, or how information created transactional, production, or operational risk for supply chain participants.

The network model that the authors created would allow management to determine the best course to eliminate or minimalize risk to the supply chain. In addition, they suggested that increased information sharing could reduce overall costs throughout the supply chain. The concern of supplier (or buyer) default remained a realistic one; therefore, the model could assist companies in improving the evaluation process before even considering a new supplier-buyer relationship. The risk was manageable through standard clauses in agreements, as suggested by Nystén-Haarala et al. (2010) and by

Dimatteo (2010), who did not discount the value of the court's decision on such matters of breaches in supplier-buyer contracts.

### Cost and Risk Management

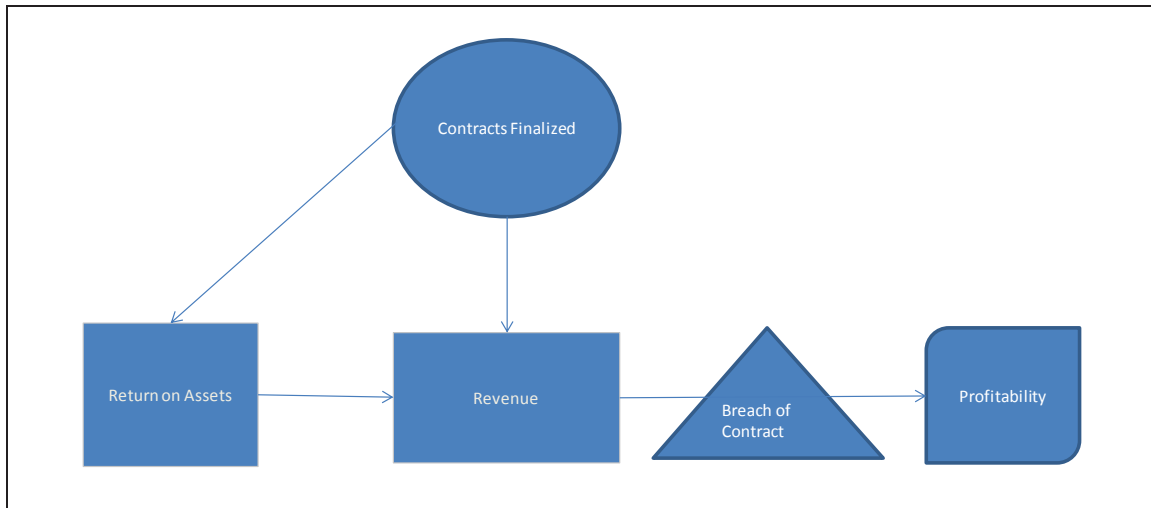


Figure 4. Effects of completed contracts on profitability.

### The Expectations of Suppliers/Manufacturers to Reduce Costs through Contracts

This literature review addressed the processes and behaviors of negotiators, which focused on the best or worst negotiating strategies and behaviors. The research suggested ways in which a contract might be negotiated to manage operational risk, protect pricing, and ensure quality. The management of supply chains was constantly looking for efficiencies, wherever they could find them, to drive down costs. To accomplish this, managers scrutinized the costs and returns for logistics, systems designs, and sourcing. However, a growing body of research suggested that managers considered the value that a structured contract, based upon the financial objectives of the company, might deliver to profitability. Thomas, Fugate, and Koukova (2011) observed that the current supply chain practice was to have suppliers dedicate significant time to contract negotiations, which had an effect on how negotiations were handled under time constraints. The

allocation of time, as a cost to the company, might have an impact on revenues; managers needed to have a way to evaluate the value that the company would receive for the commitment of that time. Collins et al. (2010) studied the relationship of knowledge sharing, supply chain investments, and overall performances, and they argued that access to knowledge, amongst supply chain companies, led to a competitive advantage.

Collins et al. (2010) suggested that firms, which were competitive, tended to do a better job in capturing data through knowledge sharing, which led those companies to process improvements. They identified the need to use data to improve supply chain management for international opportunities (Collins et al., 2010). When negotiators were able to capture firm knowledge, because of knowledge sharing, during the course of negotiations, they opened the door to innovation and improvements in their own companies.

This benefit should be a welcome additive to managers and be considered a return on the investment of negotiations, as well as a reason to continue the process. Collins et al. (2010) pointed to the need for companies to stay ahead of customer demand. To achieve this, Collins et al. (2010) suggested having the lowest costs or products with features that customers would purchase. On the other hand, information sharing could reduce costs by finding process improvements in intercompany actions. Similarly, sharing knowledge between these partners could provide information on customer preferences, which intercompany participants could turn towards a value proposition. Collins et al. (2010) cited Assundani (2005) and Drucker (1993) as researchers who had appropriately identified knowledge as a key asset to a company, in the management of risk (Collins et al., 2010).

The concept of knowledge sharing as a strategic asset with long-term potential, suggested by Collins et al. (2010), included taking steps to store and manage the information. The authors suggested that effective management of such data would support the decision-making processes and lead to greater competitiveness on behalf of the storing firm. Managers who invested in the negotiation process could extract multiple benefits from knowledge sharing, making the finalized contract almost secondary in importance. The ability for firms to focus on knowledge sharing management helped them to better understand markets and meet customer demands (Collins et al., 2010).

### **The Use of Contracts to Manage Company Resources**

The supply chains of today operated on a global basis; suppliers and manufacturers needed to engage one another on issues that had variability of effects, such as the customers, regulations, and risks. The problem formed when a contract could not accommodate these variances; the result could be that the amount of resources necessary to reach an agreement increased, as did the cost associated with the process. These costs should be a concern for the management of companies, but were they? For instance, Anderson and Dekker (2009) saw the process of contract negotiation as an economic problem to be solved by applying process improvement strategies to drive down the costs and create a competitive advantage.

This contributed to a central theme in this dissertation, which indicated that the strategic use of company assets could significantly reduce the amount of time and, therefore, the costs to negotiate a contract. This was beneficial to both supplier and manufacturer. Whether it was the reduction of price, the expense of transporting, the variability of inputs into the production, the management of cost remained a key driver,

necessary to reaching an agreement. Anderson and Dekker (2009) suggested that lean thinking principles might be applied to certain internal processes to reduce the costs to companies. The process of negotiating contracts might find an advocacy amongst management as a candidate for process improvement.

Were companies getting what they wanted from the negotiation process at a cost they were willing to pay? Anderson and Dekker (2009) referenced Shank and Govindarajan's (1992, 1994) challenge to apply process improvements throughout the supply chain. This remained in line with the author's research, which suggested that 57% of executives, in a 2008 survey by McKinsey and Co, considered that the main benefit of contract negotiation to the supply chain design was to reduce costs to manufacturers and suppliers. The authors referenced Shank and Govindarajan again (1992, 1994), as they pursued the theme of firm alignment of cost strategies with firm strategy, a continued focus on the buyer-supplier relationship, and how those relationships could deliver a competitive cost advantage. Anderson and Dekker (2009) noted that structural cost management included a strategy to engage outside suppliers and designed the relationship between the two firms. Included within this strategy was an implementation of transaction cost economics to substantiate decisions made within the firm (Williamson, 1985, Coase, 1960). This was intended to indicate where managers were attempting to control costs. Sommer and Loch (2009) conducted work in this area of contracts when they considered the use of contracts as a means to communicate incentive arrangements. In conjunction with the introduction of risk, Sommer and Loch (2009) considered such perils as downside risks, the costs associated with time and materials, and upside risks, where companies under contract demonstrated superior results through innovation.

The intent of a contract was to assist management in guarding against risk and freeing their companies to take advantage of innovation, which could be supported, suggested the authors, through the constructing of a contract. Sommer and Loch (2009) posed the question of how management might build incentives and protection into contracts for events that might never happen. Their research concentrated on observations of employee activity and behaviors, as well as past performances on similar projects.

The use of such strategies by management could provide additional value to a contract and provide economic benefits to the company. Tapiero and Kogan (2007) evaluated the way risk was managed in supply chain relationships using contracts. Risk could have a significant effect upon the profitability of the company. Contracts were often negotiated with requirements to mitigate the risk. Determining the cost of certain risks might also develop into a revenue model for the company.

This view remained of significant value to the theme of this dissertation. Were managers getting what they wanted from engaging in the negotiation process? Would the contracts they signed, actually provide a competitive advantage by managing costs downwards, while still providing the parties with the right place, at the right time, with the right quality, price, and source, suggested by Davison et al. (2011), as crucial to producing a successful contract?

The opportunity, which this research suggested would further the discussion on the priority that companies might place on the negotiation process, the level of assets they were willing to contribute to support this process, and how the economic value of such a focus might enhance supply chain competitiveness through improved shareholder return. Tapiero and Kogan (2007) suggested that the supply chain was comprised of companies

that depended upon one another, while singularly assuming their own risks and motivations.

The authors defined the supply chain as companies, which profited through collaboration. Tapiero and Kogan (2007) also cautioned that contracts, which were intended to guide the actions of partners, were not always enforceable and might facilitate supply chain firms taking advantage of the relationships. The researchers stated that supply chains were not only were exposed to risk through quality and statistical uncertainty, but were also exposed through the actions of other supply chain members. The authors saw the intent of a contract as a mechanism to protect both parties, reduce uncertainty, and provide a stable operating environment for both parties, and they recognized that contracts, which did not support the parties, could lead to lawsuits and high costs (Tapiero & Kogan, 2007, p.1441). The authors created a model that examined strategic quality between a producer and a supplier with outcomes defined by a bimatrix random payoff game, offering two strategies: economics and risk. Tapiero and Kogan (2007) concluded that the producer should rely on inspection of the supplier, to limit the instances of mutual distrust between parties.

Brooks and Schweitzer (2011) studied the effects that anxiety had on negotiators and how increased levels could affect outcomes and profitability. Brooks and Schweitzer (2011) suggested ways managers could improve the contract outcome by reducing points of anxiety encountered by negotiators. Other researchers, such as Terpend, Krause, and Dooley (2011), considered the large volumes of purchasing completed with suppliers and suggested that the development of a strategy for these purchasing activities could improve performance.



In addition, Terpend et al. (2011) suggested that companies would have developed models to base on company criteria to support purchasing decisions; however, the authors questioned the validity of these models and how they were tested. The research model included data from industrial companies, which the authors applied a cluster analysis. Terpend et al. (2011) stated that their intention was to consider the strategic intentions of the buyer, the effect of competitive market forces on the product, and the relationship of the buyer and the supplier. Terpend et al. (2011) concluded, from their research, that purchasing portfolio models of buyers applied a strategy for purchases.

### **Contracts as a Competitive Tool**

The idea of forming alliances, during which contracts could be extended to share products and design across international markets, required significant sharing of expertise to be successful (Argyres & Mayer, 2007). Argyres and Mayer (2007) supported an approach that utilized the contract to extend opportunities in alliances, rather than avoiding or limiting the use of contracts. Argyres and Mayer (2007) argued for detail in contracts within industries, such as computer software, biotechnology, and aerospace. The authors suggested detailed design for these industries because of the need to develop solutions to problems that demanded knowledge sharing and collaboration to be successful. Argyres and Mayer (2007) argued for a strategic use of contract design to achieve “superior performance by aligning contract terms to transaction attributes then exploiting the contract design effectively” (p.1061).

Furthermore, Whipple and Frankel (2000) commented on the shift in competitive strategy from company versus company to supply chain versus supply chain in their

seminal research on the subject of alliances in the manufacturing sector. The move to a group of companies, into what they termed as an alliance, required those companies to develop business practices that included cooperation, resource sharing, and process improvement efforts.

In order to study the effects of a collaborative supply chain model, Whipple and Franke (2000) concentrated on three research questions, which were as follow. (1) What factors did participants in alliances feel contributed to long-term success? (2) What conditions defined the presence of these success factors? (3) What constituted agreements from the perspective of the buyer and supplier in an alliance with respect to success factors and their defining conditions? (Whipple & Frankel, 2000, p.21).

The research design was composed of buying firms within the food and personal health care sectors. Forty-one firms participated; 22 were from the food industry, and the remaining 19 came from the personal health care sector, including percentages of large and small companies. Whipple and Frankel (2000) sent out 104 questionnaires and had a 93% return rate, covering roles from managers to purchasing and buyers. A *t*-test was performed on each question in the survey. The testing included surveying the role of management in the relationship between buyers' and suppliers. The data indicated, "Key contacts in the alliance may not need (or want) further senior management involvement" (Whipple & Frankel, 2000, p.25). Whipple and Frankel (2000) continued to state that a "gap appears to exist between senior management encouraging alliance development, and not always committing the necessary resources (emphasis added) to carry out those plans" (p.25). Giannakis and Croom (2004) also wrote about this relationship between companies in the supply chain when they commented that companies did not exist in

isolation, and they made the distinction that these companies depended on one another for the capabilities and resources of suppliers, customers, and collaborators. Giannakis and Croom (2004) added that the performance of supply chain companies was widely agreed as one where companies depended on the actions of one another.

Giannakis and Croom (2004) conducted research to develop a contemporary view of the supply chain design, which they noted had evolved from the interdependency of companies to produce a product to the “incorporation of theoretical concepts and research in strategic management, industrial organization, institutional and production economics (transaction costs)” (p.29). In addition, Zachariassen (2008) recognized the unique qualities of the supply chain and how the reliance on the companies affected success; therefore, the use of contracts in supply chains could be a strategic advantage for managers. When managers could obtain the data they needed to measure the return on a contract, they would be in a better position to determine how to allocate the resources of the company.

Furthermore, Randall, Pohlen, and Hanna (2010) examined the use of performance-based logistics (PBL) as a strategy for lowering the cost in complex logistics systems (aviation, railroad, defense, etc.). Randall et al. (2010) noted that instead of suppliers working to reduce costs for these expensive systems, they actually increased the overall cost by concentrating on activities that increased the returns for the supplier company.

## **The Effects of Contract Negotiation on Company Financial Statements**

Leng and Zailani (2012) suggested three major streams that effected supply chains, including information, materials, and financial flows. The authors utilized a design that solicited information from 202 manufacturing companies in Malaysia, which demonstrated that material and information flow did not have an impact on supply chain performance. The authors concluded that the impact of financial flows was significant. They suggested that since goods flowed through more complicated supply chains, managers must consider how they would move these goods. Leng and Zailani (2012) wrote that moving goods in the U.S. accounted for 60% of logistic costs in the United States. The authors referred to financial flow as activities, which related to payment terms, ownership, and consignment of goods. Leng and Zailani (2012) commented that the cash flowed in and out of the supply chain design and required effective financial management, management of the impacted information, and that the coordinating of financial events in the company would lead to improved operational performance.

Leng and Zailani (2012) noted that when supply chains managed their financial information, managers were better able to commit resources and carry out their strategy. The impact that financial information could have on the supply chain relationship with other suppliers had been critical, according to Leng and Zailani (2012), who recognized that accurate and timely financial information would allow them to measure the strength of parties that they were seeking to collaborate with, and they indicated what levels of risk might be present.

When the authors cited the research of Fairchild (2005), they raised the concern that a lack of financial information was available to the supply chain and financial

institutions. The researchers referenced the early work of Fairchild (2003) to demonstrate where a gap was identified between financial information, which was available to the supply chain on payment and back end processing, but not through the course of the business process, where the information would have been important to strategic planning and decision making. The authors applied the Porter Value Chain to develop three hypotheses on the positive effects that information, material flow, and financial flow could have on supply chain management.

Speh and Novack (1995) recognized the importance of logistics to the supply chain design when they suggested that investments must be made in supply chain (logistics) companies, which would continually enhance the rate of return. The authors reviewed the need to demonstrate the effect on profits and revenue when the company invested its capital in a logistic asset. Speh and Novack (1995) suggested, as part of the financial planning for logistics organization, that an investment made by the company should be preceded by an evaluation of what that investment would return. This validation of return on investments, contended Speh and Novack (1995), presented the logistics company with a difficult task.

Therefore, Camerinelli (2008) contended that supply chains pursued a strategy where companies looked to the operational side of the business to improve cash flow. Camerinelli (2008) suggested that companies would self-fund to get through periods of tight inflows of cash, which was a form of internal financing. According to Camerinelli (2008), managers of supply chains must contend with many decisions based on the financial needs of the company, as well as the demands of others supply chain partners. Camerinelli (2008) viewed the supply chain as expanding due to the increasing

globalization of the customers it served, and this growth was pushing managers to innovate, even more than they could, by improving manufacturing processes and work flow. This change developed what Camerinelli (2008) referred to as the “The Financial Supply Chain” (p.117). This was where management observed the financial flow of the company for innovation that would improve performance. What was the likelihood that some companies might use the contract negotiation process as a means to affect their cash management, and this strategy could increase the expense to supply chain partners who, while looking to contracts to extract costs from the relationships, were ending up with a higher cost for doing business.

Wanetick (2010) considered the value of a commercial contract, and he suggested that to value a contract, three preliminary valuations must be applied, including cost, market, and income. His assumption resided from the value of the contract, which was a product of what was required to produce the contract in the first place. Wanetick (2010) contended that in valuing a contract, the costs “associated with drafting the contract are un-tethered as to its value” (p. 9). Wanetick (2010) suggested that companies paid enormous sums of money over the years to contract business ventures with often-negative outcomes.

Therefore, the purpose for a commercial contract held limited value because contracts could not be sold on the open market, terminated when the parties or business attached to them changed, and were not always assignable. In spite of these limitations and for the purposes of estimating the value of a company, Wanetick (2010) devised the following formula to value contracts: “Deposits + (anticipated value of contractual income-deposits) x discount rate) + value of ancillary benefits + (recoveries\* discount

rate) - transaction costs” (p. 10). Wanetick (2010) defined the anticipated value as consisting of two parts: performance related and contingency related. Performance related consisted of what the buyer was willing to pay, minus any product liability claims, while the contingency value consisted of the assessment of the value of the contracts when exercised, multiplied and the probabilities of the contingencies being exercised. The discount rate consisted of an allocation of value against risk during the course of the contract, as illustrated by Wanetick: “Risk-free rate + exposure to general economic factors + exposure to industrial economics + exposure to counterparty’s internal factors + impact of legal factors - available remedies” (p.13)

When Wanetick (2010) suggested a methodology for determining the value of a contract, he was underscoring the practice by companies to value the worth of their assets. For instance, Phillips (2007) recognized that managers of companies tended to have differing views of the value of a particular asset. Therefore, Wanetick (2010) concluded that it was necessary for a methodology to value the activity, which represented the creation or the acquisition of the asset or a class of assets.

Phillips (2007) cited organizations, such as the U.S. Air Force, Apple, Accenture, and a variety of U.S. cities, which had utilized Return on Investment (ROI) to ascertain value from a wide array of projects, such as databases, client relationships systems, negotiations, and coaching programs. Phillips, (2007) defined an analysis of the steps to determine ROI as (a) collecting the data, (b) converting the data to money, (c) isolating the effects of the project, and (d) comparing the money to the cost of the project. Phillips (2007) contended that organizations had choices where to invest the firms’ money and would do this where they projected the greatest return (p.7).

According to Philips (2007), it was not an unrealistic expectation to accept that nearly all companies had projects that went wrong, and these failures could have been minimized by ensuring that a legitimate need for the project existed in the first place, having adequate planning in place in advance, collecting data to measure the progress, aligning the project throughout the course of the project, and conducting a study at the conclusion to calculate the value to the organization. In order to make the kind of financial determinations, which Wanetick (2010) suggested and Phillips (2007) determined, it remained critical that companies had the data available to them.

### **The Discipline of Cost Management through Effective Contract Outcomes**

Everaert, Bruggeman, Sarens, Anderson, and Levant (2008) suggested that the need for cost information in logistics remained critical to decision making. Everaert et al. (2008) cited the importance of companies maintaining sufficient margin for profitability, and they recommended that companies considered the cost of serving a customer. Everaert et al. (2008) defined these costs as “order-related expenses, specific logistics costs and selling and administrative expenses” (p.173).

In addition, Everaert et al. (2008) applied the theory of Time Driven Activity Based Costing (TDABC) to develop a model that would accurately determine costs for logistics providers. Activity based costing (ABC) consisted of a method that assigned overhead costs to activities, products, and customers serviced by a company. TDABC used time expended based on the specific costs and character of the activity, which was generating the cost. Had the management of supply chain companies applied this type of a discipline to determine the cost of negotiating contracts? The authors suggested a



discipline, which might not be in place and might do a more effective job of managing risks for a company, than a rigorous set of terms and conditions could manage.

Chen, Gilbert, and Xu (2012) focused on moving managers away from a focus on revenue to concentrating on costs. Chen et al. (2012) noted that management bonuses, which were tied to the generation of revenue, resulted in costs escalating through managers' efforts to boost revenues because of excessive investments and lack of cost restraints. Chen et al. (2012) concluded that this push for revenue by managers in supply chain operations encouraged higher investments to achieve revenue targets and caused managers to negotiate less effectively with buyers. The authors developed models to demonstrate the role of managers, their bonus incentives, and their interactions with suppliers. Furthermore, Swinney and Netessine (2009) engaged in the study of a supplier manufacturer game theory to evaluate the preferences of long or short-term contracts. Models provided a research basis for deciding the length of time managers would want to commit the company to in contract negotiations. Future development of a model could measure the equivalency of resources committed to profitability gained (costs retained).

The advantages of revenue management were approached in the research conducted by Kuokkanen (2012). Kuokkanen (2012) referred to revenue management (RM) as a "concentration by business on the overall customer profitability and acknowledge all possible income streams which the customer can create" (p. 313). The research of Perdue (1992), which examined the negotiation behaviors of purchasing agents, found that cost was not the concentration of efforts by negotiators, as would have been expected.

Research conducted by Perdue (1992) demonstrated that the drive to manage costs, during the course of negotiations, could be affected by the relationships that the negotiators had with one another. Perdue (1992) examined why firms approach to cost reduction could have such variability. According to Perdue (1992), sensitivity to price could affect three key negotiation strategies: problem solving, manipulating perception of the competition, and tough tactics. Purdue (1992) cataloged six characteristics of buyer-seller negotiations, which could affect the concentration on or away from costs:

- (1) Profitability,
- (2) How existing firm capacity was utilized,
- (3) Spending on materials as a percentage of sales,
- (4) Sales
- (5) Price sensitivity, and
- (6) Level of foreign competition (p. 27).

When units of a firm were sold at less profit, it consumed more cash, and the result was a loss (Deo, 2013). Deo (2013) contended that when firms continued to engage in revenue focused activities, they risked default by not utilizing balance sheet information in a strategic manner. Deo (2013) quoted Rappaport (1998), who viewed companies as a collection of product related investments. Furthermore, Deo (2013) argued that products could create value, which could be destroyed if the profit was not realized for the units sold in the market segments for the company. The assignment of long-term objectives for the company remained important to developing a strategy that returned value to owners.

The economic model defined the approach that companies had to generate profit (Morris, Spivack, & Allen, 2009). The model, according to the authors, resided from variables, such as pricing, service, cost structures, margins, and volumes. The way in which firms made decisions, based on their economic model, would affect their profitability, contended the authors. It remained the objective of firms to be profitable, and companies would attempt to differentiate their products with the knowledge that customers did not know all the effects of the company economic model or the price they paid for a product. Morris et al. (2009) cited Phillips (2005) and Valentin (2001) when they suggested, “strategies are the result of matching internal threats and opportunities to internal strengths and weaknesses” (p.287).

The research design developed by Morris et al. (2009) included surveys and interviews of 1218 retail companies, including a questionnaire that was organized into five categories: volume, cost structure, revenue drivers, margins, and descriptors. Morris et al. (2009) employed a cluster design to test for like attributes amongst the companies. The results suggested that each company provided greater attention to certain variables, which other companies might choose not to give their attention to; however, all of the ventures concentrated on the value of profitability as the center of the economic model.

The introduction of cost management into the discussion of the value of contracts between suppliers and buyers extended well beyond the traditional needs of firms to manage risk, default, and tactically use information and quality. The strategic use of a contract could assure firms a competitive advantage, which might also assist in the management of projects, while forcing down the cost of doing business. Companies should consider a variety of strategies to approach the use of contracts to improve

competitive positioning in the marketplace and consider how their strategic use might manage the costs of the negotiation process by extracting greater value for shareholders.

### **Conclusions**

The existing research on the subject of negotiations dealt with negotiation strategy, supplier-buyer relationships, the purpose and strategy of business contracts, and the behaviors of negotiators, during the negotiation process. In an era of continuing demand on companies to extract costs from manufacturing and supply processes, how and why companies chose to engage in negotiations could have a strategic effect on the company.

In some instances, the literature demonstrated that companies must contend with a wide array of risk factors, which management might confront through the contracts that they negotiated. Others might see the contract negotiation process as a value added collaboration, which could build trust between partners, lower costs, deliver quality, and bring innovation to customers.

### CHAPTER 3 METHODOLOGY

The purpose of this study focused on considering whether the practice of contract negotiation, as engaged in by companies, had any effect upon the profitability of the company. The operationalizing of this practice enabled the research to utilize a set of variables to test the hypothesis. Two sample groups were used to conduct the test, consisting of manufacturers and suppliers.

The use of dependent and independent variables, involving operational risk, financial performance, and the roles of executive management in the decision process, to either commit or not commit company assets to the process of contract negotiations, was applied. The researcher conducted a two-population *t*-test to accept or reject the null hypothesis.

The researcher assumed that, as a matter of common business practice, companies engaged one another in the negotiation of contracts to have an agreement, which they felt they were able to transact business successfully. In order for companies to reach this point, they must engage resources into the negotiation process.

These commitments could involve company employees, outside contractors, including attorneys, and the participation of management. At the core of this cost structure remained the cost of time. Of course, time was not easy to quantify, but it could be assumed that delays caused by a lack of a signed contract would eventually affect business partners. Although this research was unable to extract those exact costs, it was assumed that companies would simply generate less revenue because of lost time.

The costs to companies to commit these types of assets, regardless of the value returned for participating in a process that they felt compelled to engage in, was not

addressed in the literature on negotiating contracts. It followed that the research question, as to whether the use of firm assets had a direct effect on firm profitability, needed to be considered in order to fill the gap.

### **Research Design**

The design of the research consisted of a quantitative study and utilized a statistical comparison of financial performances, threats, and strategies to determine the trends, relationships, and effects between publicly traded companies.

The companies surveyed were evaluated based on their three-year financial performance, using the year end profitability, revenues, and operating expenses of the companies to determine how those companies managed, in relation to the overall profitability of the company, and to establish whether the sampling of companies, used as comparisons in the research, demonstrated profitability year over year. The purpose of this comparison focused on determining if the companies within the sample, because of committing assets to the process of contract negotiation, experienced any effect on profitability, given the cost to negotiate contracts and the management of risks related to the performance terms of the contracts negotiated.

Companies, which utilized contracts, ensured that a framework stayed in place to manage the risk of working with partners (Krishnan et al., 2011). Therefore, the research design developed a table of standard operational risks, associated with the sector of publicly traded companies, and surveyed the respective company 10K reports to determine if any recognition of these risks were identified as important to the company.

The researcher also noted from the data whether the company had allocated an executive level management position for risk. The LexisNexis Academic database

retrieved this information from sampled companies' 10K Reports. The researchers, cited in the literature on contract negotiation, concluded that companies entered into contracts to place a rigorous framework on their interfirm relationships, which would protect them in court (Barrett, 2012; Dimatteo, 2010; Nystén-Haarala et al., 2010). The researcher analyzed whether the strategy of using a contract to provide protection to a company in court was a successful one and warranted the investment by executives to manage risk to the company.

A query of the LexisNexis Academic database, where legal cases at the state and Federal level would be extracted, was conducted using search terms, such as citation, parties, topic, and case number, on the sampled companies identified for this dissertation. The sampling recorded the number of challenges brought against those companies and whether an inference could be made about the success or failure of rigorous frameworks applied to contracts to manage operational risk.

### **Population**

The population for this research was extracted from a number of sources, using the North American Industry Classification System (NAICS). According to the United States Census Bureau, which administrated the NAICS classification system:

The NAICS was developed under the direction and guidance of the Office of Management and Budget (OMB) as the standard for use by Federal statistical agencies in classifying business establishments for the collection, tabulation, presentation, and analysis of statistical data describing the U.S. economy. Use of the standard provides uniformity and comparability in the presentation of these statistical data. NAICS is based on a production-oriented concept, meaning that it groups establishments into industries according to similarity in the processes used to produce goods or services. (The United States [U.S.] Census Bureau, 2014)

The actual company names used to establish the population for this research was not drawn from the U.S. Census Bureau (2014) because “Title 13, U.S. Code, Section 9 (a) prohibits the U.S. Census Bureau (2014) from releasing information on a specific business including NAICS and SIC codes” (para. 7 ). Each industry designated sector within the NAICS classification was comprised of companies that were private and publicly traded companies listed on a variety of stock exchanges.

The stance of the U.S. Census Bureau (2014) to withhold company names, and the requirements of this research to survey publicly traded companions in each of the two sectors designated, required that an outside source be utilized to create two populations. The first group consisted of all companies, which constituted each of the sectors, and the second group consisted of a population of all companions, which made up those companies that were publicly traded in the NAICS codes of 333120 and 493110.



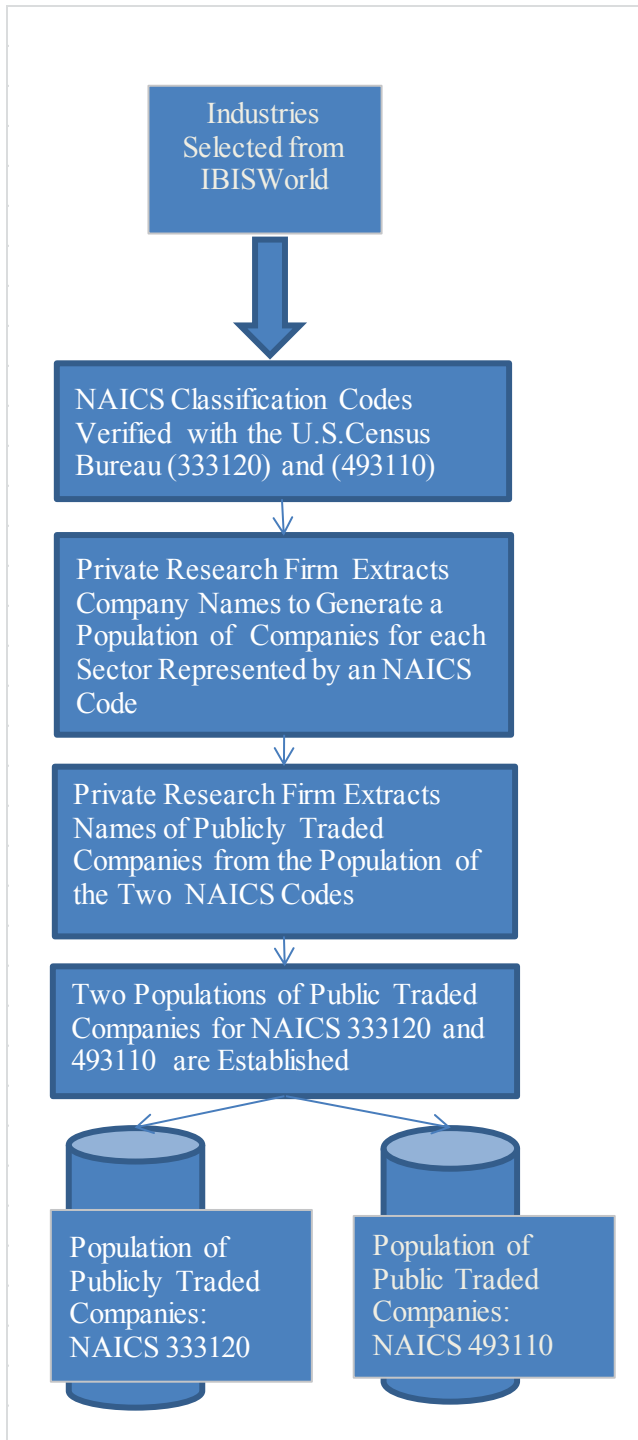


Figure 5. Population sources.

The population was drawn from 4,470 companies, identified by the NAICS code of 333120, - Construction Machinery, and Manufacturing, as well as from the population

of 38,164 companies, identified by the NAICS code 493110, -General Warehouse and Storage, according to IBISWorld (2014).

The General Warehouse and Storage sector consisted of businesses, which provided storage and warehouse, as well as other value added services to companies in the manufacturing sectors (IBISWorld, 2014). The Construction Machinery and Manufacturing sector focused on customers in the residential, non-residential, infrastructure, and highway construction sectors (IBISWorld, 2014).

The companies from these sectors were engaged in businesses, which subjected them to extensive interfirm relationships and complex supply chains designed to deliver products to customers in a time sensitive environment. In addition, the barriers to entry for these companies were high based on necessary resources and expertise to participate in these sectors. As a result, the companies had in common the high levels of assets to commit to the business, the history, and management required to have qualified them for the population. These attributes also occurred within an environment where risk was heightened for the participants, and the management of that risk could influence firm profitability and revenues. Although these companies had a global role, the evaluations would occur on U.S. entities only.

The population size remained sufficient to represent the General Warehouse and Storage, Construction Machinery, and Manufacturing sectors where, according to IBISWorld (2014), the General Warehouse and Storage sector had two companies, which made up 20% of the market share, while, in the Construction Machinery and Manufacturing sector, two companies accounted for 24.8% of the market.

## Sample

The researcher utilized simple random sampling. The sample size used for this research consist of two groups of publicly traded companies on the NYSE, AMEX, or NASDAQ, which represented Manufacturers, Suppliers, General Warehouse, and Storage. The first sampling was drawn from the (NAICS- 493110) General Warehouse and Storage, which consisted of 38,164 companies and the second sampling, was from the Construction Machinery and Manufacturing division (NAICS-33312), which had a population of 4,470 companies. The research required access to publicly traded companies to measure firm profitability. The entire list of 38,164 and 4,470, respectively, were representative of public and private companies. The lists had to be purified to yield a sufficient sample size of publicly traded copies to conduct the research. Table 1 indicated the population size for each division, along with the sample size used for this dissertation.

Table 1. *Sample Size.*

Confidence Level	Population Size	Ideal Sample Size	Margin of Error
95%	4470	354	5%
95%	38164	381	5%

## Data Collection

The data was extracted from the companies' 10K annual reports, including LexisNexis, IBISWorld (2014), and U.S. Census Bureau (2014) databases, and placed into Excel.

Table 2. *Data Extracted from 10K Securities and Exchange Reports for Sample Population.*

Extract	Ratio/Measurement
Gross Profit Margin	Operating Costs and Revenue
Total Revenue	Total Annual Income
Selling, General and Administrative Expenses	Operating Costs
Operational Risk	Administrative Costs
Executive Role for Contracts	Ratio of Contract Executives Non Contract Executives

In order to compare the results, SPSS developed the statistical models for hypothesis testing. Because the research resided from data retrieved from public databases, no special permissions were required for the research.

Table 3 indicated the variables and method of measurement for the data collection:

Table 3. *Scale of Input.*

Variables	Measurement	Responses
Gross Profit Margin	Continuous	10K Financial Statements
Total Revenue	Ratio	10K Financial Statements
Selling, General and Administrative Expenses	Ordinal	10K Financial Statements
Operational Risk	Ordinal	Lawsuits for Breach of Contract
Executive Role for Negotiations	Interval	Corporate Affiliations

### Hypothesis

This dissertation conducted research based on a set of covariates: annual profit and negotiation of contracts.

The hypotheses to be tested included:

Research Question: To what extent did the use of company assets by executive management for the purposes of contract negotiation affect the profitability revenue and management of risk to the company?

Ho: The investment of a portion of the company assets by the supply chain's executive management of suppliers and manufacturers for negotiating contracts between one another would increase the annual revenue for each company.

Ha: When the supply chain executive management of manufacturing and suppliers invested a portion of the assets of their company to negotiate contracts between one another, the annual revenue for each company would not increase Ho. If the executive management of manufacturing and supply chain companies committed assets to the negotiation of contracts to manage operational risk, gross profit margins would increase for each company

Ha: The investment of a segment of company assets by the executive management of manufacturing and supply chain companies to manage operational risk would have no effect upon the gross profit margins of either company

### **Data Analysis**

The proposed testing for this hypothesis used two-population *t*-testing. A comparison was made, based upon year end profitability between the general warehouse, storage, and construction machinery manufacturing samplings of companies. A multiple hypothesis *t*-test determined if  $H_0$  could be accepted or rejected. The software consisted of Microsoft Excel (2010) and SPSS by IBM.

### **Validity and Reliability**

Past research on the costs to negotiate to publicly traded companies within the supply chain sectors of general warehouse, storage, and construction machinery manufacturing remained limited. An ABI/Inform Global search, using the phrase, “research costs to negotiate for companies,” returned an excess of 15,000 results, with only two studies (Furlotti, 2007, Miles, 2010). Miles (2010) considered the costs to companies to save face during the negotiation process, while Furlotti (2007) discussed his research about the costs to enforce provisions in agreements. Neither, Miles (2010) nor Furlotti (2007) utilized any financial data on specific companies, nor conducted any comparisons of impact to profitability from the elements of negotiations, which they discussed.

### **Ethical Considerations**

No human subjects were used during the course of this research. Therefore, there were no potential risks to subjects or safeguards required. In addition, since the data was

extracted from public or academic databases, the information was not impacted by confidentiality or subject to privacy concerns. Gundersen, Capozzoli, and Rajamma, (2008) noted that the ever-changing business climate increased the burden on students to sort through a variety of ethical and moral responsibilities, which were involved in research. The role of organizational effect on researchers, maintaining an ethical path, suggested by Gunderson et al. (2008), placed a greater burden of duty on researchers than the academic experience provided for scholars.

The research, which was utilized for the purposes of this dissertation, had been compiled to build on existing arguments and develop suggestions, which other researchers could use to further the discussion on the value of the contract negotiation process. The temptations of the business world, in the form of promotions and bonuses, could have a strong effect on researchers (Gundersen et al., 2008). The intention of the researcher remained to simply present data, arguments, and hypothesis, which would serve to highlight the reasons and actions for behaviors in the process, not to suggest that one argument was more effective than another was.

## CHAPTER 4: DATA ANALYSIS AND RESULTS

### Introduction

The purpose of this research focused on determining whether the use of company assets by executive management for negotiating contracts could have any effect on the profitability of the company. This research analyzed the relationship amongst the level of commitment that the executive management demonstrated during contract negotiations and the levels of firm revenue represented by the gross profit margin, revenue growth, and operation margin. Data was obtained and extracted from a number of sources, using the NAICS.

The sample utilized for this research consisted of companies identified by NAICS codes 333120, Construction Machinery and Manufacturing, and 493110, General Warehouse and Storage. The independent variable was operational risk, measured by whether or not there were lawsuits filed against the sampled company for breach of contract, and the dependent variables were gross profit margin, revenue growth, and operation margin, which were based upon financial reporting of the publicly traded companies within the sample data. Statistical tests were conducted using the independent and dependent variables to address the research question and test its hypotheses as follows:

Research Question: To what extent did the use of company assets by executive management for the purposes of contract negotiation affect the profitability revenue and management of risk to the company?



H1o: When the supply chain executive management of manufacturing and suppliers invested a portion of the assets of their company to negotiate contracts between one another, the annual revenue for each company would not increase.

H1a: The investment of a portion of the company assets by the supply chain executive management of suppliers and manufacturers for negotiating contracts between one another would increase the annual revenue for each company.

H2o: The investment of a segment of company assets by the executive management of manufacturing and supply chain companies to manage operational risk would have no effect upon the gross profit margins of either company.

H2a: If the executive management of manufacturing and supply chain companies committed assets to the negotiation of contracts to manage operational risk, gross profit margins would increase for each company.

### **Description of the Sample**

The researcher utilized data that was archival and extracted from a number of sources, using NAICS. The sources, which the data was extracted, were from the companies' 10K annual reports, LexisNexis, IBISWorld (2014), U.S. Census Bureau (2014), and the NAICS databases:

Table 4. *Results of NAICS Data Extraction for NAICS 333120 and 493110.*

Primary NAICS	Number of Records
333120- Construction Machinery and Manufacturing	2958
493110 – General Storage and Warehousing	13811

Table 5. Results of NAICS Data Extraction for Corporations for NAICS 333120 and 493110.

Primary NAICS	Number of Records
333120 Construction Machinery and Manufacturing	38
493110 –General Storage and Warehousing	20

The criteria for this research required only companies that were publicly traded. The researcher eliminated 31 companies; although they were corporations, they were not publicly traded. After eliminating the 31 corporations, 27 publicly traded companies remained. However, of these 27 corporations, four had missing data (i.e., N/A); therefore, they were removed from the sample. This resulted in 23 companies that provided financial results, which were utilized as a final sample of 23 publicly traded companies from the two NAICS codes.

Data was gathered for the following variables: gross profit margin, revenue growth, operation margin, and operational risk. Gross profit margin, revenue growth, and operation margin were collected from fiscal year-end financial statements for three years, 2012, 2013, and 2014, from the ultimate parent company. Operational risk was measured as a number of lawsuits filed against the ultimate parent company by a third party, claiming breach of contract.

Table 6 presented the descriptive statistics of the dependent variable of gross profit margins for each of the three years. For the year 2012, the gross profit margin of the companies ranged from 0.12 to 0.84, with an average of 0.35 ( $SD = 0.20$ ). For the year 2013, the gross profit margin of the companies ranged from 0.14 to 0.85, with an average of 0.36 ( $SD = 0.20$ ). For the year 2014, the gross profit margin of the companies ranged from 0.13 to 0.86, with an average of 0.36 ( $SD = 0.21$ ).

Table 6. *Descriptive Statistics of Gross Profit Margin for 2012, 2013, and 2014.*

	N	Minimum	Maximum	Mean	Std. Deviation
Gross Profit Margin 2012	23	.1237	.8375	.352991	.2027824
Gross Profit Margin 2013	23	.1423	.8497	.359943	.2034735
Gross Profit Margin 2014	23	.1280	.8591	.360900	.2075021

Table 7 presented the descriptive statistics of the dependent variable of revenue growth for each of the three years. For the year 2012, the revenue growth of the companies ranged from -0.33 to 0.44, with an average of 0.06 ( $SD = 0.14$ ). For the year 2013, the revenue growth of the companies ranged from -0.23 to 0.39, with an average of 0.03 ( $SD = 0.14$ ). For the year 2014, the revenue growth of the companies ranged from -0.18 to 0.56, with an average of 0.09 ( $SD = 0.15$ ).

Table 7. *Descriptive Statistics of Revenue Growth for 2012, 2013, and 2014.*

	N	Minimum	Maximum	Mean	Std. Deviation
Revenue Growth 2012	23	-.3293	.4425	.060048	.1383393
Revenue Growth 2013	23	-.2254	.3877	.030617	.1358162
Revenue Growth 2014	23	-.1824	.5619	.089313	.1491902

Table 8 presented the descriptive statistics of the dependent variable of operation margin for each of the three years. For the year 2012, the operation margin of the companies ranged from 0.01 to 0.38, with an average of 0.11 ( $SD = 0.10$ ). For the year 2013, the operation margin of the companies ranged from 0.02 to 0.41, with an average of 0.12 ( $SD = 0.10$ ). For the year 2014, the operation margin of the companies ranged from -0.01 to 0.43, with an average of 0.12 ( $SD = 0.11$ ).

Table 8. *Descriptive Statistics of Operation Margin for 2012, 2013, and 2014.*

	N	Minimum	Maximum	Mean	Std. Deviation
Operation Margin 2012	23	.0062	.3841	.110643	.0965308
Operation Margin 2013	23	.0156	.4101	.122357	.0995880
Operation Margin 2014	23	-.0064	.4303	.122687	.1075623

To operationalize the study variables, the average of the data for the three years for each company was obtained; thereby, the study variables consisted of gross profit margin (average, 2012-2014), revenue growth (average, 2012-2014), and operation margin (average, 2012-2014). The gross profit margin average, over 2012 to 2014 of the companies, ranged from 0.13 to 0.85, with an average of 0.36 ( $SD = 0.20$ ). The revenue growth average, over 2012 to 2014 of the companies, ranged from -0.12 to 0.25, with an average of 0.06 ( $SD = 0.09$ ). The operation margin average, over 2012 to 2014 of the companies, ranged from 0.01 to 0.41, with an average of 0.12 ( $SD = 0.10$ ).

Table 9. *Descriptive Statistics of Gross Profit Margin, Revenue Growth, and Operation Margin Averaged over 2012 to 2014.*

	N	Minimum	Maximum	Mean	Std. Deviation
Gross Profit Margin Ave (2012-2014)	23	.1348	.8488	.357945	.2041822
Revenue Growth Ave (2012-2014)	23	-.1164	.2520	.059993	.0873090
Operation Margin Ave (2012-2014)	23	.0075	.4082	.118562	.0994955

The independent variable, operational risk, was measured as lawsuits filed by a third party against the sample company for breach of contract. However, this had to be recoded to operationalize the variable. The descriptive statistics of the original data was presented in Table 10, below. The number of adversarial lawsuits filed, ranged from none

to five lawsuits, with an average of 0.70 ( $SD = 1.26$ ). To operationalize the variable, operational risk was recoded into 0 = no lawsuits filed, and 1 = one or more lawsuits filed. This served as the grouping variable for the comparative tests. The frequency table for this variable was presented in Table 11, below. As observed, 15 (65.2%) companies had no lawsuits filed against them, while 8 (34.8%) companies had one or more lawsuits filed for contract actions.

Table 10. *Descriptive Statistics of Operational Risk (Lawsuits Filed).*

	N	Minimum	Maximum	Mean	Std. Deviation
Operational Risk (lawsuits filed)	23	0.0000	5.0000	.695652	1.2589600

Table 11. *Frequency Table of Operational Risk (Measured as Lawsuits Filed or Not).*

	Frequency	Percent
None	15	65.2
1 or more	8	34.8
Total	23	100.0

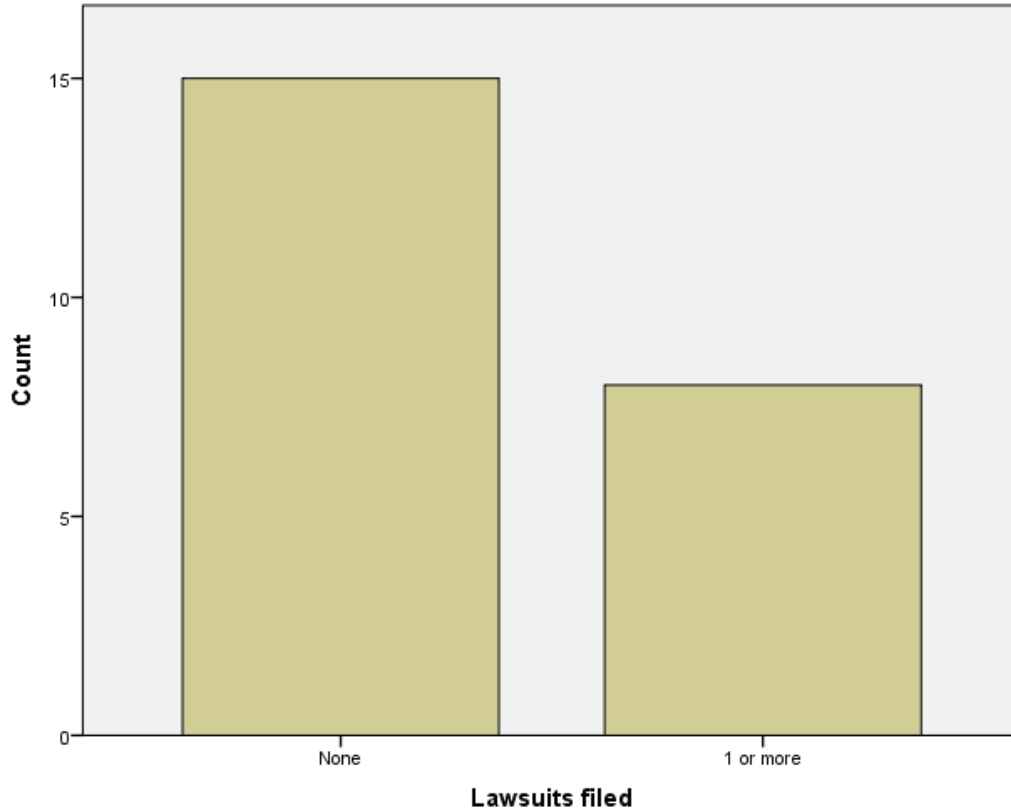


Figure 6. Frequency table of grouping variable and lawsuits filed (none vs. one or more).

### Summary of the Results

The hypotheses were tested through the Mann-Whitney U statistical test, a non-parametric alternative to the independent samples *t*-test, due to the data of the dependent variable not being normally distributed. Results of the statistical tests showed that both null hypotheses were not rejected. There was not enough evidence to reject the first null hypothesis ( $U = 25.5, p = 0.023$ ), as the reverse of the alternate hypothesis was actually true for this particular sample. There was not enough evidence to reject the second null hypothesis in favor of its alternate ( $U = 53, p = 0.681$ ).

### Detailed Analysis

Before testing the hypotheses, tests of normality were conducted for the data to determine whether to use parametric tests or their non-parametric alternative. Shapiro-

Wilk's test of normality was conducted to determine normality of data. Results of the test of normality were presented in Table 12. As observed, data for all dependent variables were found not to be normally distributed ( $p < 0.05$ ). As such, the non-parametric alternative to the independent samples  $t$ -test was used to test the hypotheses; specifically, Mann-Whitney U tests were conducted.

Table 12. *Shapiro-Wilk's Test of Normality for Dependent Variables.*

	Statistic	df	Sig.
Gross Profit Margin Ave (2012-2014)	.852	23	.003
Revenue Growth Ave (2012-2014)	.905	23	.033
Operation Margin Ave (2012-2014)	.815	23	.001

**Hypothesis 1.** The first null hypothesis stated that when the supply chain executive management of manufacturing and suppliers invested a portion of the assets of their company to negotiate contracts, the annual revenue for each company would not increase. The dependent variable used for this hypothesis was revenue growth average (2012-2014), and the grouping variable was lawsuits filed (none vs. 1 or more).

Results of the Mann-Whitney U test were presented in Tables 13 and 14. Table 13 presented the Mann-Whitney U ranks table, which indicated which group had higher revenue growth averages, over 2012-2014. The mean ranks were higher for the group with no lawsuits filed, which indicated that revenue growth averages, over 2012 to 2014, were higher for companies that did not have to contend with lawsuits filed against them. The significance of the test was presented in Table 14. As observed, the results of the test were statistically significant ( $U = 25.5, p = 0.023$ ). Given this, the revenue growth average, over 2012 to 2014, was statistically and significantly higher for companies that did not file lawsuits, as compared to those that did. As a consequence, there was not

enough evidence to reject the first null hypothesis: When supply chain executive management of manufacturing and suppliers invested a portion of the assets of their company to negotiate contracts between one another, the annual revenue for each company would not increase. In addition, for this particular sample, the reverse of the alternate hypothesis was actually true, in that, investment of a portion of the company assets by the supply chain executive manager of suppliers and manufacturers for negotiating contracts between one another would decrease the annual revenue for each company.

Table 13. *Mann-Whitney U ranks for Hypothesis 1.*

	Lawsuits filed	N	Mean Rank	Sum of Ranks
Revenue Growth Ave (2012-2014)	None	15	14.30	214.50
	1 or more	8	7.69	61.50
	Total	23		

Table 14. *Mann-Whitney U test Statistics for Hypothesis 1.*

	Revenue Growth Ave (2012-2014)
Mann-Whitney U	25.500
Wilcoxon W	61.500
Z	-2.228
Asymp. Sig. (2-tailed)	.026
Exact Sig. [2*(1-tailed Sig.)]	.023b

**Hypothesis 2.** The second null hypothesis stated that the investment of a segment of company assets by the executive management of manufacturing and supply chain companies to manage operational risk would have no effect upon the gross profit margins of either company.



The dependent variable used for this hypothesis was gross profit margin average (2012-2014), and the grouping variable was lawsuits filed (none vs. 1 or more).

Results of the Mann-Whitney U test were presented in Tables 15 and 16. Table 15 presented the Mann-Whitney U ranks table, which indicated which group had higher gross profit margin averages, over 2012-2014. As observed, mean ranks were higher for the group that filed at least one lawsuit, which indicated that gross profit margin averages, over 2012 to 2014, were higher for companies that filed at least one lawsuit. The significance of the test was presented in Table 16. As observed, the results of the test were not statistically significant ( $U = 53, p = 0.681$ ). Given this, the gross profit margin average, over 2012 to 2014, was not statistically and significantly different between the companies that did not file lawsuits and those that filed at least one lawsuit. As such, there was not enough evidence to reject the second null hypothesis: The investment of a segment of company assets by the executive management of manufacturing and supply chain companies to manage operational risk would have no effect upon the gross profit margins of either company.

Table 15. *Mann-Whitney U ranks for Hypothesis 2.*

Lawsuits filed		N	Mean Rank	Sum of Ranks
Gross Profit Margin Ave (2012-2014)	None	15	11.53	173.00
	1 or more	8	12.88	103.00
	Total	23		

Table 16. *Mann-Whitney U test Statistics for Hypothesis 2.*

	Gross Profit Margin Ave (2012-2014)
Mann-Whitney U	53.000
Wilcoxon W	173.000
Z	-.452
Asymp. Sig. (2-tailed)	.651
Exact Sig. [2*(1-tailed Sig.)]	.681b

**Additional test.** An additional test was conducted to determine whether the operation margin was different between companies that did not file any lawsuits and those that filed at least one lawsuit. Results of the test were presented in Table 17 and 18. As observed, Table 17 indicated that operation margin average, over 2012 to 2014, was higher for companies that filed at least one lawsuit. However, this was not statistically significant, as evidenced by the results in Table 18 ( $U = 49.5, p > 0.05$ ).

Table 17. *Mann-Whitney U ranks for Operation Margin.*

	Lawsuits filed	N	Mean Rank	Sum of Ranks
Operation Margin Ave (2012-2014)	None	15	11.30	169.50
	1 or more	8	13.31	106.50
	Total	23		

Table 18. *Mann-Whitney U test Statistics for Operation Margin.*

	Operation Margin Ave (2012-2014)
Mann-Whitney U	49.500
Wilcoxon W	169.500
Z	-.678
Asymp. Sig. (2-tailed)	.498
Exact Sig. [2*(1-tailed Sig.)]	.506b

## Chapter 4 Summary

Comparison of means between two independent groups, specifically, Mann-Whitney U tests, were conducted to test the hypotheses of this study and address the research question. The independent variable, lawsuits filed against the company for breach of contract, included two categories: none and one or more lawsuits, covering the year 2014. The dependent variables were revenue growth average (2012-2014), gross profit margin average (2012-2014), and operation margin average (2012-2014). The Mann-Whitney U test results for both hypotheses were found to not be statistically significant. An additional test to determine whether operation margin was different for groups that did have to defend against lawsuits and those that did not was conducted. Results of the test showed that there was no statistically significant difference in the operation margin between the two groups.

## CHAPTER 5: DISCUSSION, IMPLICATIONS, RECOMMENDATIONS

### Discussion

The relationships between a supplier and manufacturer remained critical to managing a successful supply chain. The supply chain was composed of many companies, providing a wide array of services, which were intended to speed goods to markets in order to satisfy customer demands for products produced by manufacturers within the supply chain. Companies within a supply chain had a dependency on one another in order to achieve this objective.

Any agreement between supply chain companies and manufacturers took the form of a mutually agreed upon set of operating terms and conditions, which were memorialized in a contract. These contracts remained the foundation for companies to work toward business process flows that mitigated the variability on supply chains, which was referred to as the “bull whip effect” (Brandon et al., 2009; Cho & Lee, 2012; Rief & van Dither, 2011). Cho and Lee (2012) characterized the bullwhip effect on supply chains as the disruption that could occur from a variety of external and internal forces, which added enough variability to the flow of goods and services to the supply chain that the disruption could become costly to customers and supply chain participants.

The relationship of these contracts to the value that they returned to the parties, entering into such agreements, was the focus of this research. For this dissertation, the researcher conducted a quantitative study, on a sample of 23 publicly traded companies, extracted from the North American Industry Classification System (NAICS) for the Construction Machinery and Manufacturing and General Warehouse sectors. This was in order to test the double hypothesis developed in response to the research question: To

what extent did the use of company assets for the purposes of contract negotiation by executive management affect the profitability, revenue, and management of risk to the company?

The research concluded that both of the null hypotheses were rejected. There was no statistical difference between those companies that had invested company assets in the negotiation process between suppliers and manufactures; those who had lawsuits filed against the companies for breach of contract; those who did not have lawsuits filed against them for breach of contract; and those who had also invested company assets in the negotiation process.

Two segments of the NAISCS coded business, Construction Machinery and General Warehouse and Storage, were selected as appropriate segments to extract data for research. The companies that comprised these segments were industry leaders, and consequently, the researcher presumed that these companies would deal with multiple suppliers as a regular practice in conducting business. The extraction of records for these two segments yielded 2,958 records for Construction Machinery and Manufacturing and 13,811 records for General Warehouse and Storage. From this population, the researcher eliminated all companies that did not issue debt on the New York Stock Exchange (NYSE), American Stock Exchange (AMEX), or the National Association of Securities Automated Quotations (NASDAQ). The researcher utilized the remaining 23 publicly traded companies from these two segments in this research.

As part of this research, the sample companies were analyzed for the level of annual revenue achieved and whether or not those results were affected by the quantity of lawsuits for breach of contract filed against the company within the same year as the

revenue generated for that year. The contract was used as a variable in this research because it represented the instrument in which parties relied upon to memorialize the terms and conditions of the business dealings conducted with one another. Wilkinson-Ryan and Hoffman (2015) noted that the formation of such agreements encouraged parties to invest heavily in processes leading to a contract. The research results demonstrated that those companies with higher revenue outcomes for the statement year also had less lawsuits filed against them for breach of contract.

Tidmarsh (2015) cited both rational and irrational reasons for these parties to expend more in costs than the benefits litigation might yield. A common strategy of companies was to invest company assets into the negotiation process with the expectation that they would reduce the risk of litigation to the company. This process could, at least, mitigate damages by managing supplier and manufacturer behaviors over the entirety of the relationship (Anderson & Dekker, 2009; Camén et al., 2012; Dimatteo, 2010; Leng & Zailani, 2012; Nystén-Haarala et al., 2010).

Overall, the findings from the research did not contribute sufficient results to link the volume of lawsuits for breach of contract with the revenue generated by a publicly traded company. The results of the research, which did indicate higher revenue for those companies with less or no lawsuits filed against it for breach of contract, did not necessarily mean that the higher revenue demonstrated for the year had any relationship to the actual lawsuits. The increase in revenue could contribute to a variety of operational and performance factors for the company during that financial statement year.

The findings were in line with expectations that the financial impact of the costs attributable to creating contracts between suppliers and manufacturers, and the costs to

defend or prevent an action by either party relating to a contract, were difficult to quantify given the way companies allocated such costs. The financial statements of the publicly traded companies sampled for this research did not allocate the costs attributable to the negotiation process to any line item on the Income Statement.

This created a gap for executives who managed company performance and developed strategy based on the financial statements of the company. Executive management needed to consider accounting for the costs of contract negotiation in order to manage the savings that a comprehensive contract negotiations strategy could have upon the company. When executives knew the cost to contract and prosecute, or to defend each contract by having access to such financial details, they could better manage the costs associated with said contracts.

Tidmarsh (2015) supported the need for executives to find ways to increase control over such spending and its effects. He underscored the value of a litigation budget where parties submitted to the court in advance of prosecuting their case. The amount they anticipated spending could act as an estoppel to escalating legal costs that affected the revenue of a company.

### **Implications**

The research for this dissertation complimented the existing body of literature on negotiation strategy and the value of companies sharing knowledge in a collaborative fashion. It differed from the research in cost management in contracts by identifying cost drivers in the contract negotiation process. The findings supported existing work that demonstrated where researchers quantified cost savings that executives obtained through the management of the negotiation process (Camerinelli, 2008; Kuokkanen, 2012).

Information gathered for the samples selected resided from the performance of the parent company where a relationship existed for the sample company from the corresponding NAICS code, or the standalone company from the same sector. From the last three complete fiscal years, as recorded on the financial statements for each of these companies, the researcher recorded the gross profit, revenue, and operations margins. For the same sample and hierarchy of companies, the number of lawsuits filed against each of the sampled companies was recorded in the LexisNexis database, where legal action was also extracted.

This data confirmed existing behaviors, where companies pursued contract negotiations between suppliers and manufacturers as a historical practice, often with the same partners, utilizing company resources without tracking the value of not doing so. One aspect of the research conducted, which was considered extraordinary, was the small amount of legal actions for breach of contract filed against the sampled companies during a twelve-month period.

The effect of such a small amount of lawsuits required the use of the Mann-Whitney U test. Fan and Datta (2013) stated this test was routinely applied when there were unequal sample sizes, such as with the case with the number of lawsuits filed (not filed) against the sampled companies in the research for this dissertation. The percentage of lawsuits not filed against the sampled companies was greater (65.2%) than the percentage of companies within the samples that had lawsuits filed against them for breach of contract (34.8%). For this reason, the researcher applied the Mann-Whitney U test. The Mann-Whitney U test was “commonly used in nonparametric two-group



comparisons when the normality of the underlying distribution is questionable” (Rosner, Qui, & Lee, 2013, p. 243).

The use of the Mann-Whitney U test was supported by the lack of any identified incidences where the defendant, in one case, sued the company for similar or additional breaches of a contract. Each sampled company was of substantial capitalization and appeared regularly in the public eye, which could suggest an increase in litigation activity; however, the researcher found this was not the case. Instead, there was a higher incidence of non-supplier manufacturer actions against the company for labor and tort actions than for disputes between suppliers and the manufacturer. The research on the value of negotiated contracts between suppliers and manufacturers had additional implications, given the instances of lawsuits on record between these parties. These results suggested that the relationships between these parties, which likely consisted of information sharing to improve successful contract outcomes, and the trust that developed between parties, because of these actions, could act as a barrier to companies in these relationships from bringing litigation against one another. In these instances, it was better to work out disputes, business to business, to ensure future participation in the supply chain was not threatened. It would follow that parties also selected not to sue one another with great frequency to avoid gaining a business reputation that demonstrated the company was difficult to work with. As a result, the potential litigants could find it difficult to develop new business relations and gain the trust of other partners in the supply chain.

Executives should evaluate the returns of negotiating with past and current partners before committing company assets in negotiations with these same partners or

new ones. This adherence to a process, regardless of measuring the meaningfulness of returns, could also lead executive managers to become complacent in relationships where long-standing contracts were in place (Wilkinson-Ryan & Hoffman, 2015). This stemmed from how time and costs weighed heavily on the negotiation process and could affect the outcome of arriving at a contract that all parties signed (Stoshiki, 2014). In order to improve the decision-making process by executive managers, Key Performance Indicators (KPI) could develop to measure the costs, negotiating the objectives that the company desired to validate the level of investment made in the process. The application of a robust KPI methodology could ensure that the company also avoided what Tidmarsh (2015) warned against, such as companies that spent large sums of money to defeat or modify the other parties' behaviors.

### **Recommendations**

Executives managing the financial performance of their companies should consider elevating the responsibility of the contract negotiation process to a senior executive role within the company, managing costs through savings in time, material, and human capital. The research conducted on the sample companies did not return a single instance where the role of contract negotiation was elevated to a senior management level within the company. It did not exist from a cost benefit analysis standpoint, a strategic planning discipline, or administrative governance. The Board of Directors for companies would do well to measure the value and impact on revenue and focus not only upon governance, but also upon an area of the business represented by contracts that could help to improve revenue and control costs.

During the course of the research for this dissertation, the researcher discovered that no literature addressed the impact of operational risk (lawsuits) on the revenue of supply chain suppliers and manufacturers. However, there was ample research on negotiation behaviors, strategies when negotiating, and the theories behind negotiated outcomes. This research was used to conduct this study, which served to illuminate the values and costs attributable to a process, which was often engaged with no strategic propose; on the other hand, the investment might be purposeful. Executive management was not always able to distinguish between the two because of a lack of accountability for the results returned. Because of this fact, Jakobsen (2012) suggested that the use of management accounting could improve the coordination and efficiency of inter-organizational relationships as additional control over the process.

The practice of contract negotiations could have become routine in many companies. A necessary cost and practice existed to define whether it was a partner the company had successfully worked with for decades or was a new provider. Executives decided whether a long-term business relationship with a partner warranted stepping through the negotiation process again or whether the risks had long ago been ameliorated. The question was asked: With respect to new partners, was there a way to reduce contract time through historically proven agreements?

Executives needed to know what the company was receiving in return for the costs of employees, consultants, and attorneys when negotiating contracts. Improved management of this process could result in significant savings for the company and redeployment of the associated costs into more value added activities for the company. This was what Anderson and Dekker (2009) suggested to executives when they

encouraged using the opportunity to make decisions at the moment to align costs with strategy. Similarly, these costs remained subject to market economic conditions. Barrett (2012) championed a discipline amongst executive managers, entering into contracts, to consider how the effect of the costs to construct and enforce an agreement could affect the company's financial statements. The longer a negotiation took to add a new partner, the greater the risk to the company in costs for materials, labor, transportation, the ability to manage prices for products, and the availability of those products meeting customer demands.

Time was the great enemy or friend of the negotiator, depending on what path the negotiators were pursuing. Companies who took too long to establish partners in the supply chain risked the variability of changing markets, pricing, cost of materials, changes in production costs, and loss of key personnel, either at the bargaining table or on the factory floor. Time also eroded relationships and encouraged potential supply chain partners to question sincerity in the bargaining process, which was often at the center of negotiations. The two types of negotiation strategies commonly deployed by supply chain companies were *win-win* and *win-lose*. Thomas, Thomas, Manrodt, and Rutner (2013) claimed scant research existed on the effects of either of these strategies. Certainly, there was value to understanding how imbalanced negotiations could affect relationships, or whether there were cost savings achieved by reducing the time that repeated negotiations required when negotiating to get to a win-win.

Future recommendations to extend the research on the use of company assets in the contract negotiation process could recommend ways to identify the best methodology of selecting leaders for the entire scope of the negotiation. Additional research should

focus on the value of developing an activity based accounting approach to identify cost drivers in the contract negotiation process. Other studies could research the annual effect of Cost of Goods Sold (COGS) on performance and develop scoring models, which could examine the effect of a compensation program tied to cost controls over the contract negotiations between supply chain manufacturers and suppliers. Research could also be conducted on whether gaps in contracts, which were the result of ineffectual negotiators, affected the company's share prices in the capital markets.

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## APPENDIX A. RESEARCH DATA STATISTICS

			Gross Profit Margin (Dependent Variable)	Revenue Growth (Dependent Variable)	Operation Margin (Dependent Variable)	Operational Risk (Independent Variable)
<b>NAISC Sector</b>						Lawsuits for Breach of Contract
<b>Company</b>	<b>Ultimate Parent</b>					
Amida Industries Inc	Terex Light Construction	2014	0.1989	0.0317	0.0579	None
		2013	0.2032	0.0146	0.0592	
		2012	0.2005	0.0734	0.0525	
Astec Industries		2014	0.2207	0.0457	0.053	None
		2013	0.222	-0.0035	0.0597	
		2012	0.221	0.0304	0.0546	
Atc Logistics & Elec Inc	ATC Technology-Fedex	2014	0.8591	0.0289	0.0756	None
		2013	0.8497	0.0377	0.0576	
		2012	0.8375	0.0859	0.0746	
Atmos Gathering Company	Atmos Energy	2014	0.3203	0.2749	0.1237	None
		2013	0.3644	0.1271	0.1295	
		2012	0.385	-0.1978	0.1298	
	Manitex International	2014	0.1828	0.0776	0.0528	None
		2013	0.1896	0.194	0.0716	
		2012	0.1971	0.4425	0.0704	
Baker S Self Storage	Sovran Storage	2014	0.7861	0.1922	0.3568	None
		2013	0.7758	0.1684	0.3695	
		2012	0.7643	0.1547	0.3403	
Bituma Corporation	Gencor-Bituma	2014	0.1955	-0.1824	-0.0006	2 Lawsuit Filed
		2013	0.2248	-0.2254	0.0527	
		2012	0.1904	0.0585	0.0062	
Burlington Northern RR Hldngs Inc	Burlington Northern	2014	65	N/A	30	None
		2013	64	N/A	30	
		2012	63	N/A	29	
Caterpillar Paving Pdts Inc	Caterpillar	2014	0.2794	-0.0085	0.0966	5 Lawsuits Filed
		2013	0.2682	-0.1551	0.1011	
		2012	0.2857	0.0954	0.1301	
Coca Cola Enterprises Inc	Coca-Cola	2014	0.6111	-0.0183	0.2111	1 Lawsuit Filed
		2013	0.6068	-0.0242	0.2183	
		2012	0.6032	0.0317	0.2245	
Columbia Storage Inc	Leggett and Platt	2014	0.209	0.0877	0.0876	None
		2013	0.2042	-0.0618	0.079	
		2012	0.2015	0.0193	0.0927	
Dollar Tree Distribution Inc	Dollar Tree	2014	N/A	N/A	N/A	None
		2013	N/A	N/A	N/A	
		2012	N/A	N/A	N/A	
Dover Europe Inc	Dover Corporation	2014	0.3836	0.0835	0.1568	None
Dover Global Holdings Inc	Dover Corporation	2013	0.3883	-0.1171	0.1624	
		2012	0.3834	0.0998	0.1561	
Extra Space Storage LLC	Extra Space Storage	2014	0.7175	0.2431	0.4303	1 Lawsuit Filed

## APPENDIX B. RESEARCH DATA FROM NAISC

Research Data from NAISC Download 333120-Construction Machinery and 493110 General Storage and Warehousing									
		Gross Profit	Gross Profit Margin	Total Revenue	Revenue Growth	Selling, General, and Administrative	Operation Margin	Operational Risk	Executive Role for Contract
		(Dependent Variable)		(Dependent Variable)		(Dependent Variable)		(Independent Variable)	(Independent Variable)
NAISC Sector Company	Ultimate Parent	Financial Statements		Financial Statements		Financial Statements		Lawsuits for Breach of Contract	LexisNexis Academic Database
		10K Reporting		10K Reporting		10K Reporting		LexisNexis Academic Database	Corporate Affiliations
Amida Industries Inc	Terex Light Constructi								
	2014	\$ 1,453,500.00	0.1989	\$ 7,308,900.00	0.0317	\$ 1,030,400.00	0.0579	None	No Executive Role Assigned to Contract Negotiations
	2013	\$ 1,439,500.00	0.2032	\$ 7,084,000.00	0.0146	\$ 1,020,400.00	0.0592		
	2012	\$ 1,400,100.00	0.2005	\$ 6,982,000.00	0.0734	\$ 1,033,300.00	0.0525		
Astec Industires									No Executive Role Assigned to Contract Negotiations
	2014	\$ 215,316.00	0.2207	\$ 975,595.00	0.0457	\$ 141,490.00	0.053	None	
	2013	\$ 207,119.00	0.222	\$ 932,998.00	-0.0035	\$ 133,337.00	0.0597		
	2012	\$ 207,951.00	0.221	\$ 936,273.00	0.0304	\$ 136,323.00	0.0546		
Atc Logistics & Elec Inc	ATC Technology- Fedex								No Executive Role Assigned to Contract Negotiations
	2014	\$ 39,148,000.00	0.8591	\$45,567,000.00	0.0289	\$27,188,000.00	0.0756	None	
	2013	\$ 37,632,000.00	0.8497	\$44,287,000.00	0.0377	\$27,023,000.00	0.0576		
	2012	\$ 35,744,000.00	0.8375	\$42,680,000.00	0.0859	\$25,055,000.00	0.0746		
Atmos Gathering Company	Atmos Energy								
	2014	\$ 1,582,426.00	0.3203	\$ 4,940,916.00	0.2749	\$ 505,154.00	0.1237	None	No Executive Role Assigned to Contract Negotiations
	2013	\$ 1,412,050.00	0.3644	\$ 3,875,460.00	0.1271	\$ 488,020.00	0.1295		
	2012	\$ 1,323,739.00	0.385	\$ 3,438,483.00	-0.1978	\$ 453,613.00	0.1298		
Badger Equipment Company	Manitex International								
	2014	\$ 48,264.00	0.1828	\$ 264,081.00	0.0776	\$ 31,776.00	0.0528	None	No Executive Role Assigned to Contract Negotiations
	2013	\$ 46,476.00	0.1896	\$ 245,072.00	0.194	\$ 26,026.00	0.0716		
	2012	\$ 40,464.00	0.1971	\$ 205,249.00	0.4425	\$ 23,548.00	0.0704		
Baker S Self Storage	Sovran Storage								
	2014	\$ 256,317.00	0.7861	\$ 326,080.00	0.1922	\$ 40,792.00	0.3568	None	No Executive Role Assigned to Contract Negotiations



## APPENDIX C. COMPANY INFORMATION

BUSDNSNO	COMPANY	TRADESTYLE_FULL	ADDRESS	PCITY	PSTATE	PZIP	SIC	SICDESC	TITLE
49282080	Omg Inc		153 Bowles Rd	Agawam	MA	01001-2908	35319909	Roofing Equipment	President
19067982	Howard P Fairfield LLC	Skowhegan Machine	9 Green St	Skowhegan	ME	04976-1159	35310803	Blades For Graders, Scrapers, Dozers, And Snow Plo	Executive Vice-President
22574552	Terex Corporation		200 Nyala Farms Rd Ste 2	Westport	CT	06880-6261	35310000	Construction Machinery	Chairman Of The Board
47470848	Public Storage		612 Haddonfield Berlin Rd	Voorhees	NJ	08043-1417	42250000	General Warehousing And Storage	President
962659442	Dover Global Holdings Inc		280 Park Ave	New York	NY	10017-1216	35310000	Construction Machinery	President
21226696	Crane Equipment & Service Inc		140 John Jmes Adubon Pkw	Amherst	NY	14228-1183	35310603	Crane Carriers	Chairman
948512116	I Genco Inc	Genco Atc	100 Papercraft Park	Pittsburgh	PA	15238-3200	42250000	General Warehousing And Storage	Chief Executive Officer
43887728	Jlg Industries Inc	Jlg	1 J L G Dr	Mc Connellsburg	PA	17233-9533	35310000	Construction Machinery	President
19710289	Grove US LLC	Manitowoc Crane Group	1565 Buchanan Trl E	Shady Grove	PA	17256	35310604	Cranes, Nec	President
960618171	Dollar Tree Distribution Inc	Dollar Tree	500 Volvo Pkwy	Chesapeake	VA	23320-1604	42250000	General Warehousing And Storage	Chairman Of The Board
960405991	Tinsley Group-Ps&W Inc	Olympic Steel-Ps&W	3031 Hamp Stone Rd	Siler City	NC	27344-1426	35310000	Construction Machinery	Chief Executive Officer
66325531	Amida Industries Inc	Terex Light Construction	1205 Galleria Blvd	Rock Hill	SC	29730-6671	35310000	Construction Machinery	Chief Operating Officer
18735467	Golden Triangle Storage Inc		10 Peachtree PI NE	Atlanta	GA	30309-4497	42250000	General Warehousing And Storage	
830171260	Baker S Self Storage		801 N Cocoa Blvd	Cocoa	FL	32922-7510	42259901	General Warehousing	Owner
10708329	Roadtec Inc		800 Manufacturers Rd	Chattanooga	TN	37405-3706	35310414	Planers, Bituminous	President
57845971	Kolberg Pioneer Inc		4101 Jerome Ave	Chattanooga	TN	37407-2915	35310000	Construction Machinery	
61308649	Astec Industries Inc		1725 Shepherd Rd	Chattanooga	TN	37421-2947	35310000	Construction Machinery	President
16240384	Astec Underground Inc	Astec Loudon	9600 Corporate Park Dr	Loudon	TN	37774-5584	35310608	Entrenching Machines	President
53735624	Atmos Gathering Company		123 W 4th St Ste 301	Owensboro	KY	42303-4160	42250000	General Warehousing And Storage	Principal
962507898	Concrete Leveling Systems Inc	Clis Fabricating Inc	5046 East Blvd NW	Canton	OH	44718-1212	35310000	Construction Machinery	Chief Executive Officer
364095562	F B Distro Inc		1901 E State Road 240	Greencastle	IN	46135-7825	42259901	General Warehousing	Manager
611787565	Gea Parts LLC		1251 Port Rd	Jeffersonville	IN	47130-8437	42250000	General Warehousing And Storage	President
13407498	Oakland Logistics Service Inc		12755 E 9 Mile Rd	Warren	MI	48089-2621	42259901	General Warehousing	President
46196620	Terex USA LLC	Terex Woodsman	1250 Commerce	Farwell	MI	48622-8518	35310101	Chippers: Brush, Limb, And Log	General Manager
5286539	Iowa Mold Tooling Co Inc		500 W US Highway 18	Garner	IA	50438-1090	35310604	Cranes, Nec	General Manager
5588842	Bituma Corporation	Gencor-Bituma	508 Highway 18w	Marquette	IA	52158-7729	35310000	Construction Machinery	Chairman Of The Board
605073931	Logistic Service LLC		2951 S 1st St	Eldridge	IA	52748-9341	42250000	General Warehousing And Storage	President
197264625	Telsmith Inc		10910 N Industrial Dr	Mequon	WI	53092-4331	35310000	Construction Machinery	President
187568712	Milwaukee Bulk Terminals LLC	Kinder Morgan Energy	1900 S Harbor Dr	Milwaukee	WI	53207-1027	42250000	General Warehousing And Storage	President
37598252	Western Products Inc	Western Products	7777 N 73rd St	Milwaukee	WI	53223-4043	35310803	Blades For Graders, Scrapers, Dozers, And Snow Plo	President
965118755	Manitowoc Cranes LLC		2401 S 30th St	Manitowoc	WI	54220-5919	35310000	Construction Machinery	President
118947568	Total Mixer Technologies LLC		2307 Oregon St	Oshkosh	WI	54902-7062	35310411	Mixers, Concrete	Managing Member
6210009	Caterpillar Paving Pdts Inc	Caterpillar	9401 85th Ave N	Minneapolis	MN	55445-2199	35310000	Construction Machinery	President
68148303	Labounty Manufacturing Inc	Division Of Stanley Works Th	1538 Highway 2	Two Harbors	MN	55616-4035	35310000	Construction Machinery	Chief Executive Officer
116226242	S V A LLC	Terex Asv	840 Lily Ln	Grand Rapids	MN	55744-4089	35310000	Construction Machinery	Chief Executive Officer
92786987	Badger Equipment Company		217 Patenaude Dr	Winona	MN	55987-1463	35310601	Backhoes	Chief Executive Officer
6250484	Terex Utilities Inc		500 Oakwood Rd	Watertown	SD	57201-4166	35310000	Construction Machinery	President
963541136	Fluid Management Operations LLC		1023 Wheeling Rd	Wheeling	IL	60090-5768	35310704	Mixers, Nec: Ore, Plaster, Slag, Sand, Mortar, Etc.	Chairman Of The Board
827870978	Dover Europe Inc		3005 Highland Pkwy	Downers Grove	IL	60515-5682	35310000	Construction Machinery	President
968953948	Caterpillar Logistics Inc		500 N Morton Ave	Morton	IL	61550-1575	42250000	General Warehousing And Storage	President
944176544	Caterpillar Power Systems		100 NE Adams St	Peoria	IL	61629-0002	35310000	Construction Machinery	President
607807252	R O Terex Corporation	Terex Cranes	550 E Highway 56	Olathe	KS	66061-4640	35310000	Construction Machinery	President
7158827	Caterpillar Work Tools Inc	Caterpillar	400 Work Tool Rd	Wamego	KS	66547-1299	35310800	Construction Machinery Attachments	President
7206105	Cmi Terex Corporation	Terex Roadbuilding	9528 W I 40 Service Rd	Oklahoma City	OK	73128-7108	35310000	Construction Machinery	Vice-President
80173359	Kolberg Pioneer Inc		4320 Sierra Dr	Grand Prairie	TX	75052-3118	35310000	Construction Machinery	Manager
556303899	Burlington Nthrn RR Hldngs Inc	Burlington Northern	2650 Lou Menk Dr	Fort Worth	TX	76131-2830	42250000	General Warehousing And Storage	President
102961880	Atc Logistics & Elec Inc	Genco Atc	13500 Independence Pkwy	Fort Worth	TX	76177-4010	42250000	General Warehousing And Storage	Chief Executive Officer
176404515	Crc-Evans Intl Holdings Inc		7011 High Life Dr	Houston	TX	77066-3717	35310000	Construction Machinery	Chief Executive Officer
795482269	Kinder Mrgan Txas Terminals LP		9640 Clinton Dr	Houston	TX	77029-4324	42250000	General Warehousing And Storage	Principal
151728037	Dynacon Inc		831 Industrial Blvd	Bryan	TX	77803-2097	35310200	Marine Related Equipment	Chief Operating Officer
150454171	King Terrain Corporation		1502 E Walnut St	Seguin	TX	78155-5297	35310000	Construction Machinery	President
70800719	Coca Cola Enterprises Inc	Coca-Cola	701 S Lincoln St	Amarillo	TX	79101-2533	42250000	General Warehousing And Storage	Manager
136819674	Extra Space Storage LLC	Extra Space Management	2795 E Cottonwood Pkwy	Salt Lake City	UT	84121-7033	42250000	General Warehousing And Storage	Member
963066683	Public Storage Pickup & Dlvry		701 Western Ave Ste 200	Glendale	CA	91201-2349	42250000	General Warehousing And Storage	President
9760315	Peterson Pacific Corp		29408 Airport Rd	Eugene	OR	97402-9541	35310000	Construction Machinery	President
106634272	Terex Corporation		455 N Superior Ave	Baraga	MI	49908-9602	35310000	Construction Machinery	President
926227976	F M Retail Services Inc	Fred Meyer Retail Services	222 Maurin Rd	Chehalis	WA	98532-8716	42250000	General Warehousing And Storage	President
195130307	Columbia Storage Inc	Csi Geosynthetics	2119 SE Columbia Way	Vancouver	WA	98661-8037	42250000	General Warehousing And Storage	President